RESTRICTED

G/C/M/144

10 March 2023

(23-1813) Page: 1/127

Council for Trade in Goods

MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS 24 AND 25 NOVEMBER 2022

CHAIRPERSON: MR ETIENNE OUDOT DE DAINVILLE

The meeting of the Council for Trade in Goods (CTG, or the Council) was convened by Airgram WTO/AIR/CTG/23, WTO/AIR/CTG/23/Rev.1, and WTO/AIR/CTG/23/Rev.1/Add.1; the proposed agenda for the meeting was circulated in document G/C/W/823.

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. He also informed delegations that, under agenda item "Other Business", he would comment on the functioning of the CTG and its subsidiary bodies based on the discussions that had taken place at the Council's informal meeting of 14 October 2022, update Members concerning the work undertaken on MC12 implementation matters, and announce the date of the Council's next meeting.

The delegate of the Russian Federation indicated the following:

The Russian Federation wishes to co-sponsor Agenda Item 24, "European Union – European Green Deal – Carbon Border Adjustment Mechanism and Deforestation-Free Commodities", and withdraw Agenda Item 50, "European Union – Carbon Border Adjustment Mechanism – Request from the Russian Federation".

The delegate of the United States indicated the following:

The United States wishes to withdraw Agenda Item 18, "Pakistan – Import Restrictions on Foodstuffs and Consumer Goods".

The delegate of the European Union indicated the following:

For the sake of clarity, the European Union notes that it is a sponsor of Agenda Item 18, "Pakistan – Import Restrictions on Foodstuffs and Consumer Goods", and requests that the item be kept on the agenda.

The delegate of Nigeria indicated the following:

Nigeria wishes to co-sponsor Agenda Item 24, "European Green Deal – Carbon Border Adjustment Mechanism and Deforestation-Free Commodities".

The Chairperson summarized these changes as followed: Agenda Item 50 had been withdrawn from the meeting's agenda; the Russian Federation and Nigeria had requested to co-sponsor Agenda Item 24; and although the United States had withdrawn as a co-sponsor of Agenda Item 18, the item remained on the agenda at the request of the European Union.

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 Council that five RTAs had been notified to the CRTA, as followed:

- Pacific Agreement on Closer Economic Relations Plus (Pacer Plus) – Entry Into Force for Tuvalu and Vanuatu, Goods (WT/REG451/N/2);
- Free Trade Agreement Between the EFTA States and the Gulf Cooperation Council (GCC) Member States, Goods (WT/REG465/N/1);
- Trade Agreement Between the United Kingdom and Colombia, Ecuador and Peru, Goods (WT/REG425/N/2);
- United Kingdom – Colombia, Goods – Notification of Termination (WT/REG410/N/2); and

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

- United Kingdom – Türkiye, Goods (WT/REG434/N/1/Add.1).

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 three items for the Council's consideration.

2.1 Decision on the Derestriction of the Uruguay Round Negotiating Materials – Draft Decision (G/C/W/822)

2.2. The Chairperson drew Members' attention to document G/C/W/822 containing a Draft Decision on the "Derestriction of the Uruguay Round Negotiating Materials". This draft Decision had followed the same approach that had been used in previous derestriction exercises for the previous rounds of multilateral trade negotiations. At its meeting of 18-19 October 2022, the CMA had agreed to forward this draft Decision for the consideration of the Council. At that meeting, it had also been agreed that Members would have until 23 November to contact the Secretariat and request any additional document to be removed from the list of documents to be derestricted. He informed the Council that, as no additional request had been received, document G/C/W/822 contained the full list of documents to be derestricted. On that basis, he proposed that the Council agree to forward it to the General Council for adoption.

2.3. The Council so agreed.

2.2 Introduction of Harmonized System Changes into the WTO Schedules of Concessions – Extension of Collective Waiver Decisions

2.4. The Chairperson informed Members that, at its meeting of 18-19 October 2022, the CMA had agreed to forward for the consideration of the Council four draft collective requests for waiver extensions concerning the introduction of Harmonized System changes into WTO Schedules of concessions, which were included in documents G/C/W/815, G/C/W/816, G/C/W/817, and G/C/W/818. These documents proposed a one-year extension of the draft collective waiver decisions concerning HS2002, HS2007, HS2012, and HS2017, all of which would expire on 31 December 2022. He proposed that the Council agree to forward the draft collective waiver decisions contained in these documents to the General Council for adoption.

2.5. The Council so agreed.

2.3 Introduction of Harmonized System 2022 Changes into WTO Schedules of Tariff Concessions – Draft Waiver Decision (G/C/W/820)

2.6. The Chairperson drew Members' attention to document G/C/W/820 containing a Draft Waiver Decision for the "Introduction of Harmonized System 2022 Changes into WTO Schedules of Concessions". This draft Decision followed the same approach that had been used in the waivers for the previous transposition exercises. At its meeting of 18-19 October 2022, the CMA had agreed to forward the draft Decision to the Council for its consideration prior to it being forwarded to the General Council for appropriate action. Accordingly, he proposed that the Council agree to forward the draft collective waiver decision to the General Council for its adoption.

2.7. 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.8)

3.1. The Chairperson informed Members that, in a communication dated 1 November 2022, the delegation of Armenia had requested the Secretariat to circulate document G/L/1110/Add.8 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 2024.

3.2. The delegate of Armenia indicated the following:

3.3. Following the last extension, Armenia has continued its consultations and communications with the interested delegations. However, given the current circumstances, it has done so with less intensity. Nevertheless, Armenia has made positive developments and real progress on the substance of the non-agricultural market access (NAMA) package and is also working on 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 to 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.8, 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 2024)."

3.5. In consequence, Armenia expresses its readiness to provide to Members an extension of an additional 12-month period, until 2 January 2024, 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 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.7)

4.1. The Chairperson informed Members that, in a communication dated 2 November 2022, the delegation of the Kyrgyz Republic had requested the Secretariat to circulate document G/L/1137/Add.7, 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 2024.

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

4.3. The Kyrgyz Republic is still in the process of analysing the qualifications and other relevant data announced based on the initial claims of interested Members. The Kyrgyz Republic has the informative taking an exchange with one of the interested Members and stands open to cooperation with others. The Kyrgyz Republic would like to recall that the term provided for withdrawal of substantially equivalent concessions expires on 12 February 2023. Considering that an additional time would be required in order to move these negotiations forward, and to ensure that Members reserve their rights pending the communication to the WTO Secretariat of the agreement reached in the context of Article XXIV:6 of the GATT, the Kyrgyz Republic requests a further extension of Members' rights to withdraw concessions pending the conclusion of Article XXVIII:3 negotiations until 12 February 2024, as reflected in document G/L/1137/Add.7. Thus, "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 the 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 parties to this process in due course.

4.5. The Council so agreed.

5 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 DJIBOUTI ON BEHALF OF THE LDC GROUP (WT/GC/W/742-G/C/W/752)

5.1. The Chairperson recalled that this item had been included on the agenda at the request of Djibouti on behalf of the LDC Group. The Chairperson understood that the main thrust of this proposal was to allow graduated LDC Members to benefit from a similar treatment to that granted to certain developing countries listed in Annex VII(b) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Following a request at the CTG's meeting of July 2021, the Secretariat had updated the GNP calculations for all Members, which had been circulated in November 2021 in document G/SCM/W/585.

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

5.3. The statement from Bangladesh will be brief as Members are aware of the LDC Group's request on this issue. For new delegates, and to refresh the Council's memory, Bangladesh wishes to summarize that, according to Article 27.2(a) of the Agreement on Subsidies and Countervailing Measures (ASCM), some Members are eligible to enjoy flexibilities under this Agreement, namely for the use of export subsidies for non-agricultural products. These Members are specified in Annex VII of the Agreement under two separate categories: (i) all least-developed countries (listed as Annex VII(a)); and (ii) some developing countries (listed in Annex VII(b), as long as their GNI per capita remains below the threshold of USD 1,000 in constant 1990 US dollar terms.

5.4. It is not clear from the ASCM whether an LDC, after its graduation, and if it remains below the same threshold of USD 1,000, should also benefit in the same way as do developing countries listed in Annex VII(b). For this reason, the LDC Group proposes that an LDC, after its graduation, and as long as its GNI remains below the threshold of USD 1,000 in constant 1990 US dollar terms, should be allowed the possibility to use the flexibility under Article 27.2 of the ASCM, as are the developing counties listed in Annex VII(b). Such a decision is required for clarity and predictability. The CTG can approve the LDC submission and recommend it to the General Council for appropriate action.

5.5. Bangladesh makes reference to the Secretariat note contained in document G/SCM/W/585, "GNP per Capita Calculations for All WTO Members Using the Methodology in G/SCM/38", dated 22 November 2021, which confirms the LDC Group's concerns. From the growth-rate trend in the note, it is evident that many LDCs may graduate from the LDC category with a GNI per capita below the threshold of USD 1,000 in constant 1990 US dollar terms.

5.6. The LDC Group is grateful to all those Members that have been supporting this proposal since its submission in 2018. Bangladesh, along with the LDC Group, will continue working with the delegations of the European Union and the United States and welcomes further suggestions from Members on how to achieve a positive result in this regard.

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

5.8. As indicated in April, the United States thanks the Secretariat for producing its Note of 22 November 2021, as found in document G/SCM/W/585, "GNP per Capita Calculations for All WTO Members Using the Methodology in G/SCM/38". The US has reviewed the Note carefully. Unfortunately, the Secretariat's calculations confirm US concerns, namely that there remain gaps in the information that is needed for this proposal to be workable from a technical perspective. The US is willing to consider ideas and proposals as to how to address these gaps, or otherwise address the issue raised by this proposal.

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

5.10. The European Union is mindful of the challenges facing graduating LDCs and supports constructive initiatives to better integrate LDCs into the multilateral trading system. For this reason, the EU encourages discussions on this issue. At the same time, the European Union would be interested in an in-depth discussion, which could be facilitated by the WTO Secretariat, on how LDCs make use of export subsidies and how these help LDCs in their economic development. In this context, it would also be helpful for the LDCs to provide updated subsidy notifications under

Article 25 of the ASCM. To this end, the EU recalls that technical assistance support regarding notifications is available via the WTO. In conclusion, the European Union stands ready to engage in informal consultations with the LDC Group on this matter.

5.11. The Council took note of the statements made.

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

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

6.2. The delegate of Paraguay indicated the following:

6.3. Paraguay regrets the need to persist in raising this trade concern on the Council's agenda but, unfortunately, we have not only been unable to make progress towards a resolution, despite the years that have elapsed since it was first raised, but we also view with concern the proposal by the European Union to establish even more unjustified barriers on agricultural products. Indeed, Paraguay notes that one third of the extensive agenda currently before the Council is a result of EU policies, the bulk of which affect or will affect trade in agricultural products, so in the interests of time, and owing to the inter-related nature of the trade concerns and the length of this intervention, Paraguay will take the floor just once to address this item, the proposals concerning trade in deforestation-free commodities, and the reduction in MRLs for certain substances on environmental grounds that are included in the agenda of this meeting under Agenda Items 24 and 37, respectively.

6.4. With regard to the suspension or non-renewal of the authorization for substances and the subsequent reduction in MRLs, the European Union routinely responds in this and other forums that trade has not fallen; but its argument is unsound. Members hear numbers to justify supposed increases in inclusive trade, but a rise in the value of trade can occur despite a reduction in volume as a result of price rises in a market for food that, as a result of various challenges we are currently facing, is highly volatile. Additionally, Members know that the substances are being withdrawn gradually, meaning that there are still alternatives that sooner or later will be subject to the same fate as the substances facing non-renewal. We also know that various policies are in play, as is clear from the Council's current agenda. And these policies are not applied in isolation; rather, they are related, and their phased implementation will mask their effect on trade until their full implementation has been achieved.

6.5. The second argument that we hear from the European Union is that it is unable to provide longer transition periods to allow trading partners to adjust their production systems, especially in the absence of viable alternatives to substances for which the limit has been lowered to 0.01, because consumer health and its high level of consumer protection cannot be compromised. The EU alleges that non-renewal is then only possible option if the hazard-based approach identified a potential risk to human health. However, Paraguay is not calling for harmful substances to be renewed, but rather for such substances to be identified using scientific and not political criteria. This kind of politicization often discourages chemical manufacturers from even applying for a renewal: rejection in Europe could affect their products in other markets. Accordingly, Paraguay once again asks the EU to take account of information on Plant Protection Products (PPPs) provided by the specialized agencies recognized by the WTO, such as the *Codex Alimentarius*; to base its decisions on conclusive scientific evidence and real risk weightings, in accordance with relevant international standards and principles; and, when measures are duly justified, to provide adequate transitional periods and import tolerances.

6.6. Paraguay reiterates its concerns about the politicization of these scientific processes, as seen most recently in discussions on the renewal of glyphosate, when the European Union's member States were unable to agree on an extension to enable the glyphosate assessment process to continue because the three Rapporteurs had not completed their review of the file on time. It is striking that one of the very States acting as a rapporteur refrained from allowing more time to complete the assessment. Paraguay hopes that the European Commission is able to provide us with

more information on what it plans to do to be able to complete its assessment of the file, and to prevent enormous disruption to trade, given that the registration for glyphosate expires in approximately 20 days from now.

6.7. The third argument that we hear is that the European Union's member States are required to comply with the same policy as the EU's trading partners. However, the EU member States typically issue emergency authorizations for the very substances that the Commission views as posing a hazard to human health. The public information available shows a pattern of "constant emergencies" in which authorizations are provided time and again in the same member States, for the same products, and even in the same seasons, granting European producers a *de facto* authorization to continue using substances that are "prohibited" in the EU since many years. On previous occasions, Paraguay has explained how many of these authorizations are validated even without the application forms, which are also public, having been fully filled out and completed. The EU will undoubtedly reply that these powers rest with its member States and that the European Food Safety Authority (EFSA) reviews emergency authorizations to ensure that the member States do not abuse them. However, in all the EFSA reviews that Paraguay has been able to find in the public domain, on all occasions when there was no chemical alternative to control a pest, even when other means of control and good agricultural practices existed, EFSA had taken the view that the emergency authorization was justified. In this way, European producers continue to systematically benefit from emergency authorizations and generous subsidies to maintain production methods that are incompatible with different climatic and geographical conditions. The arguments put forward by European farmers when requesting these authorizations from their countries are similar to those made by the EU's trading partners, such as the lack of viable alternatives, the potential for resistance generation, safe use in accordance with good agricultural practices, and the certain losses that would arise from not having such a tool for production. The difference is that European producers and their complaints get heard, and the EU provides them with a solution, whereas Paraguay's complaints continue to be ignored. Paraguay considers that this is not about protecting health because there is no proven benefit from these policies or any scientific evidence to justify them; rather, it is a matter, simply, of protectionism.

6.8. Paraguay addressed questions to the Commission several months before, and when the Commission evaded those questions with the argument that the emergency authorizations were a matter for national authorities, Paraguay then posed the same questions, together with other WTO Members, to the 27 EU member States, which are also Members of the WTO in their own right. We are still awaiting their replies. Paraguay wonders how something that, according to the Commission, poses an unacceptable risk to the health of European consumers can be justified as acceptable to EU member States when it comes to protecting their own agricultural production.

6.9. Moreover, it is paradoxical that, even in cases where the hazard analysis conducted by the European Union has concluded that certain substances are safe and harmless, other factors, that have nothing to do with the health of humans, plants or animals, are taken into account when setting maximum residue limits (MRLs). This is what happened with the MRL reduction for clothianidin and thiamethoxam to the limit of quantification (LOQ) notified in document G/TBT/N/EU/908. Paraguay notes that the EU intends to use the MRLs for these substances not to protect European consumers, but to regulate the use of neonicotinoids in processes and production methods in third countries. Paraguay is of the view that the TBT Agreement was not conceived to accommodate measures with clearly extraterritorial objectives. Moreover, Paraguay has serious concerns as to the compatibility of the measure notified by the EU with the market access and non-discrimination obligations provided for in the rules of the WTO.

6.10. Each WTO Member, including Paraguay, faces specific needs and challenges in agricultural production, depending on its geography, ecosystem, and local scientific capacities, in seeking to achieve and maintain agricultural sustainability. This situation is reflected in regulatory frameworks that are based on sound scientific evidence and applied to registration processes in order to assess the risks of pesticides and their uses, including the assessment of risks to the environment and pollinators. The European Union's intention to impose its environmental standards on third countries disregards and denigrates these local regulatory policies, including regional policies, and constitutes a threat to the application of environmental measures and policies that are compatible with each Member's specific circumstances. In addition, it fails to take account of common but differentiated responsibilities.

6.11. Moreover, the European Union is taking these measures without renouncing the right to grant emergency authorizations, which is a matter for EU member States, thus making it possible for EU member States to continue using products that could not be used in third countries seeking to trade with the EU. In this regard, Paraguay notes that there is not only discrimination in practice between EU producers and trading partners, but also an inconsistency over the legitimate objective pursued and the actions taken to achieve that objective. Paraguay also notes that, since neonicotinoids were banned in the EU, 213 emergency authorizations have been issued for their use in the EU, including 91 for sugar beet, 52 for oil seed rape, 27 for sunflower, and 40 for other crops, such as wheat and certain vegetables.

6.12. Finally, another non-tariff trade barrier for agricultural products that is of major concern to Paraguay is the new regulation of deforestation-free commodities. On this issue, Paraguay cannot fail to recognize the extraordinary efforts that the European Union is making in the bilateral, plurilateral, and multilateral spheres. However, what Paraguay and its producers need is not a unilateral explanation of the measures, but rather a frank dialogue allowing Paraguay's legitimate demands to be met while at the same time moving towards a mutually acceptable solution to this trade concern. Paraguay reiterates that this trade concern is of great importance to countries exporting agricultural products, especially small developing countries with economies and livelihoods that depend primarily on the agricultural sector.

6.13. In relation to this measure Paraguay also notes that, while some Members industrialized their economies and achieved their current level of development through highly polluting and environmentally damaging methods that are responsible for climate change, other Members, such as Paraguay itself, have only contributed marginally to climate change, but are nevertheless being penalized and forced to comply with those same measures, but without the same levels of support. This clearly disregards the principle enshrined in international environmental law of common but differentiated responsibilities.

6.14. Paraguay considers that the transition towards sustainability in productive systems needs to be gradual and determined by Members themselves according to their economic and social development needs. Local circumstances in different regions, possessing their own specific productive, social, and environmental characteristics, must also be respected. Paraguay is particularly concerned over the high cost that would be incurred by producers merely to demonstrate their compliance with the EU's measures which, in contrast with European producers, will not be merely a small fraction of the significant subsidies they receive, but rather a share of their profits.

6.15. In its response to the question raised in this regard in the Committee on Agriculture, the European Union stated that it had made a "significant commitment" of "EUR 1 billion to protect, restore and sustainably manage forests in the partner countries". However, this sum does not even equal the trade and production-distorting support granted by the EU annually to the production of meat, this being one of the products covered by the proposal, and which, according to data in the EU's most recent DS:1 notification, amounts to support of EUR 1,781.7 million. Paraguay notes that it has not yet even mentioned the additional support received through other programmes classified by the European Union under the Green Box, but routinely criticized by other Members.

6.16. With respect to the European Union's system for categorizing Members by risk, some interesting elements emerged at the recent meeting of the Committee on Agriculture, which took place earlier in the week. Paraguay notes that it is not yet clear how this system will function in practice, and that analysis of the system continues in Capital. Nevertheless, Paraguay is greatly concerned by what it has seen of the system thus far. Indeed, Paraguay asks if perhaps it should have discussions with those colleagues responsible for negotiating environmental agreements with a view to the terminology being changed from "National Determined Contributions" to "EU determined contributions". Paraguay hopes that this is not what will happen, and that the EU can clarify how it is planning to perform such classification, how it will take into account the common but differentiated responsibilities, and how it will ensure that the classification will be objective, transparent, and take account of all the relevant elements, including the three sustainability pillars.

6.17. Paraguay recalls that, while it has 16.6 million hectares of native forest (an area equivalent to that of Switzerland, Denmark, Belgium, the Netherlands, and Slovenia combined), provides free ecosystem and environmental services, supports the conservation of between 25% and 45% of native forests in agricultural production facilities, and produces without subsidies, it will nevertheless still be penalized by this measure and the other EU measures covered under this statement.

6.18. The delegate of Ecuador indicated the following:

6.19. In keeping with its recurring interventions in the Committees on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, Ecuador yet again finds it necessary to support this trade concern. Regrettably there has been no change in the situation compared to last year. Moreover, Ecuador feels that it has, knowingly or unknowingly, fallen into a fruitless revolving door of complaints that fail to result in an effective solution. In light of the discussions on WTO reform, the Council should consider how its mechanism for work on trade concerns can be improved in order to generate genuine exchanges between Members that deal pragmatically with the substantive matters raised in this forum.

6.20. Ecuador refers to its previous interventions on this matter. In that regard, Ecuador wishes briefly to recall the five objections on which its shared trade concern is based, namely: (i) the adoption of measures without scientific evidence; (ii) the failure to observe international standards; (iii) the failure to comply with the requirements established in the SPS Agreement; (iv) the suspension of MRLs that are beyond the levels recommended by the *Codex Alimentarius*; and (v) the absence of reasonable adjustment periods where such measures are proven necessary. By limiting the substances available for production, the European Union is obstructing the rotation of PPPs, which combined with the harmful effects of climate change, raises the risk of resistance in pests with consequent dangers for biodiversity.

6.21. Taking the view that these concerns could form the basis for constructive dialogue with all trading partners with an interest in this matter, within the framework of this trade concern, Ecuador wishes to ask the European Union the following questions:

(i) How does the EU assess the impact of its measures on the production methods of developing tropical countries such as Ecuador? How can the effects of climate change and environmental conditions in tropical countries be taken into account in order to arrive at phytosanitary solutions that fit the particular circumstances of countries subject to those effects and conditions?

(ii) The negative impact on small farmers and developing countries of the measures complained of contravenes important principles of an Organization that promotes trade as a driver of economic growth and development as well as greater participation by developing countries in global trade. Does the EU have information on the scale of the negative impact of its measures on small- and medium-sized farmers and on exports from developing countries?

6.22. The European Union is a valued trading partner for Ecuador. For this reason, Ecuador wishes this exchange of information to be not just a mere formality, but rather a means of finding a solution to this very long-standing trade concern.

6.23. The delegate of Costa Rica indicated the following:

6.24. Costa Rica supports the statements made by Paraguay and Ecuador, and shares the concerns raised by other Members on this and previous occasions in this Council, and continues to co-sponsor and support this agenda item and document G/C/W/767/Rev.1. Costa Rica believes that the concerns raised about the European Union's regulatory approach remain relevant and should be resolved as a matter of urgency.

6.25. Costa Rica and the European Union share the objectives of protecting biodiversity and the environment as the only viable way to achieving sustainable development that will secure the future of our planet. Costa Rica provides a vivid example of its commitment to these objectives because it has not only stopped the process of deforestation, but also increased the amount of forest cover. Today, 60% of Costa Rica's national territory is covered by forests, which provide a wide variety of ecosystem services.

6.26. Costa Rica notes that the European Union is interested in implementing measures to control deforestation and forest degradation related to the importation of certain products, including tropical products such as cocoa, coffee, and palm oil. There are many methodological doubts about the design of a trade mechanism such as the one proposed, but Costa Rica understands that the issue

is still under discussion in the European Parliament. Regarding this proposal, Costa Rica can only urge the EU to ensure that its measures are consistent with the WTO Agreements and their fundamental principles, and that they are neither discriminatory nor disguised barriers to trade.

6.27. With regard to MRLs, Costa Rica has systemic and trade concerns about the European Union's hazard-based approach. In practice, this approach has led to the elimination of dozens of substances that are essential for pest and disease control in agricultural production in developing countries with a tropical climate, such as Costa Rica. Costa Rica also notes the European Union's recent announcement, in notification G/TBT/N/EU/908, concerning the review of MRLs to their limit of detection for several substances. The EU argues that the implementation of the measure is based on an "environmental concern of global nature". Beyond the eminently extraterritorial nature of the measure, Costa Rica is concerned that such justification appears to be inconsistent with the principles of both the SPS and the TBT Agreements.

6.28. Costa Rica urges the European Union to continue its dialogue with the parties concerned and to address the concerns expressed by Members in this Council and its subsidiary bodies.

6.29. The delegate of Colombia indicated the following:

6.30. Colombia certainly values the rapprochements that have taken place with the European Union, but it also regrets that little or no progress has been made since this item was first included on the Council's agenda. In the interests of time, Colombia refers to its previous statements regarding its ongoing concerns about the European Union's general hazard-based regime, including the discriminatory nature of its policy.[2] Please note that Colombia has drawn up a new set of questions, along with other Latin American countries, and encourages interested Members to study these questions and to review the previous replies. Lastly, while Colombia views the process of open dialogue between authorities and the European Union with limited optimism, it welcomes such dialogue and hopes it will lead to tangible outcomes regarding the trade concerns it has raised, including a reduction in market distortions.

6.31. The delegate of Panama indicated the following:

6.32. Panama wishes to reiterate the importance it attaches to this issue. The reduction of MRLs without sufficient scientific evidence restricts access to substances essential for agricultural production, especially in countries with tropical climates, such as Panama. Panama believes that the European Union's set of policies and practices carries the risk of nullifying and undermining the legitimate rights of WTO Members that are signatories to the Agreement on Agriculture and the SPS Agreement.

6.33. Panama shares the European Union's objective of supporting the global transition to more sustainable global agri-food systems, but these must be based on solutions that are designed and implemented through dialogue mechanisms and multilateral cooperation schemes. Panama notes with regret that no progress has been observed to date. Panama once again calls upon the EU to listen to the legitimate concerns of dozens of WTO Members. In Panama's view, constructive, serious and ongoing dialogue, together with mutually agreed technical assistance, will make it possible to find solutions that are beneficial to all parties.

6.34. The delegate of Australia indicated the following:

6.35. Australia has raised or supported a number of specific trade concerns relating to the European Union's implementation of non-tariff barriers on agricultural products, including at the most recent SPS and TBT Committee meetings. Australia remains concerned that the EU's application of its health and environmental standards to imported agriculture and agri-food products in many aspects does not facilitate trade and is not conducive to achieving productive and sustainable outcomes in the agriculture sector. For imported agricultural products, the European Union's regulatory approach to agricultural inputs, production requirements, and specific measures targeted at protecting the environment has impacted third-country producers' ability to access the EU market. These concerns

[2] See, for example, document G/C/M/143, paragraphs 7.2-7.6.

include the EU's recent attempts to set MRLs for certain pesticides in order to achieve environmental outcomes in third countries.

6.36. Australia does not consider that MRLs are an appropriate or efficient tool to achieve environmental outcomes. Third country national authorities are indeed the best decision maker to ensure that pesticide application is undertaken in a safe, responsible, and sustainable manner in each country, and in accordance with their unique environment.

6.37. Australia also maintains concerns over the unfair competitive advantage provided to the European Union's producers in applying EU domestic production requirements to imports, without allowing for the recognition of third-country systems that achieve equivalent outcomes. EU producers are subsidized to implement EU production requirements, and if they are unable to maintain productivity and profitability, then only EU producers can access EU exemptions from certain regulatory requirements, such as emergency authorizations. This creates a two-tiered system, with imported products being subject to more stringent regulatory conditions than domestically-produced products.

6.38. Australia recognizes the right of WTO Members to regulate agricultural imports in a manner that protects animal, plant and human health and the environment. However, 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. In order to ensure the free flow of agricultural trade without unnecessary regulatory burden, Australia maintains its request that the European Union apply international standards and best practice for regulating imported agricultural products.

6.39. Australia thanks the European Union for its ongoing engagement with Australia on these long-running issues.

6.40. The delegate of Guatemala indicated the following:

6.41. Guatemala regrets that it must continue to pursue this concern. As the European Union has indicated in other Committees, it has already responded to Members' questions on 12 occasions. However, a reply that pays no heed to the questions raised does not constitute a reply, and nor does it offer a solution. Guatemala reiterates its concern around the European Union's policy on active substances, which is a policy not backed by scientific evidence or science-based risk analysis, and one that fails to comply with the *Codex Alimentarius*. For example, in the case of Mancozeb, the European Union is continuing its MRL review while Guatemalan producers must live with the ongoing uncertainty surrounding EU policy, and it goes without saying that an agricultural crop cannot be changed overnight.

6.42. Guatemala regrets that the European Union is not taking into account the different climatic conditions globally, and notes that not all countries enjoy European climatic conditions. Indeed, tropical countries face many challenges because of differences in temperature, humidity, and atmospheric gases that affect growth and the capacity of plants, fungi, and insects to multiply, thus changing how pests, their natural enemies, and their hosts interact. This is not a minor point for those farming in such conditions although it has still not been dealt with by the EU.

6.43. Guatemala has previously asked the European Union for longer transition times that acknowledge the reality of the phases in its agricultural production. However, the EU's reply has been negative. Some sectors are currently trialling other substances to assess their impact and effectiveness in a production area. Such tests began in January 2022 and the results will be available by the end of 2023. It should be noted that production has already fallen by 20% because of the ineffectiveness of the alternative substances. This is why Guatemala needs to use these substances, because it is a tropical country with extreme temperatures.

6.44. The European Union states that its measures have no adverse effect on trade. However, as Paraguay has noted, exports are measured by volume, although it goes without saying that small producers should also be afforded recognition and the opportunity to engage in international trade. And it is they who are currently experiencing the most serious effects. Products exported from Guatemala in 2022 have begun to be rejected and destroyed in European Union ports. This translates into economic loss, has a social impact, and affects rural development.

6.45. If there is a genuine health concern over certain substances, Guatemala fails to understand how the European Union can allow emergency authorizations for their use by European producers. That is, unless the health concern is not valid. Furthermore, Guatemala is of the view that these measures discriminate between European producers and those of third countries. European producers use these products in circumstances where they have no alternative, but producers in third countries, especially in a tropical country where the climate is extreme, face the same circumstance, namely that they have no alternative.

6.46. Guatemala would be grateful if the European Union could indicate the actions it is taking to ensure that its measure does not distort trade further than is necessary, and explain how its measure upholds the WTO principle of national treatment. In Guatemala's view, there is a social and economic impact on producers of developing countries, such as Guatemala, which the European Union is not taking this into account in its assessment. Guatemala hopes to have a real dialogue with the European Union on this matter with the aim of finding genuine solutions, because the issues are real; they are not merely a matter of statements delivered at this Organization.

6.47. The delegate of Uruguay indicated the following:

6.48. Uruguay wishes to reiterate its trade and systemic concerns regarding the European Union's use of a hazard-based approach rather than full risk assessments in its regulatory decisions related to sanitary and phytosanitary matters. Uruguay understands that any determination of MRLs, particularly when they deviate from international standards such as those set by Codex, must be based on a full scientific risk assessment and conclusive scientific evidence, in accordance with the SPS Agreement.

6.49. Uruguay agrees with other Members that the existence and practical implementation of exception regimes, such as emergency authorizations, can lead to discriminatory situations. It is also of concern that insufficient transition periods are provided to make the necessary adjustments in production, and that the opening of international consultation periods has been transformed into a mere procedural instance, but with no practical impact on decision-making. Uruguay hopes that the European Union will ensure instances of real dialogue, which could lead to effective revisions or modifications of its regulatory proposals in light of all the contradictions in them pointed out by Members.

6.50. Finally, Uruguay again urges the European Union, as one of the largest markets for agricultural products, to reconsider the general direction of its regulatory approach, with a view to avoiding the unjustified proliferation of barriers to international trade in agricultural products, taking into account the severe socio-economic consequences that these policies may have for developing and least developed countries, whose economies are based on the production and trade of agricultural products.

6.51. The delegate of Canada indicated the following:

6.52. As noted in its previous interventions on this subject, Canada emphasizes the need for transparency and predictability in international trade. An important aspect in achieving this is regulatory frameworks that have been developed based on scientific data and risk analysis, and which have taken into account the comments of trading partners so that they may achieve the outcomes desired while facilitating trade where this is feasible and appropriate.

6.53. In accordance with WTO obligations, Canada recognizes a Member's right to regulate in the public interest and to apply the food safety measures it deems necessary to protect human health. However, such measures must be implemented in a transparent manner that does not unjustifiably restrict international trade.

6.54. The European Union is the world's leading agricultural and forest products importer and therefore plays an important role in ensuring a predictable and open trade environment. On this occasion, Canada wishes to comment on two particular policy initiatives where the EU's approach is more trade restrictive than necessary and could result in increased uncertainty and higher compliance costs for importers and exporters, thus further complicating international supply chains.

6.55. The first regulation Canada wishes to comment on is the European Union's proposal on deforestation-free supply chains. While Canada share's the EU's objective of preventing global deforestation, the compliance mechanisms that have been proposed within draft legislation, including the use of plot-of-land-based traceability, will result in increased costs and administrative burden for countries exporting to the EU market. As the legislative process for this regulation is well under way, and moving rapidly, it is imperative for the EU to seriously take into account concerns of trading partners, and to ensure that any new regulation to help curb global deforestation does not unnecessarily impact trade.

6.56. The second issue Canada wishes to raise concerns the series of measures that support the European Union's approach to regulating pesticides. Canada is particularly concerned with the apparent strategy to restrict the use of important PPPs through the reduction of MRLs, as this may lead to significant barriers to trade. Canada urges the EU to reconsider its current approach to the setting of MRLs, as all countries should have the ability to use PPPs that are appropriate to their particular circumstances and needs without unnecessarily jeopardizing access to trade. The current EU approach is also problematic as European farmers still have the ability to use some of these PPPs on an annual basis through emergency authorizations. Canada 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, which may indicate that there is a legitimate case for the use of such products. Frequent use of emergency authorizations in the context of the EU's current approach to plant protection renewals creates an unfair playing field between domestic and imported products.

6.57. Canada reiterates its concern and the concern of other EU trading partners regarding the European Union's hazard-based regulation for active substances in PPPs and the impacts this may have on the setting of import tolerances. The EU must consider both hazards and exposure for all active substances in its regulatory decision-making process. This would bring the EU's regulatory framework back in line with internationally recognized approaches while continuing to protect users and consumers, as well as enhancing global food security.

6.58. Canada also recalls that the European Union has stated that it will be changing how requests for import tolerances are established in the context where the hazard-based cut-off criteria are involved, including taking into account certain environmental impacts in the country of origin. Canadian growers and exporters have yet to be assured of the real-world feasibility, commercial viability, and compliance with international obligations of the EU's proposed approach. Consequently, Canada once again requests that the EU consider maintaining MRLs for substances that do not pose unacceptable dietary risks to European consumers, as this would be the only means by which consumers would be exposed to such products. For example, Canada is concerned by the European Union's notification to the TBT Committee that it will be lowering the MRLs for clothianidin and thiamethoxam to the LOQ based on environmental concerns for the global pollinator population. This type of policy and rationale restricts trade and appears to be the EU's attempt at levelling the playing field for regulations they have imposed upon their own agricultural producers. If a pesticide does not have dietary concerns and poses no risks to EU consumers, the EU should maintain the MRLs or harmonize with Codex.

6.59. Furthermore, Canada requests 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 for commodities with long shelf lives. Transition periods should therefore be appropriate to the circumstances and product type, and should allow commodities to clear channels of trade where no dietary risks of concern to consumers have been identified.

6.60. In conclusion, Canada hopes that the reiteration of its concerns emphasizes the importance that Canada, and many WTO Members, attribute to seeking enhanced transparency and predictability for trade, particularly in a context where such trade can contribute to global food security and supply.

6.61. The delegate of Brazil indicated the following:

6.62. Brazil regrets that, since this issue was first raised, more than two years ago, not only has the European Union not provided adequate answers to the many concerns raised by a large number

of WTO Members, but it has also continued to adopt non-tariff barriers (NTBs) that lack scientific evidence and further imbalance trade in agricultural goods. Brazil therefore makes reference to its previous statements on this topic, as all Brazil's concerns remain valid.[3]

6.63. In addition, Brazil notes that the European Union has claimed that the measures being questioned have not prevented it from being a large importer of agricultural goods. Firstly, nowhere in the GATT does it say that being a large importer of agricultural goods enables a WTO Member to adopt discriminatory policies or to go against the basic principles of the SPS Agreement. Secondly, such imports simply reflect the reality that other regions of the world can produce more effectively and more sustainably than the EU without the thousands of euros of subsidies per farmer. But while enabling a more efficient allocation of production and promoting the rise of living standards through trade are key goals of this Organization, WTO Members have never had a level playing field in the trade in agricultural goods, and the reform mandated by Article 20 of the Agreement on Agriculture (AoA) is a clear indication of that. Besides, the scientific principle, enshrined in the SPS Agreement and materialized through risk analysis, exists for a reason, namely, to establish a balance between the principle of protection of life and human and animal health and the guarantee that the market access conditions negotiated multilaterally are not undermined by unjustified measures.

6.64. However, after nearly 30 years, the European Union has not engaged meaningfully in redressing the imbalance in its favour in the AoA and is constantly imposing prohibitions based on the hazard approach and/or recourse to Article 5.7 of the SPS Agreement, despite contrary technical advice from renowned institutions. This not only tilts the balance towards protectionism, but also undermines the capacity of developing countries to raise living standards in rural areas. It is thus worrying that 25 years after its adoption, the interpretation that is being given to the SPS Agreement is moving away from the purposes that guided the negotiations during the Uruguay Round. It is also worrying that Brazil has to bring debates of this nature to the CTG in a context in which it has been following with concern the legislative projects that try to create new non-tariff barriers under the guise of environmental protection measures.

6.65. Additionally, Brazil would like to note that it is still waiting for adequate answers regarding the compatibility with WTO law of 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 which presented the same arguments as delegations from other WTO Members in the SPS and TBT Committees, while others simply do not offer any justification and yet were approved, a point just raised by Paraguay.

6.66. As a final comment, Brazil stresses that the world is facing an acute food security crisis, which will become even more challenging in the next decades as the world's population grows. It is thus imperative to have in place incentives and policies that support agriculture in those areas that, blessed with a favourable climate for agriculture, can increase output in a sustainable manner. Unfortunately, EU policies in this area are not pulling in the direction WTO Members need in order to support the poorest in developing countries and increase food security worldwide.

6.67. The delegate of United States indicated the following:

6.68. The United States joins Australia, Brazil, Canada, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Jamaica, Panama, Paraguay, and Uruguay in again raising its concerns regarding the European Union's implementation of non-tariff barriers on agricultural products. As the United States has noted in the past, the European Union continues to lower many pesticide Maximum Residue Levels, or MRLs to trade-restrictive levels without clear scientific justification or measurable benefit to human health. This hazard-based approach to pesticide regulation may lead to trade barriers that threaten the security of global food systems.

6.69. Furthermore, the European Union enforces newly reduced pesticide MRLs at the point of production for domestic goods, but at the point of importation for imported goods. This difference in the way that domestic and imported goods are treated causes trade inefficiencies and disruptions for products destined for the EU market and results in an unfair advantage for EU producers, especially for those that produce products with long shelf lives.

[3] Document G/C/M/143, paragraphs 7.32-7.38.

6.70. The United States remains concerned that it appears as though the European Union is following a similar approach with its new veterinary drug legislation through prohibitions on the use of antimicrobials that are not considered medically important for human health. Like other Members, the United States has shared its concerns in the SPS Committee that these prescriptive restrictions, which do not appear to be based on completed risk assessments, will apply to foreign producers exporting animals and animal products to the European Union.

6.71. Given the European Union's position as one of the largest importers in the world, EU polices affect production practices in third countries, as producers must choose between adopting European production practices or abandoning trade with the EU. The United States requests that any EU measure allows flexibility to trading partners to meet the EU level of protection in a manner that is appropriate to the needs of farmers and producers within the exporting countries' own domestic context.

6.72. In light of recent calls for coordinated action to ensure predictable trade flow and support international food security, the international community should be working together to support science-based measures that promote a safe and sustainable food supply, and we call on the European Union to join with its trading partners in identifying such mutually beneficial approaches.

6.73. The delegate of Dominican Republic indicated the following:

6.74. The Dominican Republic welcomes the inclusion of this matter on the Committee's agenda and, for the sake of brevity, refers to its statements made at the last meeting of the Committee on Sanitary and Phytosanitary Measures. The Dominican Republic shares the European Union's concern regarding the protection of human and animal health, as well as the measures to protect the environment. However, the Dominican Republic is concerned about the systemic and commercial impact that the measures to reduce MRLs may have on its exports, given that this type of regulation has a direct socio-economic impact on the Dominican Republic, particularly affecting agricultural producers, who tend to be the most vulnerable populations in LDCs and developing countries, and who are directly hit by the socio-economic consequences of these restrictions on international trade.

6.75. It is important to recall that Members must take into account the scientific evidence generated from studies in experimental animals, as well as epidemiological studies on exposed populations, to clearly establish disruption as an effect, thereby eliminating the presumption of adverse effects. In this line, it is convenient to add that the report published by EFSA in 2010 with the conclusions of risk assessments of active ingredients, like imazalil, and mutagenicity studies, concluded that it is not genotoxic. The evaluation of other effects concluded that it is not toxic at a reproductive level, and is not teratogenic. Thereby, the Dominican Republic considers that the reasons provided by the European Union to present these modifications are not based on an identified risk to the consumer, but are due rather to a lack of studies needed to rule out certain risks. The EFSA had indicated that said studies would be necessary to conclude its scientific assessment. For this reason, both of the EFSA's scientific assessments about MRLs do not recommend any specific MRL, but instead indicate the need for more studies before reaching any conclusion. However, the European Commission has interpreted the lack of conclusion by EFSA as a health risk. The Dominican Republic therefore invites the EU to comply with the *Codex Alimentarius* by reconsidering the implementation of these measures that affect agricultural producers in developing countries.

6.76. The delegate of Jamaica indicated the following:

6.77. Jamaica supports the inclusion of this item on the agenda and shares the concerns raised by other co-sponsors. Jamaica reiterates the systemic implications of the European Union's MRL policies, especially as they relate to their impact on Jamaica's exporters and producers of the substances affected. Jamaica is of the view that the Members have the right to adopt measures that protect their plant, animal and human health, as well as to protect the environment. But such measures should be based on scientific evidence that is accepted and justified by the global scientific community. Jamaica believes that the EU's approach requires recalibration in this regard as it does not adhere to established international best practices and standards. In addition to imposing high compliance costs, the time for Jamaica's exporters and producers to adapt to the MRL adjustments is severely insufficient. It is unfortunate that no sooner had Jamaica's farmers invested hugely in adapting to the EU's previous MRL adjustments then the EU announced new adjustments to those substances. Jamaica does not even have enough time to carry out an impact assessment in the

sectors affected. In Jamaica's view, this is an unnecessary restriction, especially when there are studies to prove that the adjustment is much more than required to meet the objective of the measure. As a developing country Member seeking successful integration into the global trading system, such measures negatively affect Jamaica's producers and exporters, which in turn have an impact on Jamaica's export earnings and export potential. Jamaica calls on the EU to heed the calls of Members to take their concerns into account and to revise its approach to its MRL policies to achieve an appropriate balance between its objectives and the need to ensure that the trade impact is minimal.

6.78. The delegate of India indicated the following:

6.79. India shares the concerns raised by Members in document G/C/W/767/Rev.1, dated November 2019, over the European Union's application of non-tariff barriers on agricultural products. That these issues are still being discussed three years later demonstrates the serious concerns held by the EU's trading partners regarding the EU's adopted approach. The EU's unilateral measures are increasingly undermining regulatory principles and are not founded on internationally agreed risk analysis principles; nor do they take into account alternative approaches to meeting regulatory objectives. In implementing its SPS measures, as well as in its new approach to using TBT measures for environmental reasons, the EU seems to impose its own domestic regulatory approach onto its trading partners. India observes with concern that this is becoming a wider trend, as also seen under the European Green Deal's related regulations. The EU has not taken into account Members' feedback on its proposed regulations. Furthermore, the EU's hazard-based approach does not adequately balance the twin objectives of protecting human health and facilitating trade.

6.80. The delegate of Argentina indicated the following:

6.81. Argentina once again reiterates its concern and stresses the importance of ensuring that all Members implement measures based on risk assessments and scientific analysis. Although it shares the European Union's concern over strengthening the protection of human health and the environment, Argentina wishes once again to underline the importance of complying with the provisions of the TBT and SPS Agreements to ensure that measures are not more trade-restrictive than necessary to fulfil a legitimate objective.

6.82. Argentina is particularly concerned by the number of substances banned by the EU Commission, which has been increasing with each passing day. This situation may have serious consequences for a number of WTO Members, particularly developing country Members, whose populations and economies are highly dependent on agricultural exports, as was already stressed by previous interventions. In addition, the approach taken by the European Union to establish transition periods for MRLs is hasty and fails to take into account the needs and capacities of third countries to be able to adapt, nor the particular production conditions. The transition periods clearly need to be longer, for which reason Argentina calls for their review.

6.83. Argentina considers that it is thus crucial for the European Union to use a risk assessment approach in the analysis of these regulatory changes and to have conclusive scientific studies to determine the various aspects that may affect human health and the environment.

6.84. The delegate of Japan indicated the following:

6.85. Japan acknowledges that the European Union is working to apply the EU health and environmental standards to imported agricultural, livestock, and fishery products, which requires the EU's health and environmental standards to be applied to these products in order for the EU to build a sustainable food system. However, in order to build a sustainable food system, it is necessary not only to address agricultural products imported into the European Union, but also agricultural products produced around the world. To that end, it is important for each Member to work on building a sustainable food system that takes into account its own climate and other factors. Japan is of the view that EU health and environmental standards should not be uniformly applied to imported goods, but the efforts of each Member should be respected.

6.86. The European Commission's report on the "Application of EU health and environmental standards to imported agricultural and agri-food products" has stated that the European Union will continue to make efforts at the multilateral level to obtain a global consensus on internationally

agreed standards. If the EU introduces such a new approach, Japan requests that the EU at the same time ensure that its measures are consistent with the WTO Agreements, and that it holds international discussions on this topic.

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

6.88. The European Union takes note of the concerns expressed by WTO Members. The European Union provided detailed replies to these concerns at previous meetings of the CTG. Without repeating its previous statements in full, the EU wishes to underline that its previous statements remain unchanged and valid in their entirety.

6.89. The European Union is one of the biggest importers 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. The European Union has an open market. Its high level of consumer protection has never been an impediment to the import of agricultural commodities, including from the Members raising this concern, whose large exports of agricultural products to the EU during these five years have remained stable.

6.90. 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. The European Union remains committed to continuing an open dialogue on its policies and measures. The EU stands ready to further engage and explain its policies to its trading partners.

6.91. Finally, based on the outcome of the 2021 UN Food Systems Summit, the European Union believes that Members have a shared interest in making food systems sustainable by tackling the issue of toxic active substances and protecting citizens' health with appropriate measures.

6.92. The Council took note of the statements made.

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

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

7.2. The delegate of Indonesia indicated the following:

7.3. Indonesia reiterates its concerns already raised several times regarding India's import policy on tyres. To date, Indonesia has not received adequate solutions or firm explanations from India concerning India's limitations on imports of tyre products from Indonesia, which is a policy that has been implemented for two years, resulting in limited market access to India for Indonesian tyre products.

7.4. Indonesia requests further explanations from the Government of India regarding the rationale of its tyre imports policy, which hinders tyre imports from Indonesia, and on its decision to impose a marking fee for the use of the Indian Standard Mark (IS Mark) for tyre products exported to third countries. Indonesia understands that the Government of India has implemented an amendment to its tyre import policy, from "free" to "restricted", as stipulated in Notification No. 12/2015-2020, dated 12 June 2020. Indonesia is of the view that India's current tyre import policy will become more stringent, where every container of tyres shipped to India will need to be sampled for customs purposes, and will need to comply with provisions regarding the registration of the warehouse where the imported tyres will be stored.

7.5. As a form of the said tyre import restriction policy, India has required importers to make separate statements via email regarding import restrictions for certain types and size categories of tyres that can be produced by domestic tyre manufacturers in India, as well as regarding warehouse

registration requirements, including the warehouses where the tyres are to be stored. Indonesia notes that violation of these provisions will be subject to criminal sanctions under the FTDR Act 1992.

7.6. This policy of limiting tyre imports into India has significantly reduced market access for Indonesian tyre products to India, especially due to the wide variety of tyre sizes that can be produced in India, as one of the main tyre producers in the world. In Indonesia's view, the policy potentially conflicts with the WTO's national treatment principle. Furthermore, India has also imposed a marking fee on tyre products using the Indian Standard (IS) Mark. Indonesia perceives that the imposition of the IS Mark marking fee on tyre products to be exported to third countries is not a common policy, and has burdened Indonesian tyre businesses and created unnecessary barriers to international trade.

7.7. Based on India's previous response, Indonesia notes that the conformity assessment process carried out by the Bureau of Indian Standards (BIS) had referred to the Scheme I of BIS regulations, indicating that the imposition of a marking fee is carried out in a non-discriminatory manner for both local and foreign manufacturers to cover BIS operational costs in conducting conformity assessment and surveillance costs, as well as purchase of market samples and testing charges. Indonesia can understand this. However, Indonesia is still encountering obstacles when exporting its tyres. For this reason, Indonesia requests India to provide further detailed explanation regarding this policy.

7.8. Finally, at the CTG's previous meeting, India had also stated that the tyre import restriction regime that it had imposed, including the application of marking fees, was a non-automatic licensing procedure. Indonesia recalls that, based on Article 3.2 of the Import Licensing Agreement (LIC), WTO Members implementing non-automatic import licensing procedures must inform the Committee on Import Licensing of their scope and time-frame for implementation. The policy must not have an additional impact that impedes trade and increases the administrative burden for applicants for import permits. Furthermore, based on Article 3.3 of the ILA, WTO Members implementing non-automatic import licensing procedures that are intended for reasons other than implementing quota restrictions are required to provide information regarding the basis for granting the import permit.

7.9. Indonesia urges the Indian government to provide further explanation of how long its policy will continue to be enforced, as well as providing its further justification of the policy's implementation. Indonesia also requests India immediately to review its policy on limiting imports of tyre products with a view to ensuring its compliance with India's commitments to Article 2.1 and 2.2 of the TBT Agreement, Article XI of the GATT 1994 regarding general elimination of quantitative restrictions, as well as in relation to the WTO principles of transparency and non-discrimination.

7.10. The delegate of Chinese Taipei indicated the following:

7.11. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like once again to register its concerns regarding India's licensing regime for the importation of pneumatic tyres under Notification No. 12/2015-2020 on "Amendment in Import Policy on Tyres" of 12 June 2020. Since October 2020, Chinese Taipei has consistently raised its concerns at all the relevant WTO Committee meetings, as well as at bilateral meetings, urging India to resolve this issue as soon as possible. Therefore, it is regrettable that India has made no adjustment to its measures; indeed, India has not revoked its existing measures, nor clarified its criteria for granting licences, nor explained the reasons for its refusals. According to the trade data illustrated by Chinese Taipei and other Members in the relevant committees, the measures taken by India have resulted in a significant impact on the trade in tyres.

7.12. Chinese Taipei urges India to abide by the relevant provisions of the WTO Agreement on Import Licensing Procedures, which specifically require that import licensing measures neither restrict nor distort trade. In addition, Chinese Taipei requests India to publish complete information about its import licence application procedures, based on the principle of transparency, so that foreign manufacturers are able to understand in detail both the basis on which a licence may be approved, and the detailed reasons why a licence application may be rejected. Furthermore, it is clearly evident that India's measures have resulted in a quantitative restriction on tyre imports. Therefore, Chinese Taipei requests India to explain the WTO-consistent justification for its restrictive measure. Otherwise, Chinese Taipei urges India to ensure that all applications of import licences

that are fully compliant with the quality of tyre products required are granted, and granted without any quota limitations whatsoever.

7.13. The delegate of Thailand indicated the following:

7.14. Thailand echoes earlier speakers in reiterating the concerns that it has raised on numerous occasions in past meetings of the Committee on Import Licensing, the CMA, and the CTG, regarding India's import policies on tyres, which have still considerably affected Thailand's exports of tyre products to India. Indeed, in 2021, Thailand's exports of tyre products to India declined by more than 40% in value, or 45% in volume relative to 2019, and before this restrictive measure was implemented. Moreover, tyre exports from Thailand to India have fallen by approximately half to date in 2022 compared to the same period in 2019.

7.15. As stated previously, Thailand reiterates its concern that the Indian authority's issuance of import licences for tyres remains subject to considerable delays and unclear and dubious administrative procedures. In addition, Thailand regrets that it is yet to receive any response from India regarding its request for information made at the meeting of the Committee on Import Licensing of 7 October 2022, and the meeting of the CMA of 19 October 2022. Therefore, Thailand reiterates its request that India provide the following information as soon as practicable: (i) information on the administration of the restrictions, including the time-frame or period for processing applications; (ii) information on the import licences recently granted to Thailand; and (iii) information on the distribution of such licences among supplying countries.

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

7.17. This has become a long-standing issue. Several Members, including the European Union, have raised their concerns on multiple occasions in various bodies of the WTO, including this Council, the Market Access Committee, the TBT Committee, the Import Licensing Committee, and the TRIMs Committee. Despite the EU's repeated calls, it is very worrying that no progress has been made towards a possible resolution of this issue.

7.18. The European Union continues to be concerned about the effect of this measure on the imports of tyres, as these imports have been decreasing since June 2020. Indeed, only a limited number of licences have been granted to EU tyre manufacturers. In addition, these licences are limited in duration, quantity, and type of tyres. The EU is deeply concerned by what is a blatant discrimination against EU tyre manufacturers. The EU continues to urge India to reconsider and eliminate any implicit or explicit quantitative or other restrictions on the import of replacement tyres as these restrictions are contrary to WTO requirements.

7.19. The delegate of Canada indicated the following:

7.20. Canada reiterates its concerns, previously expressed at the most recent meeting of the CMA, over India's import policies on tyres. Canadian stakeholders have raised concerns with India's non-automatic import licensing system for tyres. India's system effectively imposes quotas on tyre imports and, as such, limits imports of tyres into India. Canada calls upon India to eliminate this quantitative import restriction in accordance with its WTO commitments.

7.21. The delegate of India indicated the following:

7.22. India thanks the delegations of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Thailand, the European Union, Indonesia, and Canada, for their continued interest in this issue. India refers to its responses provided in previous meetings of the CTG, the CMA, and the Committee on Import Licensing. India reiterates that its non-automatic licensing requirements for tyres are administered in a manner consistent with the rules of the WTO Agreement on Import Licensing Procedures, including with respect to the time-frames for the granting of import licences.

7.23. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu had sought specific data on licences granted and the same has been shared with their delegation. The issue of marking fees raised by Indonesia has been addressed in various committees, including in the Committee on Import Licensing and the TBT Committee. The specific questions raised, and the data provided by

the delegations of Thailand, the European Union, and Indonesia, in the Committee on Import Licensing and the CMA, are being reviewed by Capital.

7.24. The Council took note of the statements made.

8 CHINA – ADMINISTRATIVE MEASURES FOR REGISTRATION OF OVERSEAS PRODUCERS OF IMPORTED FOODS – REQUEST FROM AUSTRALIA; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; AND THE UNITED STATES

8.1. The Chairperson recalled that this item had been included on the agenda at the request of Australia; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and the United States.

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

8.3. The United States remains deeply concerned with China's lack of response to requests for scientific justification or explanation of how Decrees 248 and 249 will address food safety and public health concerns. The lack of guidance provided by China, and inconsistency in China's implementation and enforcement of these measures is causing considerable confusion for exporters and competent authorities, leading to negative trade impacts.

8.4. The General Administration of Customs of China (GACC) should continue to use existing government-to-government facility registration processes already implemented under bilateral agreements and not require facilities to provide additional information online. Furthermore, the GACC should ensure that all facilities are able to self-register without foreign competent authority involvement, thereby streamlining the process and facilitating trade. The United States notes that the GACC's requests for additional detailed information from facilities and competent authorities, such as process-specific food safety plans and facility floor plans on an establishment-by-establishment basis, are not consistent with a systems-based approach to food safety.

8.5. The United States repeats its request that China hold an informational session in Geneva for trading partners to learn more about China's implementation of its Decree 248. The United States looks forward to China's response to these specific requests and comments.

8.6. The delegate of Australia indicated the following:

8.7. Australia remains concerned that China's Regulation on Registration and Administration of Overseas Manufacturers of Imported Food, promulgated as Decree 248, will unnecessarily disrupt and restrict trade and is more trade restrictive than necessary to fulfil China's food safety objectives. Furthermore, Members were not given sufficient time and information to register, adjust, and prepare, before the measures entered into force on 1 January 2022. The regulations do not distinguish between food safety risk categories, nor provide the scientific justification for the measures or the required equivalency of foreign food safety systems.

8.8. Australia has previously raised its concerns on several occasions in both the Committee on Sanitary and Phytosanitary (SPS) Measures and the Committee on Technical Barriers to Trade (TBT). Exporters are continuing to report delays in registration and customs clearance, adversely impacting their trade to China. In particular, Australia has in good faith provided information for registration of establishments that has not been accurately reflected in China's registration system. This is causing significant industry concern. Australia reminds China that its regulations must not be used to discriminate against imported goods, and that delays in processing registration renewals and new applications from overseas food producers may lead to imported foods being treated less favourably than China's domestic product.

8.9. 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-frame to make changes to comply with new measures.

8.10. In light of the above, Australia requests that China's customs authorities adapt a flexible approach to implementation until 1 July 2023, during which time they would allow entry of products

in line with historical trade, in addition to entry under China's new system of registration, pending completion of outstanding applications, corrections, or updates to online registrations. Australia urges China to address these issues promptly and remains willing to work collaboratively with China to ensure that food safety is upheld while facilitating undisrupted trade.

8.11. The delegate of Chinese Taipei indicated the following:

8.12. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu continues to have concerns over China's administrative measures regarding the registration of overseas manufacturers of imported food. Given the wide range of its food industries that have been, or are likely to be, affected by this measure, Chinese Taipei has been closely following its development ever since China notified the WTO of its draft decree on 12 November 2020. Chinese Taipei has raised its concerns on multiple occasions, including in the TBT and SPS Committees. However, many concerns still remain even after the measure took effect on 1 January 2022. Chinese Taipei needs to reiterate the following ongoing issues and problems, which are based on real experiences.

8.13. Firstly, one great difficulty is the lack of information on registration requirements and the guidance on how to follow them. This issue is even more critical for those facilities that need to file applications by themselves. Chinese Taipei urges China to designate and provide an enquiry point that these facilities can engage with directly, so they can deal with their particular concerns about the online registration system, and find their own ways to overcome them.

8.14. Secondly, there are genuine concerns about the measure's review and approval procedures. The standard or anticipated processing periods are not clear. The same applies to the status and stage of the application. Furthermore, some of Chinese Taipei's facilities have been rejected by the GACC without any explanation given, making it impossible for such facilities to correct their applications on the registration system. Therefore, Chinese Taipei urges the GACC to comply with the requirements as set out under Article 5.2.2 of the TBT Agreement. These include transparency and the requirements for the applicant to be informed in a precise and complete manner of all the deficiencies in its application, so as to allow for any necessary corrections to be made.

8.15. Thirdly, another difficulty Chinese Taipei faces is the significant ambiguity of China's HS code categorization and the scope of the product that is subject to this measure. Some of Chinese Taipei's facilities have reported that their products encountered customs clearance suspension for no reason.

8.16. Fourthly, any measure of this magnitude requires far more time for relevant industries to implement, so Chinese Taipei urges China to consider offering a longer grace period for implementation in order to prevent even more serious trade disruption in the future. This additional time will at least allow facilities to accurately enter or update the product information in their online registration systems.

8.17. And finally, Chinese Taipei urges China to hold an information session in the WTO so that China's trading partners can learn more about the implementation of the measure by the GACC and engage in constructive dialogue in resolving the above-mentioned difficulties.

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

8.19. The Republic of Korea reiterates its concerns over China's administrative measures for registration of overseas producers of imported foods, and refers to its statement delivered at the most recent meeting of the TBT Committee.

8.20. The Republic of Korea respects China's right to ensure food safety and recognizes its efforts to facilitate implementation of its measures. Korea nonetheless remains concerned that several points raised have yet to be fully addressed. In particular, Korea continues to be concerned that China's measures still apply for low-risk food products provided in Article 7 of Decree 248, which creates unnecessary obstacles to trade. In addition, as pointed out at the most recent meeting of the TBT Committee, Korea's applicants are facing several challenges in trying to register through China's system, notably its time-consuming nature and uncertainty.

8.21. The Republic of Korea would like to underline that all WTO Members have the obligation to implement food safety regulations based on sound science evidence and in a transparent manner.

The Republic of Korea stands ready to further engage with China to resolve these issues constructively.

8.22. The delegate of Canada indicated the following:

8.23. Canada continues to share the concerns of other Members over the trade impacts of China's administrative measures for the registration of overseas manufacturers of imported food. Canada also refers to its previous intervention on this item, which remains valid. Canadian companies continue to face significant challenges and delays with their registration updates and renewals in the online China Import Food Enterprise Registration (CIFER) system. Serious technical difficulties with the operation of the CIFER system, and the lack of engagement by Customs China, make it impossible for companies to successfully submit their applications in CIFER and keep their registrations current. Canada often waits months for a response from Customs China after submitting an application in CIFER. This has created great uncertainty for Canadian companies as there is potential for unnecessary trade disruptions.

8.24. Canada asks China to commit to improving the efficiency of the approval process in CIFER by clearly communicating timelines and approval decisions in a transparent manner and providing alternative backup registration procedures given the ongoing technical issues with CIFER. As many questions remain regarding the CIFER registration process, Canada calls on China to develop clear guidance documents, create separate contact points within Customs China for both industry and foreign competent authorities, and to work directly with companies for the completion and renewal of their registrations in CIFER. Canada calls on China immediately to demonstrate transparency and flexibility relating to the requirements under Decrees 248 and 249 and the CIFER system in order to avoid further delays in the registration process for Canadian companies and prevent unnecessary trade disruptions.

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

8.26. The European Union would like to reiterate its concerns about the implementation of Decree 248 of the General Administration of Customs of the People's Republic of China (GACC). Overall, the European Union shares and supports China's objective of ensuring that imported food products come from legitimate sources.

8.27. China has provided guidance information and engaged in a dialogue with the European Union. However, problems persist with regard to the lengthy and burdensome mechanism set up by China to register exporting businesses, including: (i) cases of shipments being held up at ports in China due to erroneous or missing information in CIFER; (ii) cases of establishments in the meat, dairy and fishery sector that were notified to GACC before the deadline of 31 December and remain unregistered; (iii) lack of clarity about the scope and categories of products that are covered, which keep expanding; and (iv) the obligation put on competent authorities and businesses to consult CIFER almost permanently to be able to follow all the changes made by China to the structure of the CIFER system and to individual registrations, as well as to be informed about the deadlines to re-register individual establishments.

8.28. Therefore, the European Union urges China: (i) to solve implementation issues pragmatically and expeditiously; (ii) to facilitate new and old registrations by continuing to provide supporting material and guidance documents in English, including on how competent authorities have to verify the establishments that were registered under the fast track procedure; (iii) to facilitate amendments/corrections to existing registrations; and (iv) to facilitate the management by competent authorities and businesses of the changes in CIFER, of the information requested by China, and of the deadline to register establishments by introducing an automatic email notifications system in CIFER.

8.29. The European Union thanks China for its openness and for the ongoing dialogue to solve the technical issues relating to Decree 248, and in particular for China's replies to the EU received on 1 July. The EU is currently reviewing these replies. Nevertheless, important implementation issues remain and need to be resolved in order to eliminate all disruptions to trade as soon as possible, and before 1 July 2023.

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

8.31. The United Kingdom thanks China for their recent discussions on this matter and encourages China to take action to minimize the adverse impacts of this measure. Despite concerns from the United Kingdom and other Members, China's Regulation on Registration and Administration of Overseas Manufacturers of Imported Food entered into force on 1 January 2022. The amount of documentation required is significant and disproportionate, and for "high-risk" products the specific requirements often change in an arbitrary manner, with no prior notification provided to the exporting country, or guidance provided.

8.32. Much effort has been taken to meet China's administrative requirements. Yet, since the new registration regulations were introduced in January 2021, the United Kingdom has only successfully registered one new medium to low-risk business. The blanket application of these measures is incommensurate with the risk posed by many food products and seems to detract from China's aim of more economic openness.

8.33. The United Kingdom asks that China takes into account the UK's own rigorous controls and processes for ensuring the safety of food destined for domestic and international markets, and that it reviews these measures to ensure that they are applied in a manner that is not more trade restrictive than necessary to achieve the appropriate level of sanitary and phytosanitary protection, in line with China's obligations under Article 5, paragraph 6, of the SPS Agreement.

8.34. The delegate of Mexico indicated the following:

8.35. Mexico reiterates its concerns regarding China's Decree 248, notified on 16 November 2020, which entered into force on 1 January 2022. Mexico also shares the concerns raised by previous Members. In this regard, Mexico reiterates the importance that it places on Members, in the measures they adopt, complying with their international commitments contained in the TBT Agreement. As indicated in the TBT Committee, Mexico has identified concerns about possible effects on international trade, and is aware of recent problems experienced by Mexican companies in the registration process. Mexico also reiterates its request to China to indicate a contact point to assist companies that have encountered difficulties in the registration process. Mexico supports the request made to China in the TBT Committee to hold information sessions in Geneva regarding the implementation of its Decree 248.

8.36. The delegate of Switzerland indicated the following:

8.37. Switzerland shares and supports the concerns that have been expressed by other Members. Switzerland supports China's objective to ensure that only safe food and food from legitimate sources is imported. However, Switzerland regrets to note the persisting problems and uncertainties with the CIFER system. Switzerland strongly encourages China to extend the June 2023 deadline for the renewals and the validity of existing approvals of establishments falling under Article 7 of Decree 248 by one year. This additional time would enable the GACC to fix the problems relating to the CIFER system and allow Switzerland's authorities to accurately enter or update product information in their online registration. Finally, Switzerland supports other Members' calls for the creation of contact points for industries and authorities.

8.38. The delegate of Japan indicated the following:

8.39. Japan notes that there are many uncertainties in the registration procedures relating to China's "Regulations for Management of Registration of Overseas Manufacturers of Imported Foods", which impose a significant burden on overseas authorities and business operators, including that the online registration system is sometimes changed suddenly and without prior notice. Japan requests China to improve its operations and the transparency of its procedures relating to the implementation of these regulations so that the procedures do not become an excessive burden on business operators.

8.40. The delegate of China indicated the following:

8.41. As the same trade concern was raised and discussed in the TBT Committee meeting held just one week before, China currently has no further update on this issue. For the sake of time, China

makes reference to, but will not repeat, its statement delivered at the meeting of the TBT Committee of 17 November 2022.

8.42. The Council took note of the statements made.

9 UNITED STATES – TRADE DISTORTING AND DISCRIMINATORY SUBSIDIES MEASURES OF THE INFLATION REDUCTION ACT OF 2022 – REQUEST FROM CHINA

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

9.2. The delegate of China indicated the following:

9.3. The United States recently enacted the *Inflation Reduction Act* (IRA). While its policy objectives are related to addressing climate change and promoting green transition, the measures adopted include many discriminatory and distortive subsidy policies that blatantly violate the WTO's rules. In this intervention, China wishes to (i) go through some of the most problematic provisions in the IRA; (ii) raise some issues of potential violation of the WTO's rules; and (iii) highlight the distortive nature of such discriminatory subsidy policies.

9.4. The IRA provides as much as USD 369 billion in subsidies for the production of clean products and the investment in qualified facilities. Among its many provisions, China has identified nine types of tax credits that contain domestic content requirements. They include: (i) Clean Vehicle Credit (Section 30D Credit)[4]; (ii) Sustainable Aviation Fuel Credit (Section 40B Credit)[5]; (iii) Credit for Electricity Produced from Certain Renewable Resources (Section 45 Credit)[6]; (iv) Credit for Production of Clean Hydrogen (Section 45V Credit)[7]; (v) Advanced Manufacturing Production Credit (Section 45X Credit)[8]; (vi) Clean Electricity Production Credit (Section 45Y Credit)[9]; (vii) Clean Fuel Production Credit (Section 45Z Credit)[10]; (viii) Energy Tax Credit (Section 48 Credit)[11]; and (ix) Clean Electricity Investment Credit (Section 48E Credit).[12]

9.5. References to these measures relate to different sections of Title 26 of the US Code. While these measures relate to different types of products and/or facilities, they all have something in common, namely that they make local content requirements (LCRs) the preconditions for granting tax credits. China gives Members the following three examples.

9.6. The first example is the Clean Vehicle Credit. The products covered are new clean vehicles. The tax credit is available for purchases of new clean vehicles. For vehicles that satisfy the critical minerals requirement, the amount is USD 3,750, and for vehicles that satisfy the battery components requirement, the amount is also USD 3,750. In total, the tax credit could reach USD 7,500, subject to certain limitations.

9.7. The tax credit is contingent upon three LCRs: (i) an overarching requirement that the final assembly of such new clean vehicles occurs within North America; (ii) with respect to the critical mineral credit, specified percentages of the vehicle battery's critical minerals need to be extracted or processed in the United States, or originating from a US free trade agreement (FTA) partner, or being recycled in North America; and (iii) with respect to the battery component credit, specified percentages of the battery's components need to be manufactured or assembled in North America.

9.8. Last but not least, it appears that the IRA would prohibit the application of the above tax credits where a vehicle's battery contains any critical minerals sourced from China, or if any components contained in the battery were manufactured or assembled in China.

[4] 26 US Code Section 30(D).
[5] 26 US Code Section 40B.
[6] 26 US Code Section 45.
[7] 26 US Code Section 45V.
[8] 26 US Code Section 45X.
[9] 26 US Code Section 45Y.
[10] 26 US Code Section 45Z.
[11] 26 US Code Section 48.
[12] 26 US Code Section 48E.

9.9. The second set of examples include the following four credits, which share similar domestic content requirements, namely the Credit for Electricity Produced from Certain Renewable Resources, the Clean Electricity Production Credit, the Energy Tax Credit, and the Clean Electricity Investment Credit. The products and facilities covered by these credits include power generating facilities using wind, solar, geothermal, biomass, municipal waste, or hydropower; and clean electricity produced at a qualified facility, and such qualified facilities.

9.10. A domestic content bonus credit is granted, equal to a 10% markup on the pre-existing eligible credit amount. The bonus tax credit is contingent upon three LCRs, as follows: (i) any steel, iron, or manufactured product, which is a component of such facility, and which was produced in the United States; (ii) in the case of steel or iron, the above-mentioned requirement is applied in a manner consistent with "Buy America Requirements", that is, all steel and iron manufacturing processes take place in the US, except metallurgical processes involving refinement of steel additives; and (iii) in the case of the manufactured products, they shall be deemed to have been produced in the US, if a certain threshold of domestic content is satisfied, calculated as the percentage of the total costs of all such manufactured products.

9.11. The third example is the Advanced Manufacturing Production Credit. The products covered include a wide range of manufactured products and critical minerals, such as solar energy components, wind energy components, certain power inverters, qualifying battery components, and applicable critical minerals. The tax credits would apply with respect to each eligible component that is produced within the United States and sold by the taxpayer to an unrelated person. Credits differ with respect to different eligible components, and in the case of any applicable critical mineral, for example, the tax credit is equal to 10% of the costs incurred with respect to production of such mineral.

9.12. With respect to the LCRs, only production in the United States is taken into account, and the tax credits apply only with respect to eligible components, the production of which is within the US or a possession of the US. In the interests of time, China will not go through each and every item. For transparency purposes, China will attach to its statement the list of nine tax credit measures with reference to the product scope and the LCRs, to be included in the minutes of the meeting.

9.13. These US tax credits appear to violate multiple WTO rules, and the provisions speak for themselves. They contain clearly discriminatory domestic content requirements and may constitute trade-distorting subsidies. These provisions could be in breach of the following WTO rules: (i) domestic content requirements violate the national treatment obligations contained in Article III of the GATT 1994; (ii) import substitution subsidies, to the extent that the tax credits are made contingent on the use of domestic over imported goods, are prohibited by the ASCM; (iii) trade-related investment measures (TRIMs), to the extent that the investment tax credits contain domestic content requirements, are inconsistent with national treatment obligations in the TRIMs Agreement; (iv) final assembly requirements discriminate against like imports and violate the national treatment obligations contained in Article III of the GATT 1994; (v) potential adverse effects. The tax credit provisions seek to incentivize production in the United States, which could potentially cause adverse effects under the ASCM, including injury to the domestic industry of another Member or serious prejudice to the interest of another Member; (vi) provisions limiting subsidies to FTA partners and the "China exclusion" provisions in the Clean Vehicle Credit violate the MFN obligations contained in Article I of the GATT 1994.

9.14. The trade and market-distorting effects of such tax credits are three-fold.

9.15. First, they distort international investment flows and beggar thy neighbour. From the perspective of businesses, the green incentives in the IRA made the United States a very much more appealing place to invest.[13] The auto and energy industries in other Members have already started pivoting to the US.[14] On this, the industry representatives of other WTO Members have sounded an alarm: "While the IRA is being presented in many quarters as key legislation to fight climate change, in reality it is an act of trade protectionism, forcing the on-shoring of future powertrain production

[13] "US beats EU as magnet for green investment, says Iberdrola", https://www.ft.com/content/7797bd70-645d 4ef9-a7ee-0c90aa1a09c6

[14] "European industry pivots to US as Biden subsidy sends 'dangerous signal'", https://www.ft.com/content/59a8d135-3477-4d0a-8d12-20c7ef94be07

within the borders of the United States at the expense of all other countries."[15] According to media reports, a Member could lose EUR 8 billion in investment as factories set up in, or move to, North America to benefit from subsidies for local production.[16]

9.16. Second, they distort the global markets in downstream sectors and turn the efforts to protect the global commons into a zero-sum game. According to the comments submitted by one Member to the US Treasury Department, "having access to subsidized low-carbon technologies and sources of clean energy, key parts of the United States economy will receive a market-distorting boost, tilting the global level playing field and turning a common global objective – fighting climate change – into a zero-sum game".[17]

9.17. Third, they initiate a race to the bottom regarding subsidies competition and increase trade tensions. In fact, it has been reported in the media that the top US trade official urged other Members to join forces on subsidies[18], to which the Members concerned responded by calling for industrial policy possibilities to prevent downside effects of protectionist measures and ensure that WTO rules were respected by all.[19] But actually the race had started elsewhere, with another Member announcing big tax credits for green tech investment to keep up with the United States.[20] However, this is exactly something that the WTO's Director-General has warned against; "We don't want a subsidy war in [the] fight against climate change", she said in an interview.[21]

9.18. On responding to climate change through international cooperation, China acknowledges the importance of the IRA and its legislative objective to respond to climate change and promote green transition. These are laudable objectives. As such, they should be matched with equally laudable means of policy instruments and implementation measures. Local content measures, to the contrary, will not be able to deliver such goals. As pointed out in the *World Trade Report 2022: Climate Change and International Trade*: "some evidence suggests that local content requirements have hindered global international investment flows in solar PV and wind energy, reducing the potential benefits from international trade and investment and ultimately can hamper or slow down climate change mitigation efforts. "[22]

9.19. Responding to climate change is the common responsibility of all WTO Members. Trade should be an important policy tool to help address, adapt to, and mitigate against climate change. As pointed out in the G20 Bali Leaders' Declaration: "We believe that trade and climate/environmental policies should be mutually supportive and WTO consistent and contribute to the objectives of sustainable development."[23]

9.20. Measures intended to achieve environmental objectives should not be implemented in a way that violates WTO rules, should not be implemented to beggar thy neighbour, and should not be implemented to cause distortion to the global market. Rather, international cooperation and coordination, on the basis of the WTO rules, should be a core part in any domestic agenda to decarbonize and promote a green transition.

[15] "Canada's auto, steel and manufacturing sectors sound alarm over U.S. inflation act", https://ca.finance.yahoo.com/news/canadas-auto-steel-manufacturing-sectors-120108864.html

[16] "Trade rift between EU and US grows over green industry and jobs", https://www.ft.com/content/48178f1e 5572-496e-8fbe-bb4c0e3ec8ea

[17] Submission by the European Union on the Inflation Reduction Act November 2022, https://www.regulations.gov/comment/IRS-2022-0020-0774

[18] "Top US trade official urges EU to join forces on subsidies amid green deal tensions", https://www.ft.com/content/0e52d609-5cfe-453c-9baf-b33b66e941e9

[19] "We call for a renewed impetus in European industrial policy", Joint statement by Bruno Le Maire, Minister of the Economy, Finance and industrial and digital Sovereignty of France, and Robert Habeck, vice-chancellor, Federal Minister of Economic Affairs and Climate action of Germany, https://ue.delegfrance.org/we-call-for-arenewed-impetus-in

[20] "Ottawa unveils green energy tax credits of up to 40% in bid to keep up with Biden", https://ca.finance.yahoo.com/news/ottawa-unveils-green-energy-tax-214218621.html

[21] "WTO Urges US, EU to Avoid 'Subsidy War' in Green Energy Spat", https://www.bloomberg.com/news/articles/2022-11-07/wto-urges-us-eu-to-avoid-race-to-the-bottom-in-subsidyspat

[22] World Trade Report 2022: Climate Change and International Trade, p. 71.

[23] G20 BALI LEADERS' DECLARATION, Bali, Indonesia, 15-16 November 2022, para. 37.

9.21. China calls upon the United States to faithfully carry out the G20 leaders' declaration and remove from the IRA all discriminatory and distortive elements that are inconsistent with WTO rules.

9.22. List of US Tax Credits in the IRA Inconsistent with WTO Rules[24]

9.23. 1. Clean Vehicle Credit (Section 30D Credit)[25]

a. Products Covered: new clean vehicle.[26]

b. Tax Credit: a credit against the tax imposed (…) an amount equal to the sum of the credit amounts determined under subsection (b) (…) (2) critical minerals (…) the amount determined under this paragraph is $3,750 and (3) battery components (…) the amount determined under this paragraph is $3,750.[27]

c. Local Content Requirements: (1) the final assembly of such new clean vehicle occurs within North America;[28] (2) the percentage of the value of the applicable critical minerals contained in such battery that were extracted or processed in the United States, or in any country with which the United States has a free trade agreement in effect, or recycled in North America, is equal to or greater than the applicable percentage;[29] (3) the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage.[30]

9.24. 2. Sustainable Aviation Fuel Credit (Section 40B Credit)[31]

a. Products Covered: a qualified mixture of sustainable aviation fuel and kerosene.[32]

b. Tax Credit: an amount equal to the product of the number of gallons of sustainable aviation fuel in such mixture, multiplied by the sum of $1.25, plus the applicable supplementary amount with respect to such sustainable aviation fuel.[33]

c. Local Content Requirements: the term "qualified mixture" means a mixture of sustainable aviation fuel and kerosene if such mixture is produced by the taxpayer in the United States (…).[34]

9.25. 3. Credit for Electricity Produced from Certain Renewable Resources (Section 45 Credit)[35]

a. Products and Facilities Covered: power generating facilities using wind, solar, geothermal, biomass, municipal waste or hydropower, etc.[36]

b. Domestic Content Bonus Credit Amount: the amount of the credit determined under subsection (a) (…) shall be increased by an amount equal to 10 percent of the amount so determined.[37]

c. Local Content Requirements: (1) any steel, iron, or manufactured product which is a component of such facility (…) was produced in the United States; (2) in the case of steel or iron (…) applied in a manner consistent with "Buy America Requirements" in 49 U.S. Code Section 661.5; (3) the manufactured products (…) shall be deemed to have

[24] Attachment submitted by China as part of its written submission to its statement under Agenda Item 9.
[25] 26 U.S. Code Section 30(D).
[26] 26 U.S. Code Section 30(D) Subsection (a) and (d).
[27] 26 U.S. Code Section 30(D) Subsection (b)(2), (b)(3).
[28] 26 U.S. Code Section 30(D) Subsection (d)(1)(G).
[29] 26 U.S. Code Section 30(D) Subsection (e)(1).
[30] 26 U.S. Code Section 30(D) Subsection (e)(2).
[31] 26 U.S. Code Section 40B.
[32] 26 U.S. Code Section 40B Subsection (a) and (c).
[33] 26 U.S. Code Section 40B Subsection (a) and (b).
[34] 26 U.S. Code Section 40B Subsection (c).
[35] 26 U.S. Code Section 45.
[36] 26 U.S. Code Section 45 Subsection (a) and (c)(1).
[37] 26 U.S. Code Section 45 Subsection (b)(9)(A).

been produced in the United States, if not less than 40 percent, or 20 percent for offshore wind facility, of the total costs of all such manufactured products (…) are attributable to manufactured products (…) which are mined, produced, or manufactured in the United States.[38]

9.26. 4. Credit for Production of Clean Hydrogen (Section 45V Credit)[39]

a. Products Covered: qualified clean hydrogen.[40]

b. Tax Credit: equal to the product of the kilograms of qualified clean hydrogen (…) at a qualified clean hydrogen production facility during the 10-year period (…) multiplied by the applicable amount.[41]

c. Local Content Requirements: (…) shall not include any hydrogen unless such hydrogen is produced in the United States or a possession of the United States.[42]

9.27. 5. Advanced Manufacturing Production Credit (Section 45X Credit)[43]

a. Products Covered: eligible component, including solar energy component, wind energy component, certain inverter, qualifying battery component, and applicable critical mineral.[44]

b. Tax Credit: This tax credit would apply with respect to each "eligible component" that is produced (…) within the United States (…) sold (…) The amount determined (…) with respect to any eligible component (…) shall be equal to:[45] (1) in the case of a thin film photovoltaic cell or a crystalline photovoltaic cell (…) 4 cents multiplied by the capacity of such cell (…); (2) in the case of a photovoltaic wafer, $12 per square metre; (3) in the case of solar grade polysilicon, $3 per kilogram; (4) in the case of a polymeric backsheet, 40 cents per square metre; (5) in the case of a solar module (…) 7 cents, multiplied by the capacity of such module (…); (6) in the case of a wind energy component, if such component is a related offshore wind vessel (…) 10 percent of the sales price of such vessel, and [otherwise] (…) the applicable amount (…) multiplied by the total rated capacity (…) of the completed wind turbine; (7) in the case of a torque tube, 87 cents per kilogram; (8) in the case of a structural fastener, $2.28 per kilogram; (9) in the case of an inverter (…) the applicable amount (…) multiplied by the capacity of such inverter (…) (10) in the case of electrode active materials, an amount equal to 10 percent of the costs incurred (…) with respect to production of such materials; (11) in the case of a battery cell (…) $35 multiplied by (…) the capacity of such battery cell (…); (12) in the case of a battery module (…) $10 or (…) $45 multiplied by (…) the capacity of such battery module (…); (13) in the case of any applicable critical mineral (…) 10 percent of the costs incurred (…) with respect to production of such mineral.

c. Local Content Requirements: only production in the United States taken into account (…) only with respect to eligible components the production of which is within the United States (…) or a possession of the United States.[46]

9.28. 6. Clean Electricity Production Credit (Section 45Y Credit)[47]

[38] 26 U.S. Code Section 45 Subsection (b)(9)(B).
[39] 26 U.S. Code Section 45V.
[40] 26 U.S. Code Section 45V Subsection (a) and (c).
[41] 26 U.S. Code Section 45V Subsection (a) and (b).
[42] 26 U.S. Code Section 45V Subsection (c)(2)(B).
[43] 26 U.S. Code Section 45X.
[44] 26 U.S. Code Section 45X Subsection (a) and (c).
[45] 26 U.S. Code Section 45X Subsection (b).
[46] 26 U.S. Code Section 45X Subsection (d)(2).
[47] 26 U.S. Code Section 45Y.

a. Products and Facilities Covered: electricity produced at a qualified facility for which the greenhouse gas emissions rate is not greater than zero.[48]

b. Domestic Content Bonus Credit Amount: the amount of the credit determined (…) shall be increased by an amount equal to 10 percent of the amount so determined.[49]

c. Local Content Requirements: (1) any steel, iron, or manufactured product which is a component of such facility (…) was produced in the United States; (2) in the case of steel or iron (…) applied in a manner consistent with "Buy America Requirements" in 49 U.S. Code Section 661.5; (3) the manufactured products (…) shall be deemed to have been produced in the United States if not less than the adjusted percentage (…) of the total costs of all such manufactured products of such facility are attributable to manufactured products (…) which are mined, produced, or manufactured in the United States.[50]

9.29. 7. Clean Fuel Production Credit (Section 45Z Credit)[51]

a. Products Covered: certain transportation fuel with an emissions rate which is not greater than 50 kilograms of CO2e per mmBTU.[52]

b. Tax Credit: an amount equal to……the applicable amount per gallon (…) with respect to any transportation fuel (…) produced (…) and sold, and the emissions factor for such fuel (…).[53]

c. Local Content Requirements: only registered production in the United States taken into account (…) no clean fuel production credit shall be determined (…) unless such fuel is produced in the United States.[54]

9.30. 8. Energy Tax Credit (Section 48 Credit)[55]

a. Energy Property Covered: Power or heat generating facilities using solar, geothermal, fuel cell or microturbine, combined heat and power system, wind, ground water, waste energy recovery, energy storage, biogas or microgrid.[56]

b. Domestic Content Bonus Credit Amount: (…) the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year[57] (…). In the case of any energy project which satisfies the [local content] requirement (…) the energy percentage shall be increased by (…) 2 or 10 percentage points.[58]

c. Local content requirement: rules similar to rules of Credit for Electricity Produced from Certain Renewable Resources (Section 45 Credit).[59]

9.31. 9. Clean Electricity Investment Credit (Section 48E Credit)[60]

[48] 26 U.S. Code Section 45Y Subsection (a)(1) and (b).
[49] 26 U.S. Code Section 45Y Subsection (g)(11)(A).
[50] 26 U.S. Code Section 45Y Subsection (g)(11)(B) and (C).
[51] 26 U.S. Code Section 45Z.
[52] 26 U.S. Code Section 45Z Subsection (a)(1) and (d)(5).
[53] 26 U.S. Code Section 45Z Subsection (a).
[54] 26 U.S. Code Section 45Z Subsection (f)(1)(A).
[55] 26 U.S. Code Section 48.
[56] 26 U.S. Code Section 48 Subsection (a)(1) and (a)(3).
[57] 26 U.S. Code Section 48 Subsection (a)(1).
[58] 26 U.S. Code Section 48 Subsection (a)(12).
[59] 26 U.S. Code Section 48 Subsection (a)(12)(B).
[60] 26 U.S. Code Section 48E.

a. Facilities Covered: any qualified facility used for the generation of electricity for which the anticipated greenhouse gas emissions rate is not greater than zero and any energy storage technology.[61]

b. Increase in Credit Rate Contingent Upon Domestic Content: rules similar to the rules of Energy Tax Credit (Section 48 Credit).[62]

c. Local Content Requirements: rules similar to Credit for Electricity Produced from Certain Renewable Resources (Section 45 Credit).[63]

9.32. The delegate of Switzerland indicated the following:

9.33. Switzerland welcomes the efforts of the United States to combat inflation by means of environmental measures to the benefit of the American people. Switzerland refers here to the tax credit scheme applied to the purchase of US electric vehicles. Switzerland recognizes that promoting clean energy and transportation technologies may contribute to environmental objectives. And Switzerland wishes to reiterate that trade policy plays an essential role in combating climate change and other environmental problems. Indeed, trade policy must be part of the solution. That said, Switzerland expresses its concerns regarding the discriminatory aspect of the measures against imported like products. In our view, environmental measures by means of trade policy instruments must be non-discriminatory and in compliance with WTO rules.

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

9.35. The United States considers that all Members share an urgent need to increase investments in clean energy technologies to seriously combat the climate crisis, as well as to address supply chain issues. The Inflation Reduction Act (IRA) signed by President Biden is a key tool for the United States to meet these critical objectives. The transportation sector is the highest source of greenhouse gas emissions in the United States, and the US will not meet its Paris commitments and other climate goals without bold action to promote major new investments in clean energy technology, especially incentives for electric vehicle production and their adoption. The Act provides clean vehicle tax incentives to encourage a rapid transition to clean transport. It ensures that the United States can create more diverse and robust supply chains and promote the domestic adoption of clean vehicles.

9.36. In addition to the Clean Vehicle Tax Credit for new clean vehicles purchased, the IRA also provides for a Commercial Clean Vehicle Credit and a Previously-Owned Clean Vehicle Credit. These provisions create tax credits for certain eligible light, medium and heavy-duty clean vehicles purchased by businesses, and for used clean vehicles. Final assembly, battery, and critical mineral requirements do not apply to these credits.

9.37. The United States believes that these vehicles will account for a significant share of the total clean vehicle purchases in the future, and the US Congressional Budget Office estimates that these vehicles will receive roughly 40% of the overall Clean Vehicle Tax Credit funding.

9.38. The United States is in the early stages of developing the regulations for this program. The US is considering input from all stakeholders as the Department of Treasury moves forward with its public process in implementing these credits, as required by the legislation. The US notes that several of its trading partners have already taken advantage of the opportunity to participate in its transparent process, and that there will be future opportunities to engage in this process.

9.39. The United States would note that many of its trading partners, including China, have also prioritized investment in EV technologies, and taken a range of domestic measures to support zero emission vehicles.

9.40. In discussions regarding electric vehicle measures, the starting point should be the importance of working to achieve Members' overall climate, supply chain, and related goals in

[61] 26 U.S. Code Section 48E Subsection (a)(1), (b)(3) and (c).
[62] 26 U.S. Code Section 48E Subsection (a)(3)(B).
[63] 26 U.S. Code Section 48E Subsection (a)(3)(B).

parallel, and to do so in a way that maintains the support of our stakeholders. This includes, for example, Members' shared goal in ensuring we achieve the Paris commitments.

9.41. The Council took note of the statements made.

10 UNITED STATES – A SERIES OF DISRUPTIVE POLICY MEASURES ON THE GLOBAL SEMICONDUCTOR INDUSTRY CHAIN AND SUPPLY CHAIN – REQUEST FROM CHINA

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

10.2. The delegate of China indicated the following:

10.3. Recently, the United States has adopted a series of disruptive policy measures targeting the global semiconductor supply chain. On 9 August 2022, the United States enacted the CHIPS Act of 2022, which provides for semiconductor investment, production, and R&D subsidies to a total amount of as much as USD 78 billion, which is a huge amount of subsidies. To put the numbers into perspective, according to an OECD study on government support for the semiconductor sector, the 21 largest semiconductor firms were granted over USD 50 billion during the period 2014-2018.[64] The new US subsidies dwarf that number, by over 50%.

10.4. In addition to the subsidies, the CHIPS Act of 2022 explicitly requires a covered entity to disengage certain business activities with China in order to receive the benefits under the programme, that is, the so-called "guardrails". For that purpose, the United States will establish a process of mandatory notification of planned relevant transactions in China, and agency review of such transactions, with potential remedies and mitigations. A lot of questions remain to be answered, including with respect to the applicable scope of such a mechanism, the depth of government interventions into business operations, and the transparency and predictability of the administrative actions.

10.5. On 7 October 2022, the United States issued sweeping new export control measures on China. The measures are designed to limit the development and production in China of advanced node semiconductors; semiconductor production equipment; advanced computing items; and supercomputers. The new rules impose not only traditional controls on the export of listed commodities, software, and technology, but also broad and vague controls on activities of US corporations and individual US persons; exports of unlisted items for specific end-uses; and shipments from outside the United States (including from China) of non-US-origin items produced with certain US technology, software, or equipment.

10.6. What makes these new measures extraordinary is that they push US unilateralism to the extreme. First, they have no basis under multilateral export control regimes. Second, they are targeted only at China. Third, they apply to essentially commercial items. Last but not least, individuals and enterprises in other Members are compelled to follow the United States, against their will, and at the cost of their legitimate interests, by virtue of US extra-territorial control.

10.7. These measures combined were dubbed by the United States as a "Modern American Industrial Strategy".[65] Grand as the term may sound, these combined policy measures represent an about-face in the US' long-standing posture regarding industrial subsidies and export controls, and will likely lead to significant distortions and disruptions to the global semiconductor supply chain. As such, to borrow the quip from Voltaire, the "Modern American Industrial Strategy" is neither "modern" nor "American".

10.8. China voiced its concerns regarding the WTO-compatibility of such subsidies in the October meeting of the SCM Committee, including its concerns over the potential violation of the MFN principles, the rule on the general elimination of quantitative restrictions, and the subsidies disciplines contained in the ASCM. China has also repeatedly raised its concerns over the abusive use and extra-territorial application of US export control measures beyond the traditional scope of

[64] "Measuring distortions in international markets: The semiconductor value chain", OECD, 2019.
[65] Remarks on Executing a Modern American Industrial Strategy by NEC Director Brian Deese, 13 October 2022.

controlling weapons of mass destruction, conventional military items, and dual-use commodities, software, and technology.

10.9. On this occasion, China's intervention will focus on the ramifications of the US measures beyond the damage inflicted upon the WTO's rules. By over-generalizing the concept of national security, by overstretching the extent of export controls, by bullying other WTO Members to fall in line, the United States has caused severe disruptions to world trade and risked the disintegration of the global semiconductor supply chain. From the G20 to APEC, no economy, including the US, is in support of such disruptions and decoupling. In Bali, the G20 leaders committed to reinforcing international trade and investment cooperation to address supply chain issues and avoid trade disruptions. In Bangkok, the APEC leaders reaffirmed their commitment to keeping markets open and to addressing supply chain disruptions. However, there seems to be a discrepancy between what the US preaches and what it practices. In fact, the US policies will deal a severe blow to global semiconductor supply chains, to the rules-based multilateral trading regime, to the general principles of international law, and to the growth prospects of the global economy.

10.10. The US export control measures have wreaked havoc on the global semiconductor supply chain. Chaos has descended on major players in the semiconductor sector, with their revenues slashed and their investments skewed. According to Fitch, the US measure is a significant challenge for companies in the sector with considerable China exposure.[66]

10.11. The measure could actually end up hurting the American semiconductor industry. The new rules are expected to adversely affect revenue generation at the leading chip-making equipment producers, such as KLA and Lam Research. Sales in China made up about 30% of these leading equipment producers' revenue in the latest reporting period. Leading US electronic design automation companies, such as Cadence Design Systems, are also expected to face revenue headwinds as China constitutes an important strategic customer. News reports indicate that chip equipment maker Applied Materials cut its fourth-quarter estimates for net sales by approximately USD 400 million. NVIDIA, the largest US chipmaker by market value, warned that new licensing requirements on advanced chip shipments to China could cost the firm as much as USD 400 million in quarterly sales.[67]

10.12. The impact to other major semiconductor suppliers could be even worse. Chip gear firm Tokyo Electron revised its sales forecast down for this business year by 250 billion Yen, or roughly USD 1.8 billion, with half of the cut due to the new export curbs.[68] Samsung Electronics, SK Hynix, and TSMC, although being granted temporary exemptions, face an uncertain policy outlook with respect to their business operations in China.

10.13. The impact to the market as a whole could not come at a worse time as the sector is heading for a possible recession. According to news reports[69,70], Micron, a maker of memory chips, reported a 20% year-on-year fall in quarterly sales and plans to cut investments by more than 30% in 2024. AMD, a chip designer, slashed its sales estimate for the third quarter by 16%. SK Hynix warned of an "unprecedented deterioration" in memory chip demand and said its investment in 2023 would be cut by more than 50% after quarterly profits tumbled by 60%. The US measure further dampened market demand and dented market confidence.

10.14. Furthermore, the measures will interrupt the business and innovation cycle of the semiconductor industry. The semiconductor sector is an interdependent and interlocking global ecosystem. Investment and productions are divided into different stages and established in different

[66] "New US Export Controls to Challenge Semiconductor Companies", https://www.fitchratings.com/research/corporate-finance/new-us-export-controls-to-challenge-semiconductor companies-20-10-2022.

[67] "Why US tech controls on China could end up hurting American semiconductors", https://finance.yahoo.com/news/why-us-tech-controls-on-china-could-end-up-hurting-american-semiconductors 193354968.html

[68] "Following U.S. on China chip export curbs would hit Japan's industry hard", https://www.japantimes.co.jp/news/2022/11/17/business/us-chip-curbs-japan-impact/

[69] "The American chip industry's $1.5trn meltdown, Thank the boom-and-bust cycle—and America's government", https://www.economist.com/business/2022/10/17/the-american-chip-industrys-15trn-meltdown

[70] "In 'unprecedented' global chip slump, SK Hynix to halve investment as recession looms", https://www.reuters.com/technology/sk-hynix-q3-profit-plunges-economic-downturn-hurts-chip-demand-2022-10-25

areas of the world with proper comparative advantages. Cross-border trade connects the links in the chain and creates revenue that feeds into research and development. Market competitions create pressure and spur better performance, higher efficiency, and cooler innovations. This is a positive loop for economic growth and technology innovation.

10.15. However, this business and innovation cycle is at risk of being picked apart, with the US sweeping tech controls, aimed at freezing China's semiconductor development and dramatically limiting technology exchanges. Wiping out a major market and cutting out a supplier such as China from that chain is like throwing a huge wrench into the seamlessly running global semiconductor ecosystem.

10.16. It represents a myopic view with regard to the development of the global semiconductor sector. By inhibiting market participation and competition, revenue will be slashed, and innovations will happen at a much slower pace. To take the example of cell phone chips, since Huawei was put on an entity list and subject to foreign direct product rule in 2020, how long did it take for Qualcomm or Apple to issue a new generation of chips for mobile devices that significantly improved upon the previous generation?

10.17. The unilateral nature of the measures represents an affront to the rules-based multilateral trading system and general principles of international law. The US measures are unilateral to the extreme. The United States has not only imposed export controls on China unliterally, without any basis in multilateral export control regimes, but it has also compelled other WTO Members to follow suit. In this way, it is as if the US not only violates the WTO rules itself, but that it also bullies other WTO Members to violate the WTO rules, at the cost of their legitimate interests, for the purpose of so-called "US national security".

10.18. As a matter of general principle in international law, it is the sovereign right of states to decide what is in their national security interests. But what the United States does, with its so-called "Foreign Direct Product Rules", is essentially to dictate its approach of using export controls on China on other WTO Members, thereby trespassing upon the sovereign rights of the Members concerned.

10.19. Underlying the US approach is a cold war mentality, featuring a zero-sum game, picking sides, and building entrenched camps. But times have changed; revisiting a cold war mentality is therefore good for no one, and worse still for oneself.

10.20. The policy ramifications of the US measures risk "technology decoupling" and bode ill for the world economy. With rising geopolitical tensions affecting the semiconductor supply chain, "technology decoupling" often makes news headlines. No Member wants to see the semiconductor supply chain unwound, markets distorted, and comparative advantages skewed. Yet these are the policy ramifications of the US measures, and they do not bode well for the world economy's growth prospects.

10.21. According to the IMF[71], a world divided into trading blocs, if it came into being, would see annual permanent global losses estimated at 1.5% of GDP, with losses for Asia and Pacific countries mounting to 3.3% of GDP. For some economies, these losses would undo all the gains from worldwide tariff reductions since 1990, including those from the Uruguay Round and preferential tariff reductions.

10.22. The WTO has reached similar conclusions. Citing a simulation by WTO economists, WTO Director-General Ngozi Okonjo-Iweala warned that, if the world were to be fragmented into two trading blocs, it would result in a 5% loss of real global gross domestic product over the longer term. "We should remember that a fragmented world can be a very costly world," she said.[72]

10.23. To conclude, China expresses its strong concern over US unilateral measures and practices. Fighting trade wars and technology wars, artificially "building walls", and forcing "decoupling", completely violate market economy principles and disrupt international trade, which is good for no one, and worse still for oneself. China opposes the politicization and weaponization of economic,

[71] "Regional Economic Outlook: Asia and the Pacific October 2022: Sailing into Headwinds", 28 October 2022, p.48-49.

[72] "Rival trade blocs would lead to 'huge' global GDP loss: WTO chief", https://asia.nikkei.com/Editor-s Picks/Interview/Rival-trade-blocs-would-lead-to-huge-global-GDP-loss-WTO-chief

trade, scientific, and technological exchanges. Therefore, China calls upon the United States to correct the above-mentioned practices that violate the WTO rules and the basic norms of international law, and jointly maintain the stability of the semiconductor global supply chain.

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

10.25. The CHIPS Act consists of three distinct initiatives: (i) large-scale investments in leading-edge logic and memory manufacturing clusters; (ii) expansion of manufacturing capacity for mature and current-generation chips, new and specialty technologies; and (iii) initiatives to strengthen and advance US leadership in R&D. A successful CHIPS program will respond to market signals, fill market gaps, and reduce investment risk to attract significant private capital.

10.26. As is clear from the text of the law, the contemplated support is consistent with the WTO Agreements, including the ASCM. The Subsidies Agreement does not have obligations with regard to restrictions on eligibilities of entities receiving government support.

10.27. The US Department of Commerce will implement certain restrictions to ensure that those who receive CHIPS funds cannot compromise national security. Those national security restrictions are described in more detail in the Act. Entities can choose whether or not to apply for incentives through the CHIPS program, and thus be subject to the national security limitations. It is important to note that the limitations in question on which entities can receive support reflect national security concerns. The complete text of the CHIPS Act of 2022 ("the Act") is available online. The publicly available, published CHIPS Act, explains in detail the initiative, including which entities and projects are eligible to receive support, and the types of support that they are eligible to receive. The CHIPS program has a website dedicated to publicly sharing information at www.chips.gov. On this public website, the US Department of Commerce has published its initial implementation strategy.

10.28. In addition, the US Department of Commerce has issued multiple requests for information on the semiconductor industry and on implementation of the CHIPS Act, which provided an opportunity for interested parties to submit information. The requests, and the comments received in response, are available at www.regulations.gov. Going forward, the US expects that there will be more opportunities for public comment, with corresponding access to those comments.

10.29. The United States would note that China also has a semiconductor program. In particular, the national IC fund, started in 2014, which has never been notified. In addition, China has numerous programs at the central and sub-central levels of government in the form of government guidance funds, none of which have been notified. Finally, the United States does not believe that the WTO Council for Trade in Goods is the appropriate forum to discuss issues related to national security, including export controls.

10.30. The delegate of China indicated the following:

10.31. China appreciates the intervention from the United States. Regarding several points mentioned by the US, China wishes to deliver a few comments, leaving aside the issue of transparency on which China will make a separate intervention under Agenda Item 15. As for the so-called "national security", used as an excuse for a slew of export control measures on China, it has been noted that the security exemption has been interpreted in a constrained and narrow way by the Dispute Settlement Body (DSB). Namely, its provisions shall be invoked and applied in a very cautious manner so as to avoid unnecessary tensions among trading partners in a time that calls for collaboration and mutual trust for combating many of the common challenges facing us all. As Members know, the CHIPS Act of 2022 blatantly requires a covered entity to disengage certain business activities with China for the consideration of national security while, in stark contrast to this, China has noticed that several provisions of the Act intend to shore up the production chain to the US demotic markets, as stated by the Secretary of the US Department of Commerce, Gina Raimondo, on the website www.chips.gov. Thus, we have reason to doubt the real purpose of the act. In conclusion, in the context of mounting global challenges, China urge the US to implement its measures in the semiconductor sector in a way consistent with the WTO rules, avoiding bringing a heavy blow to the global supply chain and injuring trade.

10.32. The Council took note of the statements made.

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

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

11.2. The delegate of Australia indicated the following:

11.3. Australia values its mutually beneficial trade relationship with China. This includes the benefits that flow from a stable, predictable, and open global trading system, which is a key driver of prosperity for all WTO Members, as well as from the China-Australia Free Trade Agreement, and the Regional Comprehensive Economic Partnership. This is why Australia wishes to see the ongoing concerns resolved.

11.4. By now, Members know Australia's concerns regarding China's trade disruptive and restrictive measures well, as these are concerns that Australia has consistently raised in the WTO since November 2020. Australia believes that China's formal and informal practices go beyond what can reasonably be called "normal inspection and quarantine measures", or changes in market demand.

11.5. To remind Members, Australian commodities have been variously subject to the following measures: (i) quantitative restrictions such as *de facto* import bans; (ii) the imposition of unjustified anti-dumping and countervailing duties; (iii) increased and arbitrary border testing and inspections, including delays, applied without prior notification; or (iv) unwarranted delays in listing and re-listing export establishments, and in issuing import licences.

11.6. Such measures continue to affect a wide range of Australian products, some of which have been impacted for over two years. Furthermore, the measures have not been implemented in a transparent manner. To reiterate, the products affected include barley, coal, copper ores and concentrates, cotton, logs, rock lobsters, bottled wine, hay, and meat.

11.7. Australia continues to raise its concerns here in the Council, and in other committees, because these actions continue to impede Australian exports to China, and because we have not yet had the opportunity to work through with Chinese officials any concerns China may have around the products at issue. A lack of clear guidance and advice on pathways to lift or resolve these trade disruptive and restrictive measures continues to be of concern to Australia.

11.8. Australia remains open to working bilaterally with China, including under our Comprehensive Strategic Partnership, and looks forward to constructive engagement with the Chinese authorities to ensure that these issues are resolved as quickly as possible.

11.9. The delegate of Japan indicated the following:

11.10. As mentioned at the Council's previous meeting, Japan shares the concerns expressed by Australia that China's trade measures, including its trade remedy measures, should be implemented within the framework of the WTO Agreements, and that they should comply with the relevant WTO Agreements with regard to the procedures and fact-finding. As Members pointed out during China's most recent Trade Policy Review, government measures by China conducted in an informal or undisclosed manner are problematic in terms of China's WTO Accession Protocol, as well as in relation to the WTO's transparency principle. Japan believes that it is important that China ensure transparency for its relevant measures. If China implements trade measures in an arbitrary manner, as reported, this conflicts with the free, fair, and rules-based international trading system. Japan hopes that China will respond to Australia's concerns in good faith and a timely manner.

11.11. The delegate of Canada indicated the following:

11.12. Canada continues to share the systemic concerns of other Members with regard to the trade disruptive and restrictive measures adopted by China. Canada refers to its previous intervention on this item, which remains valid. China's lack of transparency and predictability in its application of SPS measures continue unnecessarily and negatively to impact agricultural trade, restricting Canada's exports of food, plant, and animal products. Canadian exporters also continue to experience significant undue delays with China's approval procedures.

11.13. Canada remains concerned with China's trade disruptive and restrictive measures impacting agricultural trade, including with regard to the following: China's COVID-19 measures on food imports; Bovine Spongiform Encephalopathy (BSE)-related trade restrictions; ongoing challenges with the registration approval process in the online CIFER system; as well as systemic and undue delays with China's approval process for Canadian food establishments, new market access requests, and the reinstatement of suspended establishments. China's maintenance of trade restrictions and its unwillingness to engage at a technical level to address trade issues is evidence of continuing arbitrary trade barriers. The use of trade disruptive and coercive measures challenges and destabilizes the rules-based international trading system from which China, Canada, and all WTO Members have benefited.

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

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

11.16. As stated in previous meetings, the European Union shares Australia's concerns with regard to the matters Australia is once again raising in this Council on China's implementation of trade disruptive and restrictive measures. On this occasion, the European Union wishes once again to reiterate the same points of principle and of law as on previous occasions. The EU continues to be concerned by the form, number and wide-ranging effects which these measures allegedly seem to have. As regards the form, informal, unpublished, and non-transparent trade restrictions are not in line with the WTO's rules and spirit. The European Union also speaks out against the alleged purpose of the measures in question, which appears to be coercive, placing the measures, if they exist, into incompatibility with general international law. Within the European Union, the legislative proposal for an anti-coercion instrument is progressing in the EU's legislature. In addition, the European Union pursues a WTO dispute with China in relation to a range of measures negatively affecting EU trade with China, and where there also appears to be such a coercive intention.

11.17. The delegate of Chinese Taipei indicated the following:

11.18. Chinese Taipei wishes to echo the concerns raised by Australia regarding China's implementation of trade disruptive and restrictive measures targeting a broad range of Australian goods. China's trade measures, which seem designed to hamper certain Members' trade interests, whether imposed formally or taken by the direction or instruction of its authorities, seem to be based on unrelated bilateral issues. These measures systemically undermine the rules-based multilateral trading system, and create a negative trade impact, not only on Australia, but on all other WTO Members as well. Chinese Taipei therefore calls upon China to engage in dialogue with the relevant WTO Members in good faith, and in a constructive manner, in order to resolve their legitimate trade concerns, and for China to uphold its commitments to the principles and obligations of the WTO rules.

11.19. The delegate of New Zealand indicated the following:

11.20. New Zealand holds a systemic interest in the concerns expressed on this topic by Australia and other WTO Members. New Zealand continues to comment on this matter, as it shares the view that China is yet to satisfactorily address the concerns raised by Members under this agenda item.

11.21. 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. And given the challenges all Members are facing as a result of the COVID-19 pandemic and other disruptions, the certainty provided by the multilateral trading system is more important than ever.

11.22. If Members step away from their commitments, or adopt remedies or other measures provided for under the WTO Agreements in an arbitrary manner and for unrelated purposes, this will undermine the predictability and certainty on which the system rests. It will also reflect on perceptions of the Member undertaking such actions. The adoption of measures by WTO Members that cause widespread disruption to trade and lack transparency cause serious concern to New Zealand, including actions taken by China against a range of exports from Australia and other WTO Members.

11.23. New Zealand encourages Members to comply fully with their WTO obligations, including in the application of trade remedies and the obligation to apply them in good faith.

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

11.25. The United States shares Australia's concerns, and remains deeply troubled by the information provided by Australia, which the US has also heard from other credible sources. The United States again registers systemic concerns with the broad range of restrictive measures, both formal and informal, that China has imposed on certain Australian goods in an inappropriate manner. In this connection, the US is also concerned by reports that Chinese authorities have informally instructed importers not to purchase certain goods.

11.26. As noted previously, China's actions are not isolated to Australia. There are many instances of China using these harmful non-market practices against WTO Members in apparent retaliation for unconnected bilateral issues, including China's discrimination against Lithuanian goods and EU products with Lithuanian content. It is important to identify similarly coercive actions taken by China against other Members, as they demonstrate a broader pattern of behaviour. Specifically, China uses, or threatens to use, arbitrary or unjustifiable trade actions to pressure or influence the legitimate decision-making of sovereign governments.

11.27. China claims to uphold the "rules-based multilateral trading system," but its actions speak for themselves. China continues to exploit the rules-based system to its advantage, ignoring or breaking rules in order to inflict harm on others to advance its geopolitical and economic ends. China's failure to adhere to global trade norms and WTO principles threatens and undermines the rules-based multilateral trading system and harms relations between its Members.

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

11.29. The United Kingdom wishes to again show support for Australia's concerns and emphasize the UK's disappointment that there has been no adequate response from China on this issue. WTO Members must adhere to the fundamental principles and objectives of free and fair trade that underpin the rules-based multilateral trading system. Neither China nor any other Member benefits when these rules are undermined for political motives. The United Kingdom therefore asks that China duly acts to provide clarifications to the points raised by Australia so that a solution may be reached in a timely manner.

11.30. The delegate of China indicated the following:

11.31. China wishes to refer to its statements made during previous meetings of various WTO bodies. China wishes to reiterate that the relevant measures it has taken against certain Australian products aim to protect the legitimate rights and interests of China's domestic industries and the health and safety of its consumers. The business decisions made by Chinese companies are based on market and demand conditions. All these measures are in line with Chinese laws and regulations, international practices, the China-Australia Free Trade Agreement, and the WTO rules.

11.32. China and Australia have tremendous potential in terms of their economic and trade cooperation. In 2021, the bilateral trade between China and Australia grew rapidly, by 35.1%, reaching USD 231 billion. From January to October 2022, bilateral trade has remained relatively stable, at USD 184 billion. China hopes that Australia will continue to work together with China to strengthen our economic and trade cooperation.

11.33. China takes note, with concern, that the United States, in its statement, referred again to China's legitimate measures as so-called "coercive actions". As it has said at previous meetings, China firmly opposes coercive actions. Actually, it is the United States that has been widely using coercive actions to pursue its various objectives. According to the report, "The United States of Sanctions, the Use and Abuse of Economic Coercion", during President Barack Obama's first term, the United States designated an average of 500 entities for sanctions per year. That figure nearly doubled over the course of Donald Trump's presidency.

11.34. In addition to this shocking figure, the United States also has recourse to various coercive economic tools. A report, "America's Use of Coercive Economic Statecraft", produced a summary of

these tools. One of the key takeaways of this report indicates that "US policymakers will continue to intensively use a growing array of coercive economic tools, including tariffs, sanctions, trade controls, and investment restrictions. The growing use reflects a desire by policymakers to use coercive economic tools in support of a growing range of policy objectives".

11.35. While these academic reports give us a general picture of US coercive actions, this Council is probably more familiar with the following specific trade measures: (i) the United States implemented Section 232 tariffs of 25% on steel and 10% on aluminium to many Members to force them to agree to import quotas and to create negotiating leverage to realize US policy objectives; (ii) the US revived Section 301 and launched 301 investigations against many WTO Members for various issues, such as Foreign Digital Service Taxes, valuation of a Member's currency, certain subsidies to the civil aircraft industry, and technology transfer; and (iii) the United States abused export control measures in the semiconductor industry to force not only US companies, but also other Members' companies, from engaging in normal trade and investment with China, which is seriously disrupting the global supply chain.

11.36. WTO Members often hear the United States criticizing other Members' measures for undermining the rules-based multilateral trading system. However, US actions clearly speak for themselves. China hopes that the US could practice what it preaches and cease all its coercive actions against other Members.

11.37. The Council took note of the statements made.

12 NIGERIA – RESTRICTIVE POLICIES ON AGRICULTURAL PRODUCTS – REQUEST FROM BRAZIL

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

12.2. The delegate of Brazil indicated the following:

12.3. Brazil recognizes the importance of fostering national agricultural production, especially that relating to the livelihoods of small, family, and medium-sized farmers, who are the producers given priority in Brazil's agricultural policies. However, it is against the letter and spirit of the Covered Agreements for Members to pursue this goal through restrictive policies that are tantamount to import bans.

12.4. Brazil has raised several concerns both at the Committee on Agriculture (CoA) and at the SPS Committee regarding a number of issues relating to Nigeria's restrictive policies. To illustrate, a decade ago, Brazil was contributing to Nigeria's food security through exports of rice, which increased overall supply and helped to keep prices in check. However, since 2014/2015, when Nigeria banned the use of foreign exchange to imports, Brazil's exports have consistently decreased, reaching zero since 2018. And despite several enquiries by Brazil at the CoA, no answer has been provided by Nigeria.

12.5. At the SPS Committee, Brazil has asked Nigeria about its refusal to launch negotiations for the establishment of SPS requirements for the import of several products. Likewise, no answer has been provided to Brazil's enquiries thus far. More recently, during the most recent meeting of the SPS Committee, Nigeria affirmed that there would be no restrictive SPS measures in force against Brazil. In response, Brazil mentioned that, failing to react to its proposals was a clear breach against Articles 2, 5, 7, 8, and Annex C of the SPS Agreement.

12.6. As stated in paragraph 2 of the Ministerial Declaration on the Emergency Response to Food Insecurity, "trade, along with domestic production, plays a vital role in improving global food security in all its dimensions and enhancing nutrition". Therefore, trade should not be treated as the villain, but as an ally to food security and prosperity. For these reasons, Brazil urges Nigeria to revisit both international law and academic evidence on the issue, and to lift the restrictions imposed on its imports of agricultural products.

12.7. The delegate of Nigeria indicated the following:

12.8. Nigeria has provided its response to the questions posed by Members on this issue in previous meetings of this Council, as well as in the CoA. Today, Brazil has indicated that Nigeria has not responded despite the fact that Nigeria has provided replies, including in the questions and answers in the AG-IMS. Regarding the discussions in the SPS Committee, Nigeria replied to Brazil that the restrictions it has in place have nothing to do with SPS. They are not SPS measures, and are not restricting trade on SPS grounds, so we do not see the SPS Committee as the forum for these discussions. Nigeria's government is currently reviewing the questions concerning the restrictions on Brazilian products which are not being restricted on the basis of e-certificates. Nevertheless, Brazil continues to place this issue on the Council's agenda even though we have provided responses on several occasions.

12.9. Nigeria imposed temporary import restrictions on a few agricultural products to address its economic development, balance-of-payments, and national security difficulties. These measures are taken within the framework of Article XII of the GATT 1994; paragraph 4(a) of Article XVIII of the GATT 1994; Section B of Article XVIII of the GATT (paragraph 8 to 12 of Article XVIII); and Article XXI of the GATT, to address Nigeria's extraordinary economic development and balance-of-payment difficulties, as well as its national security challenges.

12.10. Nigeria's currency, the Naira, has come under record pressure due to unprecedented scarcity of foreign exchange in Nigeria's economy. This is due to the sharp decline in demand and production of oil in recent years, which has negatively impacted upon Nigeria's external reserves. Oil is Nigeria's main source of foreign exchange earnings and government revenues. The situation has been further exacerbated by the COVID-19 pandemic, which has triggered exceptional reversals in capital flows as a result of decreased global risk appetite. These developments have significantly weakened Nigeria's ability to finance its imports, undermined its balance-of-payments position, and increased Nigeria's chances of defaulting on its sovereign debt if timely and appropriate measures are not taken. Nigeria is also saddled with severe livelihood and extreme poverty difficulties, with over 62% of Nigeria's population of 211 million people still living in conditions of extreme poverty. This situation, as well as Nigeria's high rate of unemployment (32.5% as at 2021), has triggered exponential increases in social ills and terrorism, which have further worsened Nigeria's national security situation.

12.11. Nigeria's current difficulties notwithstanding, the Government of Nigeria is working assiduously to address Nigeria's economic development, balance of payment, and national security difficulties with a view to phasing out this temporary measure as soon as possible.

12.12. The Council took note of the statements made.

13 UNITED KINGDOM – UK ENVIRONMENTAL ACT: FOREST RISK COMMODITIES – REQUEST FROM BRAZIL AND INDONESIA

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

13.2. The delegate of Indonesia indicated the following:

13.3. Indonesia wishes once again to raise its concerns regarding the UK Environmental Act, particularly those relating to the implementation of due diligence on forest risk commodities. Indonesia understands that one of the policies in the UK Environmental Act regulates the prohibition of imports of commodities that have the potential to cause deforestation. To be able to prove that imported goods are free from deforestation, business actors are required to carry out due diligence, namely by gathering information, as well as conducting risk assessment and mitigation.

13.4. Indonesia perceives that the obligation to exercise due diligence will potentially create restrictions on imported products and potentially violate Article XI:1 of the GATT 1994, where WTO Members are prohibited from imposing prohibitions or restrictions, other than tariffs, taxes, or other duties. In addition, they are also prohibited from imposing other restrictions that can be in the form of quotas, import or export permits, or other policies related to import and export commodities. Furthermore, referring to Article XX of the GATT 1994, WTO Members can apply restrictive policies,

as long as the intended policy aim is to protect the safety or health of humans, animals or plants, which must be proven based on: (i) legitimate objective; and (ii) the implemented policies are not more restrictive than necessary.

13.5. Indonesia requests more detailed information from the United Kingdom on its rationale and basis in selecting commodities to be used as policy objects, as well as clarifications regarding the scientific evidence considered and used by the UK in developing its policies.

13.6. Indonesia perceives that the UK Environmental Act could cause trade diversion to other WTO Members that do not have major forestry responsibilities, and especially to developing countries, which should be subject to the principle of common but differentiated responsibilities, as stated in the Paris Agreement and the United Nations Framework Convention on Climate Change (UNFCCC).

13.7. Finally, Indonesia wishes to reiterate that the due diligence on forest risk commodities obligation contained in the UK Environmental Act also has the potential to generate very large additional costs and create barriers to international trade.

13.8. The delegate of Brazil indicated the following:

13.9. Brazil shares the objective of protecting ecosystems, understanding that they will be better protected if governments cooperate with one another, and if this cooperation is based on the observance of local law and territoriality. Brazil particularly shares the United Kingdom's concern about illegal deforestation and notes that, at COP26, Brazil committed itself to eradicating this activity from its national territory by 2028. This pledge has been renewed and strengthened by President Lula at COP27.

13.10. The Brazilian government believes that improving the sustainability of international agricultural trade should be a result of the dissemination of best production practices to all rural producers. In line with their common but differentiated responsibilities regarding climate change, developed countries ought to support developing countries to achieve this goal, implementing the commitments made in different multilateral environmental agreements, particularly through financing, training, and technology transfer for conservation and sustainable production actions.

13.11. Brazil believes that the conciliation and cooperation efforts undertaken by Brazil with the United Kingdom in different formats, including the Forests, Agriculture and Commodity Trade (FACT) Dialogue, is one possible way forward. Implementing trade-restrictive measures will hardly help to solve the problem. In Brazil's view, collaborative initiatives between producer and consumer countries would be far more successful than unilateral restrictive measures in terms of promoting sustainable value chains, reducing deforestation associated with the illegal conversion of forests and other ecosystems into arable land, and generating long-lasting advances in global agricultural trade.

13.12. In particular, Brazil takes this opportunity to express its concerns about the following aspects of the UK proposal.

13.13. The definition of the scope of application of this secondary legislation in relation to the impacted countries could be considered discriminatory, as it will require measures almost exclusively from developing countries with tropical climates, which have managed, in their own processes of development over the last few centuries, to preserve their natural forests.

13.14. In the case of Brazil, it should be taken into account that more than 60% of its territory is covered by native vegetation and that almost 80% of the Brazilian Amazon rainforest is intact. Furthermore, Brazil notably has some of the world's most stringent environmental protection legislation, in addition to being one of the most environmentally monitored countries, due to large domestic investments and international partnerships.

13.15. Among the possible consequences of such discrimination is trade diversion towards imports of similar products from third countries that will receive more favourable treatment under British law for not having preserved their natural forest cover to the same extent as the targeted countries. Furthermore, those countries would not be required to provide new information to their supply chain to support UK businesses in applying the regulations and not being subject to import bans.

13.16. The definition of forest used in the Environment Act is reportedly in line with the definition of forest used by the Food and Agriculture Organization of the United Nations (FAO). However, it omits an essential aspect of that multilaterally agreed definition, namely the minimum tree height, which should be above five metres. By omitting this fundamental aspect of the definition, which is also included in the definition of forest used by the UNFCCC and the Convention on Biological Diversity (CBD), the British government is distorting the concept of forest and therefore creating a situation of conceptual uncertainty, which could lead to arbitrariness in the implementation of the due diligence process.

13.17. In addition, it should be noted that the due diligence operation will be highly costly. Due diligence could, in practice, have the same effect as a prohibitive tariff on products imported from countries discriminated against under the scope of the secondary legislation. The increased costs will inform the decision-making process of UK importers, who may stop their imports if they deem the prices excessively high or the requirements overly burdensome, with possible undesirable consequences for international supply chains, including for the wider international economy, and especially for the food security of the population.

13.18. It is not clear to what extent the additional costs incurred by supply-side companies will be taken into account, in addition to the time needed to adapt to the different scenarios in the markets of origin. Nor is it clear whether, similar to the exemptions to be granted by the British government to local companies, there will be exemptions for small and medium-sized companies, especially in exporting countries. Difficulties in complying with the requirements to be adopted may entail the risk of disruption to trade flows and an uncertain scenario for commercial operators, who could incur costs with no guarantee that the British authorities will consider the legal requirements to have been met.

13.19. The above-mentioned costs would be disproportionately higher for smaller, lower-income producers if the burden of due diligence were passed on to them by importers in the UK. This could have a negative social impact on developing countries by increasing poverty levels and related social problems. Finally, considering that the public consultation period for the secondary legislation is over, Brazil asks that the contributions by the Brazilian government and Brazilian associations receive a fair share of attention.

13.20. The delegate of Paraguay indicated the following:

13.21. Paraguay wishes to register its concern and support to this agenda item. Paraguay is following with keen interest the developments of the legislative process in the United Kingdom regarding this initiative.

13.22. The delegate of Argentina indicated the following:

13.23. Argentina is closely monitoring the United Kingdom's legislative process, in particular its compatibility with WTO rules. The Forestry Commodities Act is a unilateral measure that is likely to affect trade and be discriminatory because of the high costs that it can generate in terms of enforcement, even for those Members that already meet strict standards in this area. Argentina wishes to reiterate that all unilateral measures pursuing an environmental objective must be designed and implemented with a high degree of cautiousness and precaution with regard to their consequences for developing and least developed Members, and should, above all, be considered in the light of the principle of common but differentiated responsibilities.

13.24. The delegate of India indicated the following:

13.25. India remains concerned over the way that environmental measures are being implemented by the United Kingdom. India continues to study the various proposals and urges the UK not to undertake trade restrictive measures while citing environmental objectives.

13.26. The delegate of Nigeria indicated the following:

13.27. The Government of Nigeria also wishes to raise its concerns with respect to certain environmental measures that can restrict trade. Nigeria will continue to monitor the developments on this issue. Currently, Nigeria has seen an increase in the introduction of these environmental

protection policies that continue to undermine the competitiveness of African businesses when they export to develop country markets. In Nigeria's view, they constitute a new form of trade protectionism. Nigeria has also raised concerns and expresses its interest in similar measures that have been introduced by the EU, but we will raise them under the corresponding agenda items.

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

13.29. The United Kingdom wishes to thank Indonesia, Brazil, Paraguay, Argentina, and India, for their continued interest in the due diligence provisions in the UK's Environment Act 2021. As set out in the United Kingdom's previous responses to the Council on this matter, the UK's due diligence legislation is part of a wider package of measures. That package aims to improve the sustainability of supply chains and contribute to the international commitments made at COP26 to work collectively to halt and reverse forest loss and land degradation by 2030.

13.30. The United Kingdom believes that the introduction of due diligence measures to tackle illegal deforestation in UK supply chains will complement global, national, and local efforts to protect forests and other ecosystems. The UK held a consultation on this measure from 3 December 2021 to 11 March 2022 to inform its development.

13.31. A summary of the consultation responses was published on 1 June 2022, and the United Kingdom thanks those WTO Members that contributed to the consultation. As the UK works towards implementation of the Environment Act provisions, it continues to ensure compliance with its trade obligations. The UK is happy to continue discussions with interested parties as it finalizes and implements the measures.

13.32. The Council took note of the statements made.

14 AUSTRALIA, CANADA, EUROPEAN UNION, JAPAN, NEW ZEALAND, SWITZERLAND, UNITED KINGDOM, AND THE UNITED STATES – UNILATERAL TRADE RESTRICTIVE MEASURES AGAINST RUSSIA – REQUEST FROM THE RUSSIAN FEDERATION

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

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

14.3. The Russian Federation reiterates its deep concern regarding the illegal and unjustified trade restrictive measures imposed by Australia, Canada, the European Union, Japan, New Zealand, Switzerland, the United Kingdom, and the United States in respect of Russia. As the Russian Federation has already stated, these restrictive measures include import and export bans on Russian products, the imposition of additional tariffs, restrictive measures imposed on Russia's largest banks, insurance agencies, transportation companies, export support agencies, industrial companies, Russian seaports, legal and natural persons, and including the top management and owners of Russia's largest companies. All these measures have been introduced not only illegally, but also without any regard for the consequences for the world economy. They have already immensely affected trade in goods and provoked global economic, energy, and food crises.

14.4. Russia is the third largest oil and the second largest natural gas producer in the world, as well as the world's largest oil and gas exporter. Unilateral measures against Russian oil, petroleum products, and gas producers, and Russia's financial sector, as well as pressure on international transportation, trading companies, and foreign governments not to work with the Russian oil and gas sector has led to an increase in oil and gas prices on the global market.

14.5. The Russian Federation would also like to note that oil restrictive measures are applied not only to Russia, but to third countries as well. For example, it is clearly stated in the European Union's act that "it shall be prohibited to transport, including through ship-to-ship transfers, to third countries crude oil falling under CN code 2709 00, as of 5 December 2022, or petroleum products falling under CN code 2710, as of 5 February 2023, […] which originate in Russia or which have been exported from Russia".

14.6. Taking into account that Russia is one of the largest suppliers of energy products to the world market, imposition of restrictions on these products automatically leads to higher prices and a deepening economic crisis. High energy prices translate into higher consumer prices across the full board of products, including food, fuelling inflation expectations and slowing global economic growth. As for the food crisis, the Russian Federation underlines that it is both a major producer and exporter of wheat and fertilizers.

14.7. Notwithstanding the exclusion of these products from direct restrictions, Russian exports and imports of these most essential products are facing indirect measures, such as bans on the use of foreign seaports, and measures against companies and individuals that include asset freezes and a prohibition to deal with such persons. Taking into account current as well as planned restrictions against Russia, international transportation, trading companies, foreign banks, and insurance companies are coerced to refuse to work with Russian exporters, including those of food, energy, and fertilizers. Foreign governments are also coerced to drop any engagement with Russia, including buying its energy resources.

14.8. Unilateral trade restrictive measures result in increased transaction costs and *de facto* quantitative restrictions on Russian supplies of food and fertilizers leading to global food shortages and price hikes. According to the IFPRI, imports of fertilizers from Russia have decreased by more than 30% to EU countries, and 14% to the world.

14.9. Previously, members of the so-called "collective West" have stated numerous times that their unilateral restrictive measures do not affect the trade in agricultural products, as well as fertilizers. However, on 29 August, the European Union published an updated text of clarifications on the application of sanctions against Russian fertilizers and agricultural products. It clearly contradicts the EU's statements about not applying restrictions on trade in agricultural products and fertilizers of Russian origin. The Russian Federation would like to draw Members' attention to the fact that these clarifications are not a legal act, contrary to the EU Regulation. Thus, these clarifications cannot be considered as sufficient guarantees for economic operators. Therefore, the risk of overcompliance still exists.

14.10. Such a vast and outright violation of WTO rules is a massive blow to the WTO system. It undermines the role of the WTO as a pillar of international trade rules and shows that no Member is safe from such vast, unjustified, and unlawful measures in the future.

14.11. The Russian Federation expresses its concern over the attempt to replace the system of global economic governance with unilateral restrictive measures of extraterritorial scope. Despite different pretexts for such destructive policies they in fact put the prospects for global economic growth at serious risk and disproportionally hit developing countries. Being of a complex nature, these measures already have systemic negative implications on global value chains, international markets, and the stability of the price level. In this context, the Russian Federation calls on the WTO Members in question to restore the smooth functioning of the WTO and urges them to immediately lift their unilateral trade restrictive measures, including those with extraterritorial implications, and to stop their coercive actions aimed at forcing other WTO Members to follow suit.

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

14.13. The United Kingdom will not ignore Russia's futile attempts to disinform, divert, and distract Members regarding the impacts of their illegal invasion of Ukraine. Because what we have just heard from Russia is indeed an attempt to distance themselves from the responsibility that they alone bear for the impact of their chosen war on global trade and food security. The UK therefore welcomes this opportunity to continue correcting Russia's lies, just as the UK continues to condemn, in the strongest possible terms, Russia's illegal war.

14.14. To set the context: the impact of Russia's actions on global food supplies is stark. The facts speak for themselves. Citing a global emergency of unprecedented magnitude, the UN World Food Programme's Executive Director has said that close to 70 million people are being pushed closer to starvation by the war in Ukraine. And Russia's illegal war continues to affect commodity prices across the world, with Russia's unilateral decision to manipulate energy supplies as the most significant factor inflating prices across the globe. This is further exacerbating the food crisis. Indeed UNCTAD calculations estimate that, on average, more than 5% of the import basket of the poorest

countries are likely to face a price-hike due to Russia's invasion. So the United Kingdom recognizes that it is lower income countries that will continue to be most exposed to the consequences of Russia's invasion, and the measures being taken by the UK to support them will be addressed shortly.

14.15. Against this context, firstly: the United Kingdom wants to counter the disinformation just heard from the Russian Federation on the UK's sanctions. The UK wants to be clear that, in implementing its own sanctions, it has been consistent that its measures do not target food or fertilizer exports from Russia to third countries. To the contrary, the UK's sanctions include clear mitigations to prevent an impact on Russian food exports.

14.16. Secondly: the United Kingdom wants to turn to Russia's attempt to distract and divert from its own impact on the food crisis because, in direct contrast to the UK's approach, it is Putin who is weaponizing food. Indeed, before Russia's invasion in February, Ukraine was the fifth largest exporter of grain in the world, meeting the needs of hundreds of millions of people worldwide. This all changed on 24 February, when Russia began its destruction of Ukrainian farms and agricultural infrastructure, including transportation and storage, which has damaged regional and global supplies and driven up prices across the world.

14.17. And while simultaneously collapsing Ukraine's capabilities, the Russian Federation has unilaterally introduced numerous measures on the export of its own agricultural and fertilizer products. Russia's export measures and bans have included white sugar, raw cane sugar, wheat, rye, meslin, barley, corn, and rice. Russia has also introduced export measures against sunflower oil and rapeseed oil, and sunflower seeds and rapeseed seeds. And these are Russia's unilateral measures, exacerbating global shortages; and only Russia can remove them all.

14.18. The United Kingdom is taking action to support those that are affected by Russia's actions. The UK is working with international partners to prioritize support to the most vulnerable people facing food insecurity. The UK has pledged over USD 20 million to improve the effective use of fertilizer and increase food production in vulnerable countries, and approximately USD 178 million towards humanitarian crises in East Africa. The UK supports the Black Sea Grain Initiative, which has enabled the World Food Programme to support vulnerable populations across the world.

14.19. The United Kingdom will continue to back Ukraine in its vital role supporting the food security of millions of people worldwide. But peace is the only way in which the global economy can truly return to stability. The United Kingdom has spoken at length about the impact of Russia's chosen war on trade across the world. In closing, and to be clear, the UK condemns, in the strongest possible terms, Russia's strikes on civilians and civilian infrastructure in Ukraine. Because there can be no excuse for such a series of attacks on a sovereign nation, including targeting those who cannot defend themselves, and those who are most at risk from the consequences of Putin's war. To conclude, the United Kingdom will continue to stand alongside Ukraine for as long as it takes. Russia will be held accountable.

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

14.21. The United States condemns Russia's unjustifiable, unprovoked, and illegal aggression against independent and sovereign Ukraine, and the suffering and loss of life it continues to cause. This most recent campaign attacking Ukraine's energy infrastructure as winter approaches is simply appalling. The US will spare no efforts to hold President Putin and the architects and supporters of this aggression accountable for their actions. The US underlines its resolve to impose severe economic and financial consequences on Russia. As the United States has said before, Russia is complaining about a situation that it has created, and is trying to shift the blame for the death and destruction that it has created.

14.22. Russia started this war; Russia perpetuates this war; Russia illegally tried to annex parts of Ukraine; Russia continues to destroy Ukraine's agricultural and energy infrastructure; and Russia continues to spread disinformation that western sanctions are causing food insecurity when we have made it quite clear that banks, insurers, shippers, and other actors can continue to bring Russian food and fertilizer to the world. In short, Russia, with support from Belarus's complicity, is responsible for much of the devastation and disruption being felt around the world.

14.23. The United States will continue to condemn Putin's brutal, unprovoked, and unjustified war against Ukraine. The US will continue to support Ukraine's courageous efforts to defend itself, uphold its territorial integrity, and protect its population. The US will continue to work with its partners and allies to sustain and intensify international pressure on President Putin's regime, and its enablers in Belarus, for as long as necessary.

14.24. The delegate of New Zealand indicated the following:

14.25. New Zealand supports the statements made by other Members before us. New Zealand continues unequivocally to condemn Russia's illegal and unprovoked attack on Ukraine. The actions of President Putin are a grave breach of international rules; and the use of force to change borders is strictly prohibited under international law, as is targeting of civilians. New Zealand is appalled by reports of the devastating and indiscriminate attacks on Ukraine's population by Russian troops, including evidence of crimes against humanity and war crimes, as well as the destruction of civilian infrastructure, including the energy grid, hospitals, schools, and homes. New Zealand will spare no effort in holding those responsible for this aggression to account.

14.26. As New Zealand has heard clearly, it is Russia's invasion of Ukraine that has seriously undermined global peace, security, and economic stability, as well as creating uncertainty and volatility in world food pricing and supply.

14.27. New Zealand has joined the international community in applying sanctions in a transparent manner. Information on the Russia Sanctions Act that was passed by the New Zealand Government on 8 March 2022 is publicly available on the New Zealand Ministry of Foreign Affairs and Trade website. Sanctions under the Act are a direct response to Russia's illegal war of aggression, and are not intended to disrupt trade in essential goods. New Zealand remains united with the international community to hold those responsible for violations of humanitarian and international law to account. Imposing sanctions on Russia is a means to bring an end to this war. New Zealand stands in full solidarity with Ukraine and its people and reaffirms its unwavering support for the independence, sovereignty, and territorial integrity of Ukraine.

14.28. The delegate of Canada indicated the following:

14.29. As a result of the Russian Federation's unprovoked, unjustified, and illegal war of aggression in Ukraine, Canada continues not to engage with Russia's delegation to the WTO in a business-as-usual fashion. No amount of misinformation can hide Russia's culpability; Russia is solely responsible for this crisis, not Western sanctions, which are only designed to stop Russia's unjust and brutal war in Ukraine. Russia's efforts to blame Western sanctions for the cause of these crises are simply attempts to re-direct the narrative away from its own actions.

14.30. Canada's support for Ukraine and its people is unwavering, and Canada will work to find ways to use trade to support Ukraine in rebuilding its economy and its society. Canada will continue to take actions that it considers necessary to protect its essential security interests, and will work closely with like-minded partners to promote peace and security for all states and their citizens.

14.31. Canada is a vocal advocate for addressing immediate crises in a coherent manner while also setting a course for medium- and long-term resilience. Canada is working with multilateral partners in major forums like the UN Rome-based agencies, G7/G20, and the WTO, to promote an evidence-based and coordinated response to the crisis. Canada will continue to support humanitarian partners, such as the World Food Programme, to help meet the emergency food and nutrition needs of the growing number of acutely food insecure people.

14.32. More needs to be done to address weaknesses in the global food system, which have been exacerbated by Russia's illegal actions. Leveraging current efforts on sustainable agriculture and food systems, Canada's future development programming will focus on climate-smart agriculture, sustainable agri-food value chains, inclusive food systems governance, and productive safety nets to deliver multiple outcomes like food security, nutrition, gender equality, and climate action. Finally, Canada once again calls for Russia to immediately cease all hostile actions against Ukraine.

14.33. The delegate of Norway indicated the following:

14.34. Norway implements restrictive measures against the Russian Federation, as do other Members mentioned under this agenda item. The measures have been taken as a reaction to Russia's unprovoked military invasion of Ukraine, which Norway condemns in the strongest possible terms. Norway also condemns Russia's recent illegal attempts to annex Ukrainian territory. Norway is appalled by Russia's continued war of aggression, which is a gross violation of international law and the UN Charter. The recent new waves of attacks against Ukraine again clearly demonstrate Russia's complete disregard for the horrible suffering of millions of people. Damage to energy infrastructure brings great humanitarian harm and will certainly cause illness and death during the cold winter. The attacks serve no military purpose, and their aim seems to be to terrorize the population. They are illegal, and may constitute war crimes. Through its aggressive actions, Russia is acting with blatant disregard for international law. Russia must immediately heed the ruling of the International Court of Justice (ICJ) and the calls of the United Nations General Assembly to suspend its military operations within Ukraine's internationally recognized borders. Norway reiterates that it stands in solidarity with Ukraine and the Ukrainian people.

14.35. The delegate of the Bolivarian Republic of Venezuela indicated the following:

14.36. The Bolivarian Republic of Venezuela wishes to thank the Russian Federation for once again raising an issue that is highly sensitive for Venezuela. As Venezuela has noted on previous occasions, it has been warning about the proliferation of unilateral coercive measures for years. Since at least 2015, that is, for seven years, Venezuela has been under a multidimensional attack on its finances, trade, economy and assets, with multimillion-dollar losses. This has led to the reduction of 99% of Venezuela's income, with a negative impact that has spread to all areas, especially the food, health, transport, communications and technology sectors. Venezuela is a first-hand witness to the collateral damage that this type of measure causes, not only to the population of the affected country, but also to other economies, causing all kinds of disruptions, including trade distortions.

14.37. The Bolivarian Republic of Venezuela wishes to reiterate that the WTO has proven to be an Organization guided primarily by economic considerations and sound legal rules. Unilateralism, by definition, violates those principles and rules. In this regard, Venezuela calls for a return to multilateralism as the best way to settle differences and advocates a forward-looking, transparent, inclusive multilateral trading system founded on consensus-based rules.

14.38. The delegate of Japan indicated the following:

14.39. It is to be expected that the international community, including Japan, imposes sanctions in response to Russia's aggression of Ukraine. Japan continues to work with its partners, including international organizations, to proactively address the impact of Russia's aggression of Ukraine in areas such as energy and food, among others, across many countries. Japan and other countries have been carefully addressing the situation by imposing sanctions in a manner that does not hinder the provision of humanitarian assistance or the operation of global agricultural trade.

14.40. Russia's aggression of Ukraine clearly infringes upon Ukraine's sovereignty and territorial integrity, and constitutes a grave breach of the United Nations Charter, which prohibits the use of force. Japan will never accept this unilateral attempt to change the status quo by force, and it is an extremely serious situation that shakes the very foundation of the international order. Japan condemns Russia's actions in the strongest terms.

14.41. Together with other Members, Japan insists that the Russian Federation must urgently stop its military aggression against Ukraine and immediately withdraw its troops. Japan is firmly convinced that the Russian Federation must be held accountable and must cease its actions, which undermine peace, security, and international law.

14.42. The delegate of Switzerland indicated the following:

14.43. Switzerland wishes to add its voice to the statements of other Members by condemning in the most vigorous fashion the miliary aggression of Russia against Ukraine. This miliary aggression is totally unjustifiable. Switzerland calls upon Russia to take the measures necessary to deescalate the current situation, to cease its activities, and to remove its troops from Ukrainian territory

immediately. The continuation of these attacks represent a flagrant violation of international law, especially the prohibition against the use of force, the violation of territorial integrity, and the obligation to protect a civilian population. In the wake of this aggression, Switzerland has adopted a number of economic measures. These measures are exceptional in nature, and they have been adopted because of Russia's violation of international law. The measures have been taken in parallel with international law, and also are in keeping with the rules of the WTO.

14.44. The delegate of Australia indicated the following:

14.45. As other Members did before it, Australia again condemns in the strongest possible terms Russia's unilateral, illegal, and immoral invasion of Ukraine. This invasion is a gross violation of international law, including the Charter of the United Nations. Australia strongly supports Ukraine's sovereignty and territorial integrity, and again calls on Russia immediately to withdraw its forces from Ukrainian territory. Russia's war on Ukraine is exacting a catastrophic humanitarian toll, in addition to trade disruptions and a food crisis.

14.46. Australia supports the collective action by Members and has imposed far-reaching sanctions to inflict heavy costs on Russia and those responsible. In addition, Australia has implemented trade measures including: the ban on imports of Russian oil, refined petroleum products, coal and gas (effective from 25 April); the ban on exports of alumina and bauxite to Russia (effective from 20 March); the ban on the export of certain luxury goods to Russia, including wine and cosmetics (effective from 7 April); and denying Russia access to most-favoured-nation tariff treatment and imposing an additional tariff of 35% on goods that are the produce or manufacture of Russia (effective from 25 April).

14.47. Australia has notified these trade measures to the WTO to ensure transparency, which is an important obligation on all Members, and one which Australia takes seriously. Australia has also joined like-minded partners to prohibit the importation of Russian gold to reduce Russia's ability to fund its war. These measures are justified given Russia's unprecedented invasion, and are justified under WTO rules, in particular Article XXI of the GATT.

14.48. Although sanctions are negatively impacting Russia's economy, food and agricultural commodities (aside from a limited number of luxury goods, such as lobster and caviar) are not sanctioned by Australia. Rather, it is Russia's own decisions that are constraining its contribution to global food stocks, including through the imposition of restrictions on its own exports. Russia's war is also reducing global food supplies by destroying Ukraine's agricultural land and facilities for processing and exporting staple foods, and disrupting regular trade through the Black Sea.

14.49. Australia is committed to strengthening the global rules-based order, and is a ready and able partner for all countries that seek a peaceful and prosperous world, where sovereignty is respected.

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

14.51. The European Union is committed to the rules-based international order. The EU therefore continues to condemn Russia's unprovoked and unjustified act of aggression against Ukraine, which grossly violates international law and the UN Charter, and undermines international security and stability. The European Union condemns in the strongest possible terms the continued heinous attacks on civilians and civilian infrastructure. This illegal war against Ukraine also continues to cause immense economic harm to Ukraine with effects felt around the globe. Approximately 1.7 billion people in over 100 countries are now facing severe food, energy, and commodity supply issues and price rises.

14.52. The European Union wishes to underline once again that its sanctions against Russia neither target trade in agricultural, food, or medical products, nor the trade of the Russian Federation with third countries. The European Union considers its measures fully consistent with its WTO rights and obligations as actions necessary to protect its essential security interests. The measures include export and import restrictions targeting Russia's ability to finance this reprehensible war.

14.53. The European Union has taken all its measures in a fully transparent manner. The relevant EU measures are publicly accessible, including through our recent quantitative restriction notification

to the CMA. The EU closely monitors their implementation in order to ensure that the measures achieve their objective, namely to hamper the ability of the Russian government and military machine to sustain this illegal war.

14.54. The European Union calls on Russia to immediately cease its military actions, withdraw all its troops from the entire territory of Ukraine, and fully respect Ukraine's territorial integrity, sovereignty, and independence within its internationally recognized borders.

14.55. The delegate of Costa Rica indicated the following:

14.56. Costa Rica wishes to join in the expressions of support and solidarity with the people of Ukraine and condemns the unjustified aggression by Russia in the strongest possible terms. The cruel human tragedy that millions of Ukrainian families are suffering is unthinkable for a country like Costa Rica, a democracy without an army and with a pacifist tradition.

14.57. Costa Rica has been, and will always be, a fervent advocate of multilateralism and of an international architecture at the service of peace, security, sustainable development, and the protection of human rights. Costa Rica firmly believes that trade can and should contribute to the stability and peace of nations. In this context, Costa Rica is concerned about the impact that the Russian aggression against Ukraine is having on international trade in agricultural products and inputs critical to global food security. Costa Rica urges Russia to cease hostilities as soon as possible and to embark on a route that will restore international peace and security.

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

14.59. The Republic of Korea has been strongly condemning Russia's armed invasion of Ukraine. Regarding the current item, the Republic of Korea believes that it is essential to focus on the origin of the sharply aggravating situation on the global supply chain in many areas, which poses a significant threat to the rules-based global trade order under the WTO. The way to end all this is obvious; that is, for Russia to stop its military action in Ukraine.

14.60. The delegate of Ukraine indicated the following:

14.61. Under this agenda item, Ukraine wishes to express its sincerest gratitude to all WTO Members mentioned in Russia's request, and to other Members that support Ukraine in this difficult time of unjustifiable aggression of Ukraine by the Russian Federation, which has brought about a catastrophic loss of life and human suffering in Ukraine, and which poses a direct threat to the international security order.

14.62. Ukraine appreciates all the support, including sanctions, imposed in response to Russia's aggressive war. The Russian Federation's hostile act has had catastrophic effects not only on Ukraine, but also on its neighbours, and people across the globe, exacerbating the already rising food and energy prices worldwide, and affecting economic stability across all regions. It is Russia's actions that are the most significant factor inflating global prices.

14.63. Nevertheless, Russia continues its acts of state terrorism against Ukraine and Ukrainians. Active military actions have already disrupted trade and destroyed many enterprises. At present, the aims of Russia's massive attacks are not only the objects of military infrastructure, agricultural enterprises, food and petroleum depots, but Russia has also deliberately attacked, for weeks now, Ukraine's energy and water supply infrastructure. Many of Ukraine's energy facilities have been damaged or destroyed by Russia's attacks, which are causing electricity blackouts, heating and water supply disruptions. Ukraine firmly believes that it is extremely important to share this information with Members so that Members can focus on policies that may mitigate or help solve a possible crisis. Ukraine underscores that sanctions are not responsible for this crisis; they are designed only to stop the war. Russia alone is responsible.

14.64. Russia's war has not only seriously undermined Ukraine's ability to participate in global trade, but it has also caused trade disruptions and aggravated food insecurity worldwide. Despite the indisputable facts, Russia continues its disinformation campaign and keeps pushing false narratives in an attempt to shift the blame for the food crisis on countries that have imposed sanctions against it, although those sanctions do not target food. Rather, the sanctions are a direct

response to Russia's illegal act of aggression, and are not intended to disrupt trade in essential goods.

14.65. Ukraine reiterates its gratitude to its partners for their comprehensive support and calls on other WTO Members to make every effort to limit Russia's ability to wage war, to kill Ukrainians, and to undermine the rules-based multilateral trading system.

14.66. The delegate of the Republic of Moldova indicated the following:

14.67. The Republic of Moldova wishes to join other Members in adding its voice of support to Ukraine and in reiterating its solidarity with the Ukrainian people. Moldova condemns in the strongest possible terms Russia's war against Ukraine, which continues to cause a devastating loss of life and have a huge negative impact over our economies. Moldova reiterates in this Council its serious concerns regarding the consequences of war in Ukraine over Moldova's economy. Moldova, as one of Ukraine's closest neighbours, is being seriously and directly affected economically by this war.

14.68. Currently, the Republic of Moldova faces unprecedented challenges linked to its national security crisis and its energy crisis, amplified by spikes in inflation. Moreover, on 23 November, one day before this meeting, the Republic of Moldova experienced a full and all-day power outage across its entire territory, while many cities and villages in Moldova continue to experience power shortages still today as a result of Russia's attacks hitting Ukrainian cities and vital infrastructure. In short, every bomb falling on Ukraine is also affecting Moldova's people and economy.

14.69. The Republic of Moldova will continue to remain in full solidarity with Ukraine and its people. Moldova calls upon Russia to stop the war and withdraw its troops immediately and unconditionally from the territory of Ukraine.

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

14.71. Russia did not raise a point of order during the interventions that have just been made. However, most of the interventions clearly violate the mandate of the present Council. Russia has repeated on multiple occasions that discussions on the regional or global security situation, and on UN Charter enforcement or compliance, evidently go beyond the mandate not just of this Council, but of the WTO itself. Trade diplomats do not possess the expertise to discuss these issues; rather, these discussions belong to the specialized UN bodies and agencies. And it is in these bodies and agencies where Russia shares, in detail, its position on the roots and reasons for its special military operation, as well as on the issues that arise during the conflict. Those interested can watch the recordings of the UN Security Council and other relevant UN body meetings.

14.72. The delegate of Canada indicated the following:

14.73. Canada wishes to reiterate its earlier comment that the security situation in Ukraine clearly affects its ability to trade, and as we heard from the Ukrainian delegate earlier, it also clearly affects Ukraine's ability to participate in these meetings here at the WTO, where Members do discuss economic issues. For these reasons, Canada will continue to raise the security situation because it has a direct impact on the trading system of Ukraine and the trading system around the world.

14.74. The Council took note of the statements made.

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

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

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

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

Protocol of Accession, China agreed to publish all trade-related measures in a single journal, which China has designated as the China Foreign Trade and Economic Cooperation Gazette, or MOFCOM Gazette. However, China rarely publishes its subsidy measures in the MOFCOM Gazette, especially what it calls "normative documents", as well as measures from sub-central governments. And sometimes these measures are not made public at all. 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".

15.4. Several years ago, the United States came across references to five legal measures, two relating to fuel subsidies for fishermen, one relating to the development of China's distant water fishing fleet, and two relating to the semiconductor industry. Unable to find these measures in the MOFCOM Gazette, or anywhere else, the US submitted a request to China's WTO enquiry point in April 2020, over two years ago now.

15.5. 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." Despite having submitted the initial request for the missing legal measures in April 2020, two years later the United States has yet to receive a written response to its request. In September 2020, a Ministry of Commerce representative did speak with the US Embassy and stated 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 were, in its view, not relevant to China's WTO commitments. MOFCOM did not provide any information on timing of the replacement measures.

15.6. Is it China's position that it can refuse to provide any requested measure, if that measure is soon to be replaced? China's Protocol of Accession certainly does not provide for such an exception, and given that legal measures are often superseded, China's position would rather significantly undermine the obligation itself. And is it China's position that government support and development policies for its fishing and semiconductor industries are not relevant to its WTO commitments?

15.7. The United States views China's handling of the United States' request as inadequate and not in keeping with China's WTO commitments. The transparency obligations of China's Protocol of Accession are there because Members were concerned, in part, with the lack of transparency of China's industrial subsidy regime. After twenty-one years, those very same concerns remain. But more fundamentally, as the United States noted at the Council's previous formal meeting, beyond the legal technicalities, the US has to ask the obvious question: why is China refusing to make public, for example, a legal measure on its fuel subsidy programme for fishers? It is difficult to understand.

15.8. As noted at the Council's previous meeting, the United States has now found, through its own further investigation, two of the measures that it requested relating to China's fuel subsidy programmes for its domestic and distant water fishers. These measures were published on unofficial Chinese news sites, and they still do not appear on any official government websites; and, as noted earlier, they have not been published in the MOFCOM Gazette.

15.9. The essence of these two measures, which cover China's fuel subsidy programmes from 2015 to 2020, is that, while China is keeping the overall level of support for its fishing industry the same, it has reduced subsidies for its fishers in its own waters, while increasing the level of subsidies for its distant water fleet. These measures also provide striking new details about China's support for domestic fishers. For example, the measure covering fishers in China's domestic waters cites the objective of renovating 14,000 fishing vessels and scrapping, or converting to other uses, 20,000 fishing vessels.

15.10. So what exactly is it about these measures that China does not want us to see? What makes them so revealing that China has been willing to ignore its obligation to publish these measures as required by its Protocol of Accession and to refuse to provide the measures pursuant to a legitimate request of another WTO Member, or even to provide a written explanation as required under its Protocol of Accession?

15.11. And what is in the other measures that China has refused to provide or to otherwise make public? Of the remaining measures, one appears to be China's plan to develop its distant water fishery. The other two measures relate to China's semiconductor policies. What is it about these measures that China does not want us to see?

15.12. Often the first response that the United States hears from China on these transparency issues is that China takes its WTO transparency obligations very seriously. But to be frank, the US experience in making a very simple request to China's enquiry point seems to demonstrate otherwise. And the US can only wonder what else it is that China is not showing us, despite its WTO transparency obligations.

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

15.14. The commitment by China under its Protocol of Accession to publish all trade-related measures, as well as providing information through the enquiry point, are designed to improve transparency. 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 interests of transparency, but it is also required under China's obligations in its Protocol of Accession. The European Union urges China to fully comply with its commitments under its 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.

15.15. The delegate of Australia indicated the following:

15.16. Australia attaches considerable importance to the WTO notification and transparency obligations, particularly relating to subsidies. These obligations stem from both the Agreements and the obligations made by Members under their Protocols of Accession. Transparency remains critical to the proper functioning of the WTO and underpins the Subsidies Agreement. It creates certainty for all our exporters in being able to compete fairly in international markets. Australia therefore urges China to fulfil its transparency commitments made as part of its Protocol of Accession.

15.17. The delegate of Japan indicated the following:

15.18. A WTO Member's observation of, and compliance with, its notification and transparency obligations, is in the interests of all WTO Members, and represents one of the most important foundations of the WTO system. If the transparency of subsidy spending is not ensured, there are concerns that distorted subsidy delivery will be encouraged, which may lead to problems such as excess production capacity. This issue has been discussed by the Subsidies Committee, but it is difficult to say whether China has taken sufficient measures.

15.19. Regarding China's subsidies, various Members have expressed their concerns in the Committee about transparency and the possibility of non-notification issues. China is the world's largest trading nation, and it is required to ensure transparency and comply with the WTO's notification obligations, especially with regard to subsidy expenditure. Japan also urges China to fulfil its transparency obligations agreed in its WTO Accession Protocol and to ensure the effectiveness of mechanisms that contribute to increased transparency.

15.20. The delegate of Canada indicated the following:

15.21. The notification and transparency requirements are integral aspects of the multilateral trading system, and it is important that these obligations are upheld for the proper functioning of the rules-based international system. With that in mind, Canada continues to echo the concerns of others regarding China's compliance with its WTO transparency obligations, and remains concerned that China is not upholding its obligations as outlined in its Protocol of Accession.

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

15.23. The United Kingdom again wishes to show its support for the concerns raised by the United States, and other co-sponsors, regarding China's compliance with its transparency obligations under its Accession Protocol. The UK wishes to reiterate its belief that transparency is central to the proper functioning of the WTO. It is vital that China, as a WTO Member, takes all the necessary steps to

fulfil its obligations, including any Member-specific commitments, in a timely manner. Therefore, the UK encourages China to comply with its transparency commitments, in accordance with its WTO obligations.

15.24. The delegate of New Zealand indicated the following:

15.25. New Zealand considers transparency as critical to the proper functioning of the WTO, and attaches considerable importance to adherence by all Members to WTO notification and transparency obligations, particularly in relation to subsidies, including under their Protocols of Accession. It is vital that all Members fulfil these obligations in a timely manner, including any Member-specific commitments. Adhering to these obligations helps build certainty for exporters and makes an important contribution to the successful functioning of the rules-based international trading system.

15.26. The delegate of China indicated the following:

15.27. China wishes to refer to its statements made at the Council's previous meetings and other relevant Committees.[73] In contrast to what the United States has claimed in its statements, China has no intention of hiding its relevant policies. Regarding the documents that the US enquired about relating to China's fishery development, these documents were replaced by a new document, and the new document has been published on the official website of China's State Council.

15.28. China wishes to stress that, in order to support the WTO fisheries negotiations, China has made great efforts and taken active steps to reform its domestic fishery policies. The new document aims to promote high-quality development of fisheries, protect fishery resources, and support the sustainability of fisheries. It highlights the importance of supporting the WTO fisheries negotiations and contributes to the success of the Agreement on Fisheries Subsidies concluded at MC12.

15.29. Regarding the two documents on semiconductors, China wishes to reiterate that, since these documents are not laws, regulations, or other measures pertaining to, or affecting, trade in goods, they are not relevant to China's enquiry point commitments. China's enquiry point has already communicated with the United States on this issue.

15.30. The Council took note of the statements made.

16 INDIA – RESTRICTIONS ON IMPORTS OF CERTAIN PULSES – REQUEST FROM AUSTRALIA, CANADA, THE EUROPEAN UNION, AND THE UNITED STATES

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

16.2. The delegate of Canada indicated the following:

16.3. Canada and other Members have raised India's restrictions on imports of pulses in this Council and in other WTO committees. Canada continues to be concerned with India's trade restrictive measures, including quantitative restrictions, minimum import prices, restricting imports to one seaport, and uncertainty introduced by frequent changes to tariffs on imports of pulses, in particular for dried peas.

16.4. 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 quantitative restrictions on imports of dried yellow peas were established on 25 April 2018, and now, over four and a half years later, this "temporary" measure is still in place. To conclude, Canada calls on India immediately and expeditiously to 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.

[73] See, for example, document G/C/M/143, paragraphs 26.33-26.34.

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

16.6. The United States shares the concerns of other Members regarding India's quantitative restrictions for select varieties of pulses. As previously stated in the Committees on Import Licensing, Agriculture, and Market Access, the United States repeats its requests for information on how the measures reflect India's WTO commitments, and when and how the measures will be ended. Taking note that India reinstated its restrictions on certain pulses earlier this year, the United States continues to urge India to consider less trade restrictive requirements and to notify future relevant measures and regulations in a timely manner.

16.7. The delegate of Australia indicated the following:

16.8. Australia appreciates India's response to this agenda item at the Council's previous meeting held on 7 and 8 July 2022. In response to the question posed by India at the Council's previous meeting requesting specific information on problems being experienced by traders, Australia is not currently aware of traders experiencing any specific problems with India's free import policy. Rather, the issue lies in the uncertainty of the temporary nature of India's free import policy and the long-term supply-side adjustments that are necessary when a Member's import policies are frequently changed. Indeed, the issue is not about current problems being experienced by traders, but rather about anticipated problems should India reinstate import restrictions after 31 March 2023. It is worth noting that India's current removal of import restrictions for pulses now extends back to measures announced in May 2021. Seeing as some media articles have forecast another year of reduced pulse production for 2023 due to adverse seasonal conditions, we question if the removal of these import restrictions will be extended for another year.

16.9. Rather than continuing to alternate between the permission and prohibition of imports, Australia encourages India to consider the longer-term benefits of permanently removing import restrictions relating to pulses. More open settings would build greater resilience in India's pulse supplies, increase certainty for suppliers and reduce risk-related costs. This would mean lower prices and more reliable pulse supplies for Indian consumers with clear benefits for food security.

16.10. The delegate of Argentina indicated the following:

16.11. As Argentina has stated on previous occasions in this Council and its subsidiary bodies, this measure affects two of the main pulses exported from Argentina to India: yellow peas and mung beans. As in previous statements, and as clearly articulated by Australia, Argentina reiterates its concern over the uncertainty that this measure creates for its exporters, and requests its review by the Indian authorities.

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

16.13. The European Union fully supports the interventions from Canada, the United States, Australia, and Argentina. As mentioned before, the European Union remains concerned about India's import restrictions for certain pulses. The EU urges India to provide certainty and stability when it comes to its import regime for pulses.

16.14. The delegate of India indicated the following:

16.15. India thanks the delegations of Canada, the United States, Australia, Argentina, and the European Union, for their continued interest in this issue. As addressed in previous meetings of the CTG, as well as in the CMA, the measures adopted by India are undertaken for the purpose of maintaining food and nutritional security. This is an area of great importance to India's economy and its policies on imports are regularly reviewed and updated.

16.16. India's Notification No. 63/2015-2020, made by the Directorate General of Foreign Trade on 29 March 2022, states that the free import policy of urad HS code 07133110 and tur or pigeon peas HS code 07136000 has been extended until 31 March 2023.

16.17. India's notification on the import measure of moong has already been notified to the Committee on Import Licensing under Article 5.1-5.4 notifications and the reference for the same is document G/LIC/N/2/IND/22. India's annual notification under Article 7.3 of the Agreement on

Import Licensing, which should shortly be available, also makes reference to India's import policy on moong.

16.18. As such, India urges the proponents of this agenda item to specifically state what the problems are that their exporters are facing, and the quantification thereof. In the absence of such information, it would be unfortunate if this specific trade concern continued to be carried forward to other meetings of WTO regular bodies.

16.19. The Council took note of the statements made.

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

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

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

17.3. The European Union regrets to have to reiterate its concerns on this long-standing issue. The EU has repeatedly voiced its concerns and requests on this issue to the United States. However, the US has so far not provided information on when apples and pears from the EU under a systems approach will be allowed market access to the US. The EU urges the United States to base its import conditions on science and to solve this important matter without further delay. The EU reiterates its call on the US to play its part in supporting a constructive and mutually beneficial cooperation.

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

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

17.6. The Council took note of the statements made.

18 PAKISTAN – IMPORT RESTRICTIONS ON FOODSTUFFS AND CONSUMER GOODS – REQUEST FROM THE EUROPEAN UNION

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

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

18.3. The European Union wishes to refer to the Council's previous discussion on Statutory Regulatory Order (SRO) 598 issued by Pakistan's authorities. The Order introduced a temporary import ban on non-essential and luxury goods. The European Union welcomes the decision of the Government of Pakistan to lift this three-month import ban. That said, the EU wishes to express its growing concerns over the new restrictive import measures that Pakistan has introduced, in the form of "regulatory duties", instead of the previous ban.

18.4. The European Union understands that Pakistan needs to tackle the severe debt crisis that it is currently facing, which is further exacerbated by the recent rise in commodity and energy prices. However, Pakistan has been practising a policy of import compression since 2018. That policy is not only detrimental to EU exports; it has also not helped to adjust Pakistan's fiscal imbalances and long-standing external pressures. Furthermore, the new "regulatory" duties, although temporary in nature, will continue to impact companies and consumers in Pakistan, with further negative consequences on local competitiveness and the business environment.

18.5. The European Union also notes with serious concern that the frequent issuing of new Statutory Regulatory Orders is very detrimental to transparency and legal predictability. The European Union invites Pakistan to clarify which of its SROs are still in place.

18.6. The European Union recalls to Pakistan's authorities the need to ensure prior consultation and to fulfil the notification requirements for any new restrictive measures, as well as to ensure their full compliance with the WTO rules. The EU invites Pakistan to make these measures the least trade-restrictive possible, and to allow economic operators time to adapt to them.

18.7. The European Union stands ready to work jointly with Pakistan to remove these restrictions. The EU has seen many times in the past that import restrictive measures are not the solution to dealing sustainably with soaring public debt and budget deficits.

18.8. The delegate of Pakistan indicated the following:

18.9. Pakistan thanks the European Union for its comments on Pakistan's regulation (SRO 598(I)/2022) of 19 May 2022, and thanks the United States twice, once for their comments on the SRO, and once for withdrawing those comments. As this Council may recall, this measure was taken by Pakistan's authorities with a view to addressing the balance-of-payments emergency facing Pakistan at that time.

18.10. Pakistan is pleased to inform the Council that the measure was withdrawn on 19 August 2022, just a few weeks after the Council's July meeting. The measure is therefore no longer in place and all related trade restrictions have been lifted. Nevertheless, Pakistan wishes to avail itself of the opportunity to respond to some of the comments made by the European Union in its interventions during the Council's meeting in July.

18.11. Pakistan makes every effort to abide by its multilateral commitments when adopting trade-restrictive measures. Even in situations such as this serious balance-of-payments concern, compounded by the broader context of an unstable and fragile post-COVID-19 economic environment, Pakistan has strived to safeguard the trading interests of all its trading partners. This good-faith effort is shown in the limited scope of the measure and in its very short duration, of just three months.

18.12. Pakistan notes with satisfaction the European Union's recognition of Pakistan's need to address its balance-of-payments situation, as well as the EU's acknowledgement that Pakistan's measure "has been taken on the ground of the balance of payments and current account deficit crisis affecting the country". Pakistan fully agrees and wishes to highlight that it is vital for the legitimacy of the WTO that developing Members can react speedily to emergencies of this kind, especially in the current challenging economic environment.

18.13. Finally, with respect to notification, Pakistan notes that, faced with the deteriorating balance-of-payments situation in May of this year, Pakistan's authorities were required to act with great urgency. Pakistan must also remind Members that these issues, and the crisis, have since deepened due to climate change induced disasters. In this regard, Pakistan urges big polluting Members to take immediate steps towards achieving environmental sustainability, doing so in the best interests of those Members that are most vulnerable to climate change, and in order to help them in their economic recovery efforts. However, Pakistan regrets any delay in the formal notification of the measures to the WTO that resulted from these exceptionally challenging circumstances.

18.14. Pakistan thanks the Members of this Council for their concern over Pakistan's economic and general situation.

18.15. The Council took note of the statements made.

19 INDONESIA – IMPORT SUBSTITUTION PROGRAMME AND COMMODITY BALANCE – REQUEST FROM THE EUROPEAN UNION

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

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

19.3. Import restrictive policies and practices by Indonesia are a long-standing item in several WTO Committees and in this Council. The European Union has repeatedly stressed its deep concerns about the increasing number and scope of Indonesian restrictions, with negative impacts on trade flows. The European Union is particularly concerned by Indonesia's increased focus on import substitution, and especially that the target of a reduction of imports equivalent to 35% of the value of its 2019 import potential was advanced to 2022.

19.4. Despite Indonesia's reassurances that the purpose of its import substitution programme is not protectionist, the European Union has seen a worrisome increase of a broad range of import-restrictive measures, including expanding local content requirements (LCRs), including in public procurement, the mandatory use of national "SNI" standards, as well as the further promulgation of cumbersome import licensing procedures.

19.5. EU operators across a variety of sectors are already negatively affected by these measures. The European Union is further concerned about the commodity balance system established under Government Regulation 5/2021 and Ministry of Trade Regulations 19/2021 and 20/2021, as this system may also have a restrictive impact. The EU welcomes efforts to ensure a coordinated and streamlined approach on the management of import and export licences. That said, the mechanism might result in further restrictions to trade flows, and raises questions in terms of its WTO compatibility. It is also unclear if the commodity balance will actually be implemented because there is a lack of clarity on its scope and timelines for its application to different groups of products. This creates additional challenges for economic operators that lack the legal certainty and predictability that they need to do business in Indonesia.

19.6. The European Union reiterates that imports remain necessary to Indonesia given that it intends to develop its domestic industry. In contrast, raising barriers to trade would hamper Indonesia's economic growth, which cannot be achieved through export promotion alone.

19.7. The European Union requests Indonesia to clarify its underlying rationale for increasing import substitution policies. The EU would further welcome clarification of Indonesia's introduction of the "commodity balance" system as the basis for issuing import (and export) approvals, as well as on the implementing measures that Indonesia intends to undertake. The European Union also stresses the need to ensure that such policies and measures will comply with Indonesia's WTO obligations.

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

19.9. The United States continues to share the European Union's concerns regarding the Indonesian government's statements that it will suppress imports with the goal of "substituting 35 percent of imported products" in 2022. The United States requests that Indonesia provide an update on this item, and the specific policies it is implementing, or intends to implement, to achieve its import substitution goals. If Indonesia is proceeding with an import substitution programme, will it make the draft measures that it is developing publicly available and hold a notice and comment period to ensure that affected parties have the opportunity to provide input?

19.10. Indonesia has stated that this policy "has no element of protectionism", and "is not intended to hinder imports from other [WTO] Members." It is difficult to see how that is possible. Could Indonesia provide further clarity on the intent and scope of its import substitution programme? The United States again strongly urges Indonesia to rethink this counter-productive and trade-disruptive goal.

19.11. The delegate of Japan indicated the following:

19.12. Regarding the P3DN programme, in which Indonesia stipulates that the purchase and use of domestic products should be prioritized on the basis of Decree No. 29/2018, Japan is concerned about the possibility of domestic and foreign discrimination as a means of promoting import substitution with domestic products. Japan also shares the concerns about the plan to introduce domestic SNI certification pointed out by the European Union. Japan has repeatedly expressed its concerns about the fact that Indonesia has introduced and maintained local content requirement measures in various fields. Japan is concerned that this programme will exacerbate such situations.

Japan requests Indonesia to clarify how it implements the P3DN programme if it does not intend to guarantee trade protections. Japan also asks Indonesia to explain how it aims to ensure WTO consistency with these measures that Indonesia is working to implement to realize its plan.

19.13. The delegate of Switzerland indicated the following:

19.14. Switzerland shares the concerns raised by the European Union, in particular regarding Indonesia's plans in its import substitution programme aimed at reducing, by the end of 2022, the import value by 35% compared to its 2019 levels. Switzerland is also interested in the clarifications that Indonesia will provide.

19.15. The delegate of India indicated the following:

19.16. India remains concerned about Indonesia's import substitution programme. It appears that several measures undertaken are more trade restrictive than necessary to achieve the policy objectives that Indonesia has set. Indian businesses have complained about procedural delays in several areas of trade, including those in agricultural products. India requests Indonesia to review its import licensing procedures and measures, and to remove any inherent barriers to trade contained therein.

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

19.18. The United Kingdom echoes the concerns raised by the European Union and other partners. Local content requirements (LCRs) introduced by Indonesia represent a significant barrier to trade and go against the principles of free and fair trade. The high levels of LCRs in several sectors are such that investment into Indonesia is ceasing to be viable. In the pharmaceutical sector, LCRs are inhibiting a stable supply and increasing the cost of medicines to Indonesian consumers. In the energy sector, LCRs for solar are disincentivizing large investment projects, while domestic products remain insufficient to fulfil domestic demand, thereby hindering support for Indonesia's renewable energy transition. The United Kingdom requests Indonesia to consider lowering its LCRs across all sectors. The UK would welcome further information from Indonesia on any future developments regarding this policy, and looks forward to future engagement on this subject.

19.19. The delegate of Indonesia indicated the following:

19.20. Indonesia thanks the European Union, the United States, Japan, Switzerland, India, and the United Kingdom, for their continued interest in Indonesia's import substitution programme, and its commodity balance system, and also thanks Japan for its condolences and sympathy regarding Indonesia's recent and devastating earthquake.

19.21. Indonesia refers to its statement delivered at the CTG's previous formal meeting.[74] Indonesia wishes again to emphasize that its import substitution programme and the commodity balance system are not intended to inhibit imports from other WTO Members. Rather, the import substitution programme, and the commodity balance system, are aimed at increasing Indonesia's contribution to building better and more orderly global trade governance.

19.22. On the commodity balance system, Indonesia's policy, while not burdening Indonesia's import regime, is intended to create and facilitate a better business environment, certainty in doing business, and free trade flows. The policy also serves as an evaluation tool by the Government of Indonesia for policy transparency, which is based on more accurate data, and will be carried out by the relevant government ministries and institutions.

19.23. From a government policy standpoint, Indonesia's commodity balance system will be useful in providing more complete, detailed, transparent and accurate data for the relevant government ministries and institutions, while for business the commodity balance aims to support business certainty, transparency, and business development calculations.

19.24. The Council took note of the statements made.

[74] See document G/C/M/143, paragraphs 9.21-9.22.

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

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

20.2. The delegate of Japan indicated the following:

20.3. In previous meetings of the CTG and TRIMs Committee, Japan has continuously expressed its concerns about the consistency with the WTO Agreements of various local content requirement (LCR) measures implemented by Indonesia, including in relation to 4G LTE equipment, TV equipment, and the retail industry. Indonesia has repeatedly explained that its LCR measures in general are based on its government procurement policy. However, the content of Indonesia's government procurement policy is unclear. It does not appear that all LCR measures are being implemented as part of government procurement, and nor are they immediately justified because of government procurement policies. Indonesia explained at the TRIMs Committee in October 2022 that a comprehensive review is currently under way. Accordingly, Japan requests to receive details of the review's schedule and consultations.

20.4. Japan is also concerned about the increase in import restriction measures for the import registration and approval system for textile products and air conditioners, and has concerns about their consistency with Article XI:1 of the GATT. Japan appreciates that there has been an improvement in the level of permitted quantities; however, Japan hopes that the criteria will be clarified in depth, and that operational transparency will be improved.

20.5. During the meeting of the Import Licensing Committee held in October 2022, Indonesia stated that import licences for textile products were processed electronically and swiftly. However, since the measure has been introduced, there have been no cases of an import licence application being approved, and exports are actually declining. Japan is concerned about the continuation of such import restricting effects.

20.6. Moreover, Japan continues to be concerned by Indonesia's import licensing system for steel products, which has been implemented in accordance with the Minister of Trade Regulation No. 20 of 2021. For example, since the measure's introduction, the number of approved licence applications has reduced significantly compared to the actual number of applications submitted, regardless of the type of licence. Japan is concerned that a measure having such trade restricting effects on imports may not be consistent with the WTO Agreements, including with Article XI:1 of the GATT.

20.7. At the meeting of the Import Licensing Committee of October 2022, Japan asked about the relationship between the objective of ensuring the importation of safe products and the reduction of the quantity of applications. For example, Japan asked about what kind of technical standards were taken into consideration when reducing the quantity of applications. However, no response from Indonesia has been received. In this regard, Japan considers that the significant reduction in the quantity of applications should not be maintained, and that the reasons and criteria for such a reduction in applications should be clarified.

20.8. Furthermore, Japan understands that a new framework (*Neraca Komoditas*, a supply and demand adjustment framework called the "Commodity Balance") will begin in 2023. Japan requests Indonesia to provide a detailed explanation of this new framework, in particular with regard to the implications for steel products, and how changes to the import procedures will be made compared to the current system.

20.9. Furthermore, regarding textile products, Japan considers Indonesia's safeguard measure on carpets, introduced on 17 February 2021, to be truly regrettable, given that Japan has been raising this measure at various consultations and discussions, including during the SG Committee. And Japan considers that it is also regrettable that no improvement has been seen. For Japan, there are two main problems: (i) the tariff is as high as 150-200% in terms of *ad valorem* tax conversion; and (ii) the tariff has been introduced in a situation in which carpet imports have dropped sharply.

20.10. At the SG Committee meeting held in October 2022, in response to Japan's concerns, Indonesia stated that Japan's share of imports had not decreased, but since the overall volume of

imports has decreased sharply, the comparison of the share of imports from Japan among the total volume of imports is meaningless. In addition, imports from Japan have decreased compared to 2019.

20.11. Japan is concerned about the increasing number of Indonesia's trade restrictive measures, which may be inconsistent with the WTO Agreements. For this reason, Japan requests a concrete explanation regarding the background of the introduction of these systems and their consistency with the WTO Agreements.

20.12. Furthermore, Japan recalls that it submitted written questions to the Import Licensing and TRIMs Committees regarding the following three Indonesian measures: (i) import regulation on air conditioners; (ii) import licence for steel; and (iii) import regulation for textiles.

20.13. Japan expects Indonesia to respond promptly to its questions. In particular, Japan hopes that Indonesia's import regulations on air conditioners will not be operated as import restrictions, that permit standards and procedures will be stipulated with more transparency, and that other measures will be corrected or abolished as soon as possible.

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

20.15. The European Union, as well as many other WTO Members, is deeply concerned that no real progress can be registered regarding Indonesia's import and export restrictive policies and practices. Rather, the number and scope of Indonesia's restrictions seem to have further expanded over time, with negative impacts on trade flows. In particular, the European Union reiterates its serious preoccupation with Indonesia's burdensome and lengthy SPS import authorization procedures, its complex rules and lack of pragmatic certification procedures for Halal labelling, its mandatory use of domestic SNI standards diverging from international standards, its wider use of LCRs, and its restrictive import licensing requirements or other import control measures, such as the slow and partial allocation of import authorizations for textiles and footwear.

20.16. As mentioned under the previous agenda item, the European Union is also concerned as to the actual management and impact of the commodity balance system established under Indonesia's Government Regulation 5/2021 and Ministry of Trade Regulations 19/2021 and 20/2021, on which the EU seeks further clarifications.

20.17. In addition, the European Union notes the introduction of a new export regime under Regulation 18/2021. This new export regime appears to significantly expand the scope of goods subject to export prohibitions (from 39 to 275 tariff posts), which could further hamper trade flows, and which also raises doubts in terms of the regime's compliance with Indonesia's WTO obligations.

20.18. The European Union therefore urges Indonesia to reduce its high number of trade barriers, which have been affecting EU trade flows for too long, and to refrain from issuing new regulations that erect further trade barriers. The EU also reiterates its call for Indonesia to ensure that all its relevant measures are notified to the WTO in order to afford Members an opportunity to provide their comments on them.

20.19. The delegate of New Zealand indicated the following:

20.20. New Zealand echoes the concerns raised by the European Union and Japan, as raised also by others at the Council's previous meetings. As New Zealand has noted previously, it believes that Indonesia's restrictions on agricultural imports continue to undermine core WTO principles. Indonesia's frequent changes to import requirements reduce commercial certainty, which in turn hampers returns for farmers and can lead to increased costs of production. Moreover, this uncertainty also contributes to the ongoing increasing cost of food, which can have a particularly negative effect on people on low incomes. New Zealand is particularly concerned about the inconsistent issuance of import licences. Delays in import licences lead to commercially significant market access issues for trading partners and can lead to importers having greater difficulty in sourcing food products for local consumers.

20.21. New Zealand requests that Indonesia also provide further information to its trading partners on its commodity balance mechanism, including how the mechanism is calculated, the process

exporters have to go through to get import licences, timelines for implementation for particular commodities, and how Indonesia is undertaking to make the mechanism more transparent.

20.22. New Zealand welcomes that a stated objective of the Presidential Regulation 32/2022 on Commodity Balances is to improve the import licensing process and facilitate business access to imports. However, New Zealand notes that the Regulation appears likely to add further complexity, as it allows for import restrictions to be applied where domestic supply is calculated to be sufficient to meet projected demand. Details of the commodity balance/import licence system are yet to be provided, which is adding to the uncertain environment for imports.

20.23. Finally, New Zealand appreciates Indonesia's comments at the Council's meeting in July that "in principle, Indonesia has no intention to impede the flow of international trade through our import and export policies"; that "Indonesia always pursues for simplification, transparency, and efficiency to make exports and imports easier to implement", and that "Indonesia stands ready to engage bilaterally with WTO Members on their concerns". New Zealand joins others in asking Indonesia to make renewed efforts to address these long-standing concerns about Indonesia's import restricting policies and their impact on agricultural trade.

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

20.25. The United States wishes to take this opportunity to again underscore its concerns with Indonesia's import and export restricting policies and practices. The United States notes the growing number of Members that are intervening on this agenda item, as well as the increasing number of Indonesian policies that Members are raising as concerns. The US hopes that Indonesia takes heed of this worrying trend. The US has raised concerns with specific Indonesian policies in past meetings of the Council, as well as in the TRIMs, TBT, ITA, and Market Access Committees, and regrets that the US must raise them again on this occasion.

20.26. First, the United States notes that, at the Council's previous meeting, Indonesia stated that it had "begun several reviews" of its local content policies and that consultations were ongoing. The US requests that Indonesia provide the Council with an update on these reviews, and underscores the importance of ensuring that its consultations allow for broad public input.

20.27. Second, the United States continues to have concerns regarding Indonesia's application of tariffs on certain ICT products that appear to exceed its WTO bound tariff commitments. While there were some positive developments earlier in the year, Indonesia continues to maintain tariffs on multiple ICT products that appear to exceed its WTO bound tariff commitments. The US has raised this issue repeatedly with Indonesia over the past three years, but without receiving a substantive response to its concerns. In multiple past CTG meetings, Indonesia has noted that the issue is under review and that it "strives to comply with relevant agreements". The US urges Indonesia to engage constructively on this issue, providing more than the standard "still reviewing" update, and finally address these long-standing concerns to ensure the integrity of its market access commitments. The US believes that these tariffs on certain ICT products 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.

20.28. Third, the United States is concerned by Indonesia's continued practice of finalizing trade-related measures without sufficient opportunities for stakeholder input. Indonesia has demonstrated a pattern of issuing into effect final measures connected to its Halal product assurance law, without sufficient notification and with little, if any, opportunities for public input. These measures have the potential to impact a significant proportion of global goods trade with Indonesia, including US exports. By finalizing measures in this manner, Indonesia misses an opportunity to receive valuable feedback from stakeholders regarding the trade impact of its measures. Additionally, the US remains concerned that Indonesia has yet to respond to important questions on its Halal measures that the US has circulated at the TBT Committee. Going forward, the US strongly encourages Indonesia to adopt a more transparent and consultative policy-making process.

20.29. In closing, the United States urges Indonesia: (i) to provide a response to the US questions posed during the April 2021 ITA Committee; (ii) provide a response to US questions on Indonesia's

Halal measures previously submitted to the TBT Committee; and (iii) provide an update on its ongoing review of its local content policies.

20.30. The United States believes that Indonesia's trade restricting policies run counter to Indonesia's broader economic recovery goals, as well as the interest of Indonesian consumers, workers, and businesses, and strongly encourages Indonesia to reconsider such policies. The US is hopeful that Indonesia can respond to US concerns, and stands ready to engage.

20.31. The delegate of Canada indicated the following:

20.32. Canada shares the concerns expressed by other WTO Members relating to Indonesia's administration of its import licensing system for agricultural products and would request additional information on the administration of its commodity balance mechanism. Canada calls on Indonesia to implement its import measures in a transparent and predictable manner, in accordance with the relevant WTO provisions, particularly in a context where international trade can help to achieve Indonesia's food security objectives. Canada also adds its voice to those with a systemic and commercial concern with Indonesia's application of tariffs above its bound rates on ICT products. Canada calls on Indonesia to eliminate its tariffs on ICT products in a way that is consistent with its WTO commitments.

20.33. The delegate of Indonesia indicated the following:

20.34. Indonesia thanks Japan, the European Union, New Zealand, the United States, and Canada for their continued interest in Indonesia's import and export policies and practices. Indonesia would also like to thank New Zealand for its condolences and sympathy in relation to Indonesia's recent devastating earthquake.

20.35. Indonesia wishes to address certain issues raised by Members also with reference to its statement delivered at the previous meeting of the CTG, as well as in related committee meetings, as follows.

20.36. With regard to LCRs, Indonesia notes that these are intended for policies relating to government procurement, policies relating to fulfilling the needs to maintain welfare and life necessities for the people of Indonesia, or policies relating to strategic resources managed by the state. A comprehensive review process of localization measures, especially those relating to government procurement for goods and services, is still ongoing.

20.37. Regarding tariffs on ICT products, domestic consultations between relevant ministries and institutions are ongoing. Indonesia will continue to strive to comply with its commitments in all of the WTO Agreements.

20.38. On the textile import licensing regime, based on existing regulations, applications for import licences are currently being carried out electronically. Once all documents have been submitted, and are complete and in line with the regulation, import permits are processed within a relatively short time, in accordance with the Import Licensing Agreement.

20.39. Regarding the licensing regime for importing agricultural products, Indonesia is committed to implementing the recommendations and decisions of the DSB in DS477/478.

20.40. Regarding the licensing regime for imports of steel products, Indonesia notes that the purpose of the policy is to ensure that all steel products in the Indonesian market are fulfilling the necessary standards, specifications, and qualifications relating to health and safety aspects in the use of imported steel products. Indonesia considers that these policies are in accordance with the WTO principles of transparency and non-discrimination, as well as with the provisions in the Import Licensing Agreement.

20.41. On the import licensing procedures relating to SPS measures, Indonesia has made progress, and will always continue to strive to make progress, and improvements, and to become more transparent in its SPS-related import licensing approval procedures.

20.42. On Halal regulations, Indonesia reaffirms its openness and transparency for international cooperation regarding its Halal Assurance System, based on mutual principles, mutual recognition, and mutual acceptance, in accordance with international practices and regulations. Indonesia has also submitted a number of clarifications regarding Indonesian Halal regulations to the TBT Committee.

20.43. On Indonesia's National Standard (SNI), this is an Indonesian consumer protection policy, which is not intended to hinder imports from WTO Members. Rather, the SNI policy is intended to ensure that products fulfil the relevant safety, security, and health aspects to protect Indonesian consumers, and that these are enforced both for domestic and imported products alike. In this regard, Indonesia notes that it always strives to fulfil the principles of WTO transparency by notifying to the WTO its every implementation of mandatory SNI regulations and other related technical regulations.

20.44. Indonesia reiterates that it will continue to strive to comply with all of its WTO commitments, including every agreement, and every regulation, and likewise to comply with all of the WTO principles, including transparency and non-discrimination.

20.45. The Council took note of the statements made.

21 EGYPT – MANDATORY USE OF A LETTER OF CREDIT AS PAYMENT CONDITION FOR IMPORTS – REQUEST FROM THE EUROPEAN UNION

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

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

21.3. The European Union closely monitors the developments relating to the recent mandatory requirement to use a Letter of Credit as payment condition for imports in Egypt. The EU has also raised this issue at the most recent meeting of the CMA. The European Union understands that, since February 2022, imports in Egypt can be authorized by the Customs Authority only after the Egyptian banks have opened a Letter of Credit. This has led to a *de facto* blockage of EU trade at ports and customs points. This situation has been compounded by a lack of transparency and predictability regarding the introduction and implementation of the measure. The measure was adopted without prior warning to economic operators or prior WTO notification.

21.4. The European Union understands that earlier this month the Central Bank of Egypt announced the gradual removal of the measure with full implementation as of December 2022. The EU requests Egypt to confirm the exact date of the measure's full removal, and also to provide more detail on the steps being taken to ensure that trade flows in Egypt are reinstated. The EU welcomes Egypt's decision to reconsider the measure in order to address the serious concerns raised with respect to imports in Egypt.

21.5. The delegate of Norway indicated the following:

21.6. Norway thanks the European Union for raising this agenda item. Like the EU, Norway also raised concerns regard the mandatory requirement to use Letters of Credit as payment for imports to Egypt at the October meeting of the CMA. Norway also pointed to the resulting deadlocks at ports and customs points, including for goods supposed to be excluded from the measure, and to the lack of transparency and predictability regarding the introduction and implementation of this requirement. As the EU, Norway welcomes Egypt's decision to reconsider the measure and would appreciate receiving more information on the timing and steps taken to restore the trade flows.

21.7. The delegate of Egypt indicated the following:

21.8. Egypt wishes to thank the European Union and Norway for raising this issue. In fact, this issue has already been the subject of exchanges between Egypt and the European Union bilaterally, and in various forums, including in the CoA and the CMA. Egypt wishes to highlight recent developments in this respect, including that the Central Bank of Egypt, in October 2022, introduced a number of facilitating measures with the aim of gradually phasing out the requirement by end-December 2022.

Such measures include increasing the value limit of shipments excluded from the Letter of Credit Requirement from USD 5,000 to USD 500,000 (or their equivalent in other currencies).

21.9. Having said that, Egypt wishes to note that a Letter of Credit is a common payment method, and is in many cases required by exporters given that it provides a high level of assurance to the exporter. In addition, letters of credits do not create import blockages.

21.10. In case of any delay, it is important to note that the current and unprecedented global challenges have placed the monetary reserves of a net food importing country like Egypt under pressure. This in turn may cause delays and affect a Member's ability to finance its imports, including those essential goods.

21.11. Concerning the availability and publication of information, since the introduction of mandatory use of Letters of Credit for various products in February 2022, the Central Bank of Egypt (CBE) has ensured transparency through the issuance of a number of circulars. The latest circular is dated 27 October 2022, and clarifies the scope of the requirement, in terms of entities, products, and trade regimes, and the relevant administrative procedures.

21.12. Furthermore, Letters of Credit are not the only payment method allowed; there are also other accepted payment methods, as explained in the Central Bank's circulars. The circulars also explain that there are many products not falling within the product coverage, including, *inter alia*: medicines, vaccines and relevant chemicals, medical supplies and their inputs, and supplies for medical testing laboratories; tea, meat, poultry, fish, wheat, oil, powder milk, infant milk, beans, lentils, butter, and corn; live cattle and poultry, in addition to veterinary medicines and their relevant chemicals; and raw materials and production inputs, including seeds, chemicals used in agricultural activities, and raw cocoa powder.

21.13. Finally, to ensure that no shipments of perishable goods (agricultural and food products) face any customs delays, Egypt's ports are currently instructed that all perishable shipments be cleared from customs provided the importer pledges to finalize the administrative procedures with the bank within a maximum of one year.

21.14. The Council took note of the statements made.

22 EGYPT – HALAL CERTIFICATION REQUIREMENTS FOR IMPORTED FOOD AND BEVERAGE PRODUCTS – REQUEST FROM AUSTRALIA, CANADA, AND THE UNITED STATES

22.1. The Chairperson recalled that this item had been included on the agenda at the request of Australia, Canada, and the United States.

22.2. The delegate of Australia indicated the following:

22.3. Australia acknowledges its ongoing bilateral communication and engagement with Egypt on the implementation of Egypt's new Halal certification requirements for IS EG Halal. Australia welcomes Egypt's third addendum to their notification at the TBT Committee's meeting of 15 August 2022, which clarified which products required Halal certification as an Egyptian import requirement. Nevertheless, Australia remains concerned about a number of issues, including the need to provide Members with adequate time to comment on any proposed changes to the measures.

22.4. Australia encourages Egypt to meet its WTO transparency obligations and to provide notifications in advance of further changes and any implementation of Egypt's new Halal certification measures. At the same time, Australia welcomes ongoing discussion on the Halal certification requirements to ensure they meet Egypt's policy goals, while also not being more trade restrictive than necessary.

22.5. The delegate of Canada indicated the following:

22.6. Canada continues to be concerned with Egypt's new Halal certification requirements for all imported food and beverage products. Canada understands Egypt's objective to ensure that Egyptian consumers are confident that they are buying and consuming Halal-certified products in agreement with Islamic Sharia. However, Canada also believes that such measures should not create

unnecessary barriers to international trade or be more trade-restrictive than necessary to fulfil that objective.

22.7. Although Canada appreciates Egypt's delayed implementation of the Halal certification for dairy products, Canada remains concerned with the lack of details, documentation, and specificity on how these requirements will be implemented, and how specific products will be impacted. For example, the proposed new regime only specifies one Egyptian certification body that will have the authority to certify Halal products for the Egyptian market. It is Canada's understanding that this has already significantly raised the Halal certification fee, which will have to be borne by exporters of Halal product to Egypt. The new measure could result in a certification process that is overly burdensome, costly, and more trade restrictive than necessary to achieve Egypt's stated objective.

22.8. Canada strongly encourages Egypt to have open and transparent discussions with its trading partners to share information, further clarify the requirements under this new measure, and consider the impact it may have on trade. Until then, Canada respectfully requests that Egypt suspend the implementation of the measure.

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

22.10. The United States continues to share the concerns expressed by Australia and Canada regarding Egypt's implementation of Halal certification requirement, as notified in document G/TBT/N/EGY/313, and the subsequent three addenda. It is important to note that the United States recognizes Egypt's right to assure its consumers of certain products' compliance with the precepts of Islamic Law through a Halal certification.

22.11. At this time, it does not appear that Egypt has provided the information necessary for exporters to adequately understand Egypt's new Halal requirements for dairy products. Without these details incorporated in clear technical regulations, US producers are unable to adjust production practices and continue shipping quality goods to Egypt. This is especially concerning given the significant food security challenges the world has faced over the past year.

22.12. The United States requests that Egypt suspend implementation of its Halal requirements for dairy products until Egypt is ready to provide: (i) specific Halal criteria that producers must meet; (ii) conformity assessment procedures; (iii) clear product scope (by HS code); (iv) certification fee structures; (v) audit procedures (for example, if audits are to be required, what criteria will facilities and certifiers be audited against); (vi) criteria Egypt will use to approve overseas Halal certifiers; (vii) government enforcement mechanisms (for example, required documentation at port, corrective action mechanisms); (viii) process to appeal enforcement actions and remedy non-compliance; and (ix) any other details necessary for overseas producers and certifiers to meet these new import requirements.

22.13. The United States also requests a reasonable implementation period of at least six months after notifying the technical regulations that would include the aforementioned information. The United States stands ready to work with Egypt through technical engagements to assist Egypt in implementing Halal certification requirement measures.

22.14. The delegate of Paraguay indicated the following:

22.15. Paraguay wishes to register its support for this item. Paraguay understands Egypt's legitimate objectives, but despite repeated requests for information to Egypt, Paraguay still does not have the information that it requested. Although Paraguay sought greater clarity from Egypt more than a year ago, the fact that it still does not have clear information or details on the procedures for its implementation is preventing operators from being able to adapt in order to ensure compliance.

22.16. Egypt regularly reminds us at the WTO that it is a net-food importing developing country and that we are in an unprecedented food security crisis. However, measures such as these prevent exporters from being able to access the Egyptian market and that trade can be a tool that can provide solutions to the Egyptian people's food needs.

22.17. Paraguay again requests that Egypt suspend the implementation of its new Halal certification requirements until Members have all the information requested and necessary, so that trade

operators have enough time to adapt to these new requirements, allowing food exporters, in this way, to be part of the solution to Egypt's food and food security needs.

22.18. The delegate of New Zealand indicated the following:

22.19. New Zealand thanks Egypt for their ongoing dialogue on its proposed Halal standard and the recent further extension for the inclusion of dairy. New Zealand continues to respect Egypt's desire to ensure Egyptian consumers can be assured of the Halal status of their imported food, but remains concerned with aspects of the proposed Halal requirements, including having only one approved Halal certification body.

22.20. In addition, the inclusion of all dairy products requiring Halal certification does not follow globally accepted norms for food products. New Zealand understands that, by their nature, dairy products are intrinsically Halal and should not require Halal certification (other than dairy products with added non-dairy animal product ingredients). New Zealand requests Egypt to clarify this and issue a final regulation with Halal registration requirements that includes a sufficient notification period to implement any new requirements once the new standard is finalized and formally notified.

22.21. New Zealand also asks if the additional registration requirements, as noted as free text in document G/TBT/N/EGY/313/Add.3, will be part of legislated requirements, or a guidance document. New Zealand notes its understanding that any registration requirements for manufacturers or exporters will not be required before the final Halal standard enters into force. New Zealand encourages Egypt to apply the least trade restrictive requirements in relation to Halal and welcomes further engagement with Egypt on this matter.

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

22.23. The European Union wishes to express its concerns with regard to Egypt's requirements on Halal certification, applying as of 1 October 2021, based on the Egyptian Halal standard 4249/2014. The EU is concerned about the negative impact of this measure on food and beverages imports to Egypt. The EU welcomes the more recent facilitating measures notified by Egypt to the TBT Committee on 4 April 2022 extending, until 30 September 2022, the period in which imports of milk and dairy products are accepted in Egypt without a Halal certificate. At the same time, the EU would welcome Egypt's clarification as to whether the suspension measure may be further extended to provide for a reasonable period for companies to adapt to the new requirements.

22.24. The European Union would also like to invite Egypt's authorities to not further extend the list of products covered by Halal certification. An extension would create significant new trade barriers for importers and would have negative impacts on Egypt's consumers, in the form of higher prices and limited choice due to limited competition.

22.25. In addition, the European Union would like to invite Egypt to reconsider its decision to grant the right to certify the compliance with Halal requirements to a single company, IS EG Halal. The EU encourages Egypt to provide for a Halal certification system that would allow multiple, well-established certification entities, in accordance with international best practices.

22.26. Finally, the European Union wishes to ask Egypt about the concrete steps it intends to take, in particular to provide comprehensive information about the new measures, as well as clear written and publicly available guidance to stakeholders, including a detailed description of the certification procedure, its duration, costs, and required documents, as well as the process for registration of suppliers, and the product coverage. The EU is ready to work with Egypt on solutions that would avoid the negative impact this measure would have on food and beverages imports to Egypt.

22.27. The delegate of Argentina indicated the following:

22.28. Argentina reiterates its concern about this measure and the lack of detailed and complete information on it. In particular, the recent postponement of the entry into force of the new regime does not allay Argentina's concerns and worries. These concerns relate mainly to the lack of transparency and predictability, as there is no information on the certification procedures or other regulatory details. Argentina therefore requests that Egypt provide the necessary information and

refrain from implementing this measure until detailed information is available, and sufficient time has been granted to foreign producers to adapt to it.

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

22.30. The United Kingdom understands Egypt's objective to ensure Egyptian consumers' confidence when purchasing Halal-certified products. Alongside Canada and the United States, the United Kingdom encourages Egypt to have transparent discussions with its trading partners, to share information, and to provide clarity on the requirements under this new measure. The UK looks forward to engaging with Egypt on this.

22.31. The delegate of Egypt indicated the following:

22.32. At the outset, Egypt thanks Australia, Canada, the United States, Paraguay, New Zealand, the European Union, Argentina, and the United Kingdom for their interest in this matter, and takes note of what has been said. Egypt wishes to refer to its statements on this issue made in previous TBT Committee and CTG meetings on this issue.[75]

22.33. Since its first notification, in December 2021, Egypt has been keen to respond to the comments and concerns of WTO Members, and its trading partners, through numerous formats, including bilateral exchanges, the Egyptian TBT enquiry point, and through notifying further addenda to its original notification, in order to address the issues of common concern.

22.34. Egypt wishes to note that it has been almost a year since the original notification was made. In the interim, Egypt has delayed the entry into force of the requirement of imports of milk and dairy products to be accompanied by the Halal certificate, and notes that, to date, no imports of milk and dairy products have been denied entry into Egypt if not accompanied by a Halal certificate. Furthermore, the substance of the requirement, and the implementing procedures through which it is be implemented, as set by the General Organization for Veterinary Services (GOVS), have not changed since the initial notification. Hence, the delay introduced by Egypt has provided economic operators with the appropriate period of time to adapt to the requirement.

22.35. It is also noteworthy that Egypt's import data of dairy products indicate that the flow of trade has not been disrupted as a result of the requirement. In fact, comparing the volume of Egypt's imports of dairy products from the world during the first seven months of 2021 and 2022, there has been a minor decrease, which cannot be attributed to the Halal certification requirement. The impact of the multiple crises faced by our countries on prices, and hence on demand, should also be taken into account.

22.36. In its latest addendum, in document G/TBT/N/EGY/313/Add.3, Egypt was keen to clarify the points raised by Members during the TBT Committee's previous meetings, and bilaterally. For example, the scope of the products has been defined in HS code as requested by all countries. In this respect, Egypt stresses that the scope is limited and confined to the specified products, as notified. The original notification and its addenda never contained a reference to requiring a Halal certificate for imports of all agricultural products. Since the original notification, the specified products were meat and poultry and their products, and milk and dairy products (except for crude milk). The most recent addendum also clarified the procedures involved in Halal certification as applied by the currently approved certification body by GOVS. It also clarified the labelling requirements that are issued by the currently approved and recognized certification body by GOVS.

22.37. Furthermore, responding to Members' questions on the status of the revision of the Egyptian Standard (ES) 4249 "General requirements on Halal food according to Islamic Sharya", the latest addendum noted that the final draft had been finalized and was available for comments from Egypt's TBT enquiry point. Indeed, a number of Members had provided their comments during the 60-day comment period, to which Egypt had replied.

22.38. ES4249 comprises nine articles and two tables that cover the following: scope; definitions and terminology; general requirements for Halal food; instruments, vessels, and production inputs; storage, display, and transport; cleanliness, health, and safety conditions; inspection and approval;

[75] See document G/C/M/143, paragraphs 27.26-27.29.

display in the markets; and Halal Labelling. The two tables included in the standard provide for the following: (i) categorization of what is not Halal; and (ii) the food products that shall have a Halal Certificate according to their product label and ingredients.

22.39. It is also important to clarify that ES4249 does not, and shall not, provide for any supervision requirements for a specific certification body. The relevant authority is the one to recognize the certification body that certifies compliance with Halal requirements, which is currently ISEG Halal. Members will be duly notified if other certification entities are also approved.

22.40. As for the fees structure, it is determined by the certification body and is dependent on the type of the product and quantity.

22.41. Finally, Egypt wishes to express its appreciation and readiness to continue engagement with all Members on this topic.

22.42. The Council took note of the statements made.

23 EUROPEAN UNION – COUNTERVAILING DUTIES (CVD) ON STAINLESS STEEL COLD-ROLLED (SSCR) – REQUEST FROM INDONESIA

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

23.2. The delegate of Indonesia indicated the following:

23.3. Indonesia wishes to again convey its concerns to the European Union on the imposition of CVD on Stainless Steel Cold-Rolled (SSCR) products from Indonesia, after imposing both safeguards and anti-dumping duties on the same product. The imposition of CVDs practically declines market access and reduces the export value and competitiveness of Indonesian SSCR products on the EU market due to the high duties imposed. Indonesia emphasizes that the European Union has made a mistake in interpreting Indonesian policies as a financial contribution to the stainless-steel industry. Furthermore, the EU has broadened the interpretation of the meaning of subsidies in the Agreement on Subsidies and Countervailing Measures (ASCM), by including cross-country financing as a subsidy. Indonesia believes that the imposition of CVD by the European Union to Indonesian SSCR products has the potential to violate the provisions contained in the ASCM. Indonesia wishes to engage further with the EU on this matter.

23.4. The delegate of China indicated the following:

23.5. China expresses its concerns over the European Union's distortive interpretation of the SCM Agreement, and its introduction of a novel concept of "cross-border" subsidy in countervailing investigations and measures. The EU has departed from the clear text of the SCM Agreement in several countervailing investigations by invoking cross-border subsidies, a concept that was not derived from the Agreement, but rather created by the EU. Embedded in such concept was the EU's distortive interpretation of Article 1.1(a)(1) of the SCM Agreement, which clearly states that "a subsidy shall be deemed to exist if there is a financial contribution by a government or any public body within the territory of a Member". However, in the case of a cross-border subsidy, the EU construes the normal practices in overseas investment activities as a subsidy, for example, a non-binding bilateral economic cooperation between country A and country B, overseas investments made by private corporations in country A to country B, and finances secured by such corporations in banks in country A in overseas investments. By the EU's logic, any normal bilateral cooperation and overseas investments could be treated as subsidies and therefore be subject to countervailing measures. Such practices clearly depart from the basic principles of the SCM Agreement.

23.6. The European Union's actions are inconsistent with the SCM Agreement. Such actions not only affect the legitimate interests of corporations and Members involved, and disrupt normal bilateral economic cooperation and overseas investments, but they are also detrimental to the sustainable and inclusive growth of the global economy. China requests the EU to correct its problematic practices, terminate all measures concerning cross-border subsidization, and stop conducting similar investigations.

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

23.8. The European Union appreciates and respects Indonesia's right to develop its steel industry and exploit its considerable nickel reserves. However, this legitimate industrial policy aim should be carried out in line with the WTO rules. The EU recalls that it lodged a WTO complaint against Indonesia's export ban on nickel ore. This European Union's countervailing duty case targets two key subsidies, which undermine many competitive EU industries in the emerging new landscape of unfair trade: subsidized raw materials critical for industrial value chains, and cross-border subsidies deriving from China that Indonesia accepted based on the numerous documents found.

23.9. Two further features need highlighting here: (i) Indonesia's authorities only partially cooperated in many aspects of the investigation, so that the European Union had to rely in part on the so-called 'facts available'; and (ii) moreover, this case has revealed a large number of agreements between the authorities of Indonesia and China for channelling cross-border subsidies.

23.10. The European Union has acted in full compliance with the WTO rules. The EU did not countervail subsidies granted outside the national jurisdiction of the exporting country. In fact, the Chinese subsidies are clearly attributable to the Indonesian government, as evidenced by the dense web of agreements Indonesia had agreed with the Chinese government in the framework of a close cooperation. In sum, the investigation revealed that, by providing subsidies to exporting producers established in Indonesia with the express acceptance and acknowledgement of the Indonesian side, China is creating additional capacity and opening new channels in order to export subsidized products to the EU, thereby causing injury to EU producers. As long as distortive, WTO-countervailable subsidies continue damaging the European Union's steel industry, jeopardizing tens of thousands of jobs, the EU will have no choice but to exercise its legitimate WTO rights to their fullest extent.

23.11. The Council took note of the statements made.

24 EUROPEAN UNION – EUROPEAN GREEN DEAL (CARBON BORDER ADJUSTMENT MECHANISM AND DEFORESTATION FREE COMMODITIES) – REQUEST FROM BRAZIL AND INDONESIA

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

24.2. The delegate of Brazil indicated the following:

24.3. Brazil will touch upon the European Union's Carbon Border Adjustment Mechanism (CBAM) under Agenda Item 40, so will only address deforestation free commodities at this point. Brazil believes that the European Union's proposal establishes an illegitimate obstacle to international trade, is strongly discriminatory in nature, and will have little impact, if any, on its alleged goal of reducing deforestation and forest degradation.

24.4. First, Brazil considers that the proposed regulation does not contribute to the fight against deforestation. Deforestation is a multivariable problem that should be dealt with through comprehensive public policies in the short, medium, and long term. Illegal activities linked to deforestation must be halted. Alternative means of livelihood must be made available to the millions of people that live near forests, 25 million people in the case of the Brazilian Amazon. And sustainable production practices must be fostered and scaled-up.

24.5. In this sense, trade restrictions are a very limited instrument. They unfairly punish more than 99% of rural producers and do not provide any other remedy for the direct and indirect drivers of deforestation. By acting as an obstacle to economic development, trade restrictions actually reinforce some of the dynamics that lead to deforestation and reduce government capacity to deal with this issue. At the same time, their use rests on the flawed assumption that the affected producers will simply to turn to legal activities as a consequence of this measure.

24.6. Second, the proposed regulation is also heavily skewed towards punishment and disengagement by excluding from the EU market any producer suspected of having links to deforestation (or worse still, based on an area regarded as high risk, regardless of the specific sustainability credentials of each producer) with no flexibilities or margin for remedial or

compensatory action such as reforestation. Once cut off, producers no longer have any incentives to improve their practices and will probably also lack the means for doing so.

24.7. Brazil is committed to the protection of its forests. In its last Nationally Determined Contribution (NDC) to the UNFCCC Paris Agreement, Brazil confirmed that it will strive to end illegal deforestation in the Amazon by 2028 and this commitment has only been strengthened and reinforced at COP27 by President Lula. Brazil also excels in the legal protection of its natural ecosystems, with 30% of Brazil's terrestrial area and 26% of its marine areas being protected. In the Amazon, this number rises to 50%. These figures are significantly higher than those of the European Union. It is also worth noting that 10.9 million hectares of land are going through the process of natural regeneration in Brazil.

24.8. Demanding that Brazil accomplishes its NDC targets immediately not only violates the Paris Agreement and the UNFCCC, but also opens the floodgates for similar initiatives by other Members. Should Brazil perhaps classify as high-risk those Members that do not meet Brazil's "ambition" in having an energy grid of which 80% comes from renewable energy sources, and ban their products accordingly? Just as Brazil does not criticize the European Union in light of the challenges it is facing in increasing its reliability on renewable energies, the EU should take into account the many challenges that Brazil faces in the Amazon, an area larger than the EU itself.

24.9. Third, Brazilian agriculture is sustainable. Brazil is the third-largest exporter of agricultural products in the world. This position was achieved through massive increases in productivity. In the last 25 years, grain production has grown by 248%, in a harvested area that expanded by only 58%. In livestock, Brazil's cattle herd increased by 49%, while areas of pastureland decreased by 11%.

24.10. Fourth, Brazil believes that international trade contributes to the fight against deforestation. Sustainable development only materializes through the simultaneous improvement of its three core dimensions: economic, social, and environmental. It is precisely because international trade helps improve conditions in all three that it can be such a powerful tool in that process. International trade has a proven beneficial effect by providing opportunities for small and medium-sized companies, as well as for families, to access new markets and improve their income, escape poverty, and improve their economic and social conditions. The European proposal, however, disregards such positive effects and instead proposes to restrict trade by imposing a potential ban on the trade of several commodities based on an unnecessarily strict concept of "deforestation-free products" that diverges from the 2030 Agenda for Sustainable Development and all relevant multilateral environmental agreements, including the UNFCCC and the CBD, which acknowledge the importance of notions such as sustainable use, ecosystem regeneration, and reforestation, among others. Therefore, the European Union's proposed regulation is likely to have very little impact in terms of actually reducing deforestation. It lacks any provisions or pathways for rehabilitation and offers no incentives for struggling producers to improve their practices.

24.11. Fifth, Brazil considers that the benchmarking system is discriminatory and distorts trade. The proposed country benchmarking system, with its tiered classification, will not contribute to fighting deforestation. On the contrary, it will only promote trade diversion. Brazil considers that there are several reasons to believe that a benchmarking system in general, and more specifically, the benchmarking system proposed by the European Commission, is an entirely inefficient tool when trying to halt deforestation. First, the benchmarking system is inherently discriminatory and will impose a different treatment to producer countries based on a unilateral decision by the European Commission in light of criteria as subjective as the suitability of a country's environmental laws and enforcement capabilities. Second, by mandating "enhanced scrutiny" over products originating from high-risk countries, it stigmatizes entire countries and penalizes those producers that produce in a sustainable manner in those countries. Third, it creates a significant incentive for trade diversion, as operators interested in escaping the heavy administrative and financial burdens related to the due diligence system, and in avoiding the possibility of heavy penalties, would then simply abandon all exchanges with those countries or areas and merely switch to other sources.

24.12. Sixth, in Brazil's view, as raised in the CoA, the proposed regulation is incompatible with the WTO's rules.

24.13. Seventh, for Brazil, the proposed regulation must be adapted to the production reality on the ground. The proposal has been designed in such a manner as to be disconnected from actual

production practices and the way supply chains have been organized over the past decades. For the regulation to work, it is imperative that the due diligence system is adapted to production characteristics and needs of which cover each commodity. Instead, the European Union's approach is to impose a "top-down", "one size fits all", very detailed and cumbersome due diligence obligation on traders and operators within the EU market, which includes a heavy informational and documentary burden, as well as full geo-localization and traceability requirements throughout the supply chain. This system is then complemented by comprehensive and strict provisions on monitoring and enforcement, and by heavy penalties in case of non-compliance, not to mention the possibility of transferring the costs of enforcement to traders and operators.

24.14. Such a system completely disregards the very significant differences in the ways in which the covered commodities are produced, and their supply chains organized. For example, it ignores the fact that some of the commodities are largely produced by smallholders (like coffee), as well as the fact that the supply chain for several commodities (such as coffee and soya) usually include several links between producer and trader/operator. It also fails to take into account that these commodities are usually stored along the supply chain, not according to origin producer, but to other criteria related to their physical characteristics, quality, and chemical composition. As a result, deregulation will likely result in significant disruptions of supply and even shortages as operators and traders will be unable to comply with the stringent requirements contained therein and forced to restructure entire supply chains. It will also likely result in significant price surges for European consumers and for European producers using the covered commodities as inputs in a time when inflationary pressures are already intensifying, and food security is under stress.

24.15. Eighth, Brazil believes that the proposed regulation should foster cooperation and focus on the future. In this regard, it is disappointing that the European Commission has decided to pursue an avenue of unilateral legislation and enforcement when it comes to an issue of such importance. There are several appropriate multilateral forums in which initiatives to reduce deforestation could have been discussed with a more significant participation and engagement from producing countries. Brazil is convinced that the European Union's proposal would have benefited, during its inception, from a more open and participatory process, which might actually have taken into account the realities, challenges, and experiences of producing countries. At the very least, such a process would have contributed to a fairer and less commercially harmful legislation, with fewer of the aforementioned technical and conceptual problems.

24.16. Ninth, Brazil considers that the proposed regulation should have objective criteria. In this regard, the criteria used to evaluate the risk of non-compliance with the regulation are insufficiently clear and objective. For example, it contains unclear parameters, including governance criteria, which are not always related to deforestation risk. Furthermore, the proposed regulation's criteria may be applied in a discretionary manner by the Commission, which is not required to justify country categorization or decisions regarding compliance or non-compliance with the regulation. In addition, the criteria are not internationally agreed and there is no harmonized methodology to assess and evaluate them. This lack of objective criteria, besides reinforcing the perception of a unilateral and arbitrary piece of legislation, is an obstacle to the very participation of countries and producers in the evaluation process, which is not guided by international and consensual values and measures. Only a piece of legislation issued with shared and objective parameters would allow producer countries to participate in the confirmation and implementation of this system and give them more predictability in their evaluations.

24.17. In addition to these remarks on specific aspects of the European Union's proposal, Brazil believes that the EU's initiative should be seen in a broader context. If Members were to take a bird's-eye view of the discussions on this occasions, Brazil, for its part, would note that, in Agriculture, the EU has benefited from an unbalanced playing field regarding agricultural subsidies, has consistently adopted policies that violate the SPS Agreement and granted undue and discriminatory benefits to its own producers. In CBAM, similarly, Brazil sees that the EU is going against the letter and spirit of the UNFCCC and the GATT in granting undue benefits to its domestic producers. And in "deforestation-free commodities", as Brazil has argued, there are many grounds to affirm that the proposal may violate WTO and UNFCCC norms and grant undue benefits to domestic producers. This is an extremely worrying pattern that, if it were to persist, would weaken the capacity of both trade and environmental regimes to provide global solutions to Members' common challenges. And if Members are to have a proper rules-based international order, and not the law of the jungle, they cannot have such an important member of the international community adopting policies that depart from the principles and spirit of both regimes.

24.18. One final aspect that Brazil wishes to address is that of historical responsibilities, as many Members have referred to International Environmental Law (IEL) principles. First, Brazil addresses what it is not. Common But Differentiated Responsibilities (CBDR) is not an excuse for developing countries to avoid environmental commitments. Members have seen large developing countries assuming ambitious net zero commitments in line with the idea of "respective capabilities", but what historical responsibility does mean is that mean, however, is that Members that developed for centuries on the back of dirty energy sources and unsustainable practices have a moral and legal obligation to do more. The consumer preferences of a few hundred millions should not be an excuse for shifting the transition costs to billions of rural producers in the developing world, especially if those consumers are only in a position to do so because of centuries of unsustainable practices by their countries. And, as EU consumers are well aware, the transition towards a low carbon economy must be based on the principles of justice and fairness.

24.19. Brazil has a legacy of constructive effort in building bridges in both trade and environmental regimes, making meaningful and often decisive contributions to achieving outcomes that balance the interests of all Members, thus putting Members on a proper path to addressing their common challenges. Therefore, Brazil reiterates that the European Union will find in Brazil a strong and committed partner in the promotion of sustainable development, and Brazil urges the EU to duly consider the many concerns that Brazil has expressed and adopt a constructive approach on these issues, to the benefit of both regimes, and to the benefit, most especially, of small producers in the developing world.

24.20. The delegate of Indonesia indicated the following:

24.21. Indonesia wishes to refer to its statement delivered at the CTG's previous meeting, and again raises its concerns to the European Union regarding the European Green Deal policy, specifically the CBAM and Deforestation Free Commodities (DFC) proposal. Indonesia notes that several commodities listed in the CBAM are required to comply with carbon emission limits for accessing the EU market. However, specific methodology for calculating the average price that will be included in the CBAM certification is not yet clearly reflected in the regulation.

24.22. Indonesia understands that the European Union will be imposing tax for imported products while exempting the same tax on domestic products, which will depart from one of the main principles of the WTO. Indonesia requested the EU to consider other approaches to achieving its environmental goals that are not burdensome to their trading partners, especially developing countries. Moreover, Indonesia requests the EU to provide more detailed technical information on the CBAM mechanism, including the methodology for calculating the average price for the CBAM certificates.

24.23. With regard to the DFC proposal, Indonesia is of the view that this policy will shift the burden to developing country producers and erect more barriers to international trade. Indonesia would like to seek more detailed information from the European Union on the scope of commodities, the due diligence mechanism, the scientific basis, as well as the EU's plans to provide technical cooperation, if any.

24.24. Indonesia shares the European Union's view of the high importance of protecting the environment. Nevertheless, any policy formulated by WTO Members to achieve environmental goals must comply with WTO provisions and principles, particularly the non-discrimination principle.

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

24.26. The Russian Federation reiterates its deep concern in respect of the CBAM, which is now being finalized by the European Union. Russia also reiterates its statements made during the previous meetings of the CMA and the CTG.[76] The Russian Federation believes the CBAM to be a protectionist measure aimed at improving the business environment for EU domestic industries for the following reasons.

24.27. First, one of the objectives of the CBAM is to address the risk of carbon leakage, which is stated in paragraph 1 of Article 1 of the EU's draft regulation establishing a CBAM. According to the

[76] Document G/C/M/143, paragraphs 41.56-41.60.

Explanatory Memorandum to this draft regulation "carbon leakage occurs if, for reasons of different ambitions related to climate policies, businesses in certain industry sectors or subsectors were to transfer production to other countries with less stringent emission constraints or imports from these countries would replace equivalent but less GHG emissions intensive products due to the difference in climate policy".

24.28. The whole concept of prevention of the so-called carbon leakage is an intention to localize capacities in the EU territory, especially those that are European but have been moved outside the Union.

24.29. The Russian Federation would like to remind the EU and other WTO Members that the UNFCCC, as well as the Paris Agreement, allows their Parties to choose their own way of achieving climate goals that is the most effective for them. According to Article 3 of the UNFCCC "policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors".

24.30. In addition, Article 5 of the UNFCCC provides for the cooperation of its Parties in order "to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade".

24.31. The Russian Federation notes that the major principles of the Paris Agreement are the following: (i) common but differentiated responsibility; (ii) the transfer of technologies, their deployment and dissemination; and (iii) cooperation. The CBAM neglects all these principles and absolutely does not meet the terms of the multilateral arrangements on how to address the climate change problem concluded at the global level.

24.32. Despite all these provisions, the European Union has decided to punish all those countries that are applying climate policies different from its own.

24.33. Second, it is no secret that the European Union's institutions have made their proposals to amend the initial draft regulation. These proposals include: (i) extension of the scope of products subjected to the CBAM; (ii) no opportunity to recognize alternatives to carbon pricing internal measures aimed at decarbonization applied by exporting to the EU countries as effective when calculating the CBAM rate; (iii) no ability for mutual recognition of the verification results; and (iv) ensure export rebates for the so-called most effective installations involved in export activity, according to the EU Emissions Trading System (ETS) regulation.

24.34. Third, the CBAM should mirror the European Union's ETS for importers of the covered products. However, the EU ETS implies financial contribution measures. The EU State Aid Guidelines provide compensation for the reduction of indirect Green House Gas emissions. In other words, national authorities provide financial support to companies if they consume alternative energy resources produced within the EU. Besides, the participants of the EU ETS have free allocation within this system and do not purchase any allowances.

24.35. Finally, the Russian Federation would also like to draw Members' attention to the EU institutions' discussion on possible export rebates for EU producers to help them remain globally competitive. It is obvious that even if the EU establishes the CBAM to increase the cost of imported products in the domestic market, the EU's exported goods will still be uncompetitive in the market of third countries. However, it is not clear how this export rebate will comply with WTO rules on export subsidies?

24.36. All these elements reflect that the nature of the proposed measures is purely economic, rather than environmental.

24.37. As for the proposal on deforestation-free products, such measures, in Russia's view, are aimed at imposing trade-restrictive measures in order to improve the business environment and

ensure compulsory localization in the EU territory. One of the examples is a proposal of the European Commission on deforestation-free products, which implies import authorization procedures in respect of certain categories of goods, such as cattle, cocoa, oil palm, soya, and wood and products derived from them.

24.38. According to the draft Regulation, permits on import of such goods are supposed to be issued in case: (i) the production of the supplied products has not caused deforestation and forest degradation; (ii) production has been carried out in accordance with the national legislation of the country of origin; and (iii) due diligence expertise by the importer has been conducted. At the same time, this proposal neither sets out any relevant specific provisions, nor any quality or quantity criteria, for the implementation of this approach and compliance therewith.

24.39. The draft regulation imposes benchmarks for risks depending on the product's country of origin. And if the country of origin falls under the high-level risk group, the imports from this territory are prohibited. This seems like another unilateral measure that is not in conformity with the WTO rules and main principles of the global arrangements related to the issue of combating climate change.

24.40. Moreover, the European Union's institutions within the framework of the trialogue go further and propose to extend the scope of products subject to deforestation-free regulation, as well as to add new, and vague, conditions for import authorization, which are: (i) absence of compulsory labour force in manufacturing process of products exported to the EU; and (ii) compliance with international standards despite the existence of the technical regulation system in the EU, and others.

24.41. There is no doubt that all these requirements, together with the initial proposals of the Commission, will create additional administrative obstacles for international trade that do not serve the interests of the multilateral trading system. In conclusion, the Russian Federation urges the European Union to fully respect the WTO rules and international climate agreements.

24.42. The delegate of Guatemala indicated the following:

24.43. Guatemala is concerned about the implementation of these measures and their negative effect domestically on rural development in developing countries. Countries' sustainability is managed individually in line with each Member's needs and resources. However, the resources of developing countries, such as Guatemala, are limited in comparison with the support offered by the European Union, which is in the range of millions of euros.

24.44. In relation to the proposal for a Regulation concerning certain relevant commodities and products associated with deforestation and forest degradation, Guatemala is not fully clear about the criteria used to select the commodities likely to be included in the Regulation. The European Union has responded at the WTO that it is based on the impact assessment carried out for the measure. In that assessment, the section "Product Scope" refers only to commodities imported into the EU, but no study was used that addressed commodities produced within the EU. Accordingly, we have concerns about national treatment under the application of this measure.

24.45. In relation to risk categorization by country and risk areas for third countries, Guatemala is similarly unclear as to the criteria and scientific basis underlying such categorization. Guatemala reiterates the importance of having rules that follow WTO principles, such as most-favoured-nation treatment and national treatment.

24.46. The delegate of Ecuador indicated the following:

24.47. Ecuador would first like to thank Brazil and Indonesia for including this trade concern on the agenda of the Council's meeting. As stated at the previous meeting of the CMA, Ecuador is concerned by the development of policies under the Green Deal and rules on deforestation-free commodities, since they are unilateral decisions that have international ramifications beyond the borders and jurisdiction of the European Union, and may affect third countries. Ecuador is a strong advocate on matters of the environment and, as such, recognizes, supports, and promotes compliance with countries' international commitments to reduce greenhouse gases. Under the Paris Agreement, each country establishes its own targets to reduce greenhouse gas emissions through nationally

determined contributions. As such, each country, while retaining its sovereignty and observing the principle of common but differentiated obligations, in line with its development capacities, establishes its own system for controlling the expansion of crops at the expense of forests, forage, or vegetation with high carbon stock.

24.48. Against that background, any measure adopted in relation to controlling greenhouse gases and deforestation should follow the provisions agreed globally in the Paris Agreement. In other words, they cannot be decided unilaterally, much less without considering national capacity, progressivity, and a multilateral follow-up system.

24.49. It should be borne in mind that the measure disproportionately affects countries with primary tropical forests, the bulk of which are in developing countries, and furthermore, it neither includes their points of view nor translates into a proportionate increase in the funds available for sustainable development that can also address the effects of climate change. Meanwhile, there are indeed resources available to allocate billions, notably resources for agricultural subsidies that affect competitiveness, distort markets, and disadvantage countries that do not have the resources to pay similar generous subsidies.

24.50. Ecuador would be grateful for any information that the European Union could offer in reply to the comments made at this meeting of the Council, including replies to the particular details of those comments or recommendations made by various Members, in a timely manner, and by different channels, on how they were included in the development of the policies.

24.51. The delegate of Paraguay indicated the following:

24.52. As Paraguay has covered its concerns regarding other elements under the Green Deal that affect trade in agricultural products, on this occasion Paraguay will focus on the Carbon Border Adjustment Mechanism. Regarding the CBAM, Paraguay reiterates its systemic interest in this concern and requests that its prior statements are reflected in the minutes of today's meeting.[77]

24.53. Paraguay requests the European Union, once more, to share information on whether they are planning a lowering of tariffs for imported products that contain a lower carbon footprint, and whether they are considering increasing tariffs for products with a higher carbon footprint than that of EU products, as there should be a mechanism to recognize positive contributions and lower carbon footprints, and not just a penalty for producers who pollute more than European companies.

24.54. Paraguay also reiterates that responsibilities are common but differentiated, and must be taken into account, and that these mechanisms should be negotiated and not unilaterally imposed, so that they actually fulfil their objectives – which may be shared. But the policy tools are criticized due to the manner in which they are built, designed, and implemented, lending themselves to protectionism and trade distortions.

24.55. Briefly, regarding commodities free of deforestation, Paraguay wishes to make reference to its statement delivered under Agenda Item 6[78], but to add that there is an intrinsic discrimination in the design of the measure, even if according to the European Union it applies in the same way to its producers. This discrimination exists from the moment production of some of these commodities does not take place in European territory, and that the EU only has 3% of its native forests, and thus the same conditions do not apply as to those with a higher percentage of native forests. Therefore, we are being penalized for our conservation and preservation efforts, and for providing eco-systemic services for years, and continuing to do so, when Europe has eliminated 97% of its native forests.

[77] Minutes of the Meeting of the Council for Trade in Goods, 7 and 8 July 2022, document G/C/M/143, paragraphs 16.42–16.43: "The delegate of Paraguay indicated the following: Paraguay wishes to reiterate its interest in this trade concern and requests that its previous statements be placed on record. In addition, Paraguay again requests information from the European Union on whether it plans a tariff reduction for imported products with a lower carbon footprint, and how it plans an increase for those with a higher footprint. Paraguay believes that incentives are just as important as penalties in measures such as these, and that common but differentiated responsibilities should also be taken into account." Footnote: "Document G/C/M/142, paragraphs 36.24-36.25."

[78] Paragraphs 6.2-6.17.

24.56. The delegate of India indicated the following:

24.57. India thanks the delegations of Brazil and Indonesia for placing this item on the Council's agenda. In the previous month's Committee on Trade and Environment, during Environment Week, more than a dozen Members intervened on the European Green Deal agenda item, including developed and developing countries, Members large and small by geographic area, and Members large and small by population. The concerns around the European Green Deal are numerous, widespread, and global.

24.58. Sustainable development and environmental protection, and to enhance the means for doing so in a manner consistent with the respective needs and concerns of countries at different levels of economic development, are critical concerns for each country. However, there are serious concerns as regards the trends and manner on the increasing use of unilateral measures impacting trade, which are sought to be justified as environmental measures. The implications of such measures for the WTO rules need to be reflected upon. The underlying concern is one of systemic implications for international law as a whole, and the impact any unilateralism would have for the multilaterally negotiated rights and obligations of countries.

24.59. Reducing greenhouse gas emissions to address climate change is a global effort, and all WTO Members are members of the UNFCCC. The UNFCCC functions on the basis of the principles of equity, and in accordance with UNFCCC members' common but differentiated responsibilities and respective capabilities.

24.60. India also notes that the Sharm el-Sheikh Implementation Plan was adopted just days ago, at the end of COP-27, and promoted international cooperation. On the other hand, the European Green Deal, and the various related legislations and rules being framed around it, are being discussed in the CTG, the Committee for Trade and Environment, the TBT Committee, and the SPS Committee, among others. In this light, India urges the European Union to reflect on the proportionality of its unilateral, trade-restrictive, consumer-choice-restrictive actions being taken in the name of the environment.

24.61. The delegate of Argentina indicated the following:

24.62. Argentina is closely following the European Union's legislative process on deforestation and is concerned about the proposed single model concept that the EU intends to impose, which does not take into account the different characteristics of the production models of the various countries. Argentina also reiterates that the regulations must be compatible with the WTO's rules. Argentina considers that the new regulations stemming from the European Green Deal should respect the EU's commitments to the WTO, and also be based on scientific evidence, to ensure that the EU's measures do not constitute a means of arbitrary or unjustifiable discrimination, or be a disguised restriction on international trade.

24.63. Argentina shares European concerns about climate change and, above all, the objective of producing food sustainably, taking into account the current challenges of safeguarding food security in changing climatic conditions. At the same time, it should be borne in mind that there are regional and national differences in natural resources, environmental challenges, and the impacts of climate change, meaning that best practices in one region of the world may differ from those in another.

24.64. Given this scenario, Argentina is convinced that there is no single model for achieving environmental protection, and that environmental degradation, including climate change, must be addressed by respecting the core principle of common but differentiated responsibilities. Solutions should therefore be geared towards local realities, and the proposed policies and initiatives for the legitimate purpose of environmental protection must be flexible, pragmatic, implementable, and realistic, providing the most effective measures to achieve the objective sought, while being the least trade-restrictive to that end.

24.65. In this connection, the unilateral approach of the European Union's trade policies under the Green Deal is cause for concern, given that it does not take into due account the environmental commitments made by third countries, in line with their national priorities and policies. In fact, in the case of Argentina, the country has undertaken and extended its environmental commitments,

fulfilling its responsibilities in terms of its international obligations. Thus, third-country measures should be taken as equivalent, avoiding the imposition of one-size-fits-all solutions.

24.66. With regard to the CBAM, Argentina has already stated in this Council that this measure is cause for growing concern among Members. Serious doubts have been raised regarding whether a mechanism of this nature is consistent with the WTO Agreements, in particular with the provisions of the GATT 1994.

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

24.68. Regarding the draft Regulation on deforestation, Argentina is concerned that it does not consider measures that could be less trade-restrictive to meet the environmental objective sought, such as the recognition of forest conservation programmes or third-country certification. Instead, the Regulation proposes applying the same EU standards globally, without making clear the criteria established by the EU or the scientific basis for determining "high-", "medium-" and "low-" risk countries. Given that there could be different local and regional realities in each country with respect to forest conservation, generalizations should be avoided. Similarly, by imposing the proposed due diligence and more onerous requirements on countries classified as "high risk" than on other countries, the EU will be applying more stringent and trade-restrictive criteria to certain countries classified by the EU itself as "high risk", which could be incompatible with WTO rules. Furthermore, the proposed approach is not in line with developed countries' historical responsibility for environmental degradation, including the EU, by setting a baseline of 2020 without taking into consideration land-use changes and deforestation since the Industrial Revolution in such countries. This effectively penalizes developing countries, which is incompatible with the principle of common but differentiated responsibilities.

24.69. In short, Argentina stresses the importance of avoiding unilateral actions that lack any proper legal basis or multilateral support, or the required scientific basis. Argentina will follow the development of these initiatives closely in order to prevent any disguised restrictions on international trade in the name of environmental protection.

24.70. The delegate of Colombia indicated the following:

24.71. Colombia thanks the delegations that placed this trade concern on the Council's agenda. Colombia has a 0.6% share of global GDP and, according to international sources, is currently responsible for 0.2% of global CO_2 emissions (historically the figure is much lower). However, a number of measures pertaining to deforestation, different types of compensation and adjustment, and restrictions based on environmental considerations, are having increasing and potentially significant effects on production in Colombia. This is a lose-lose situation.

24.72. The measures we are discussing do not have a significant environmental effect, and one could even argue that they would have negative effects because of their lack of synchronization, given that they are unilateral actions that fragment the response to a global problem and could provoke reaction and retaliation. Furthermore, they have direct negative effects on Colombia's production, its trade and the general well-being of its population, thereby exacerbating other problems. In consequence, these tariff compensation and adjustment measures, based on environmental grounds, are unbalanced, unfair, and, above all, ineffective. They do not address the real problem of environmental degradation and, worse still, shift attention away from the real problem.

24.73. In this context, this series of new environmental compensation measures, referred to in Agenda Items 6, 13, 14, 25, 29, 30, 39, 42, 52 and 53 of the Council's agenda, do not acknowledge the principles negotiated and adopted by all our countries as part of international environmental law, with the common but differentiated responsibilities (CBDR) and sovereignty principles being two of the most important.

24.74. Members' efforts must instead focus on agreeing on a collective multilateral environmental remedy with baselines and mutually beneficial conditions that is effective in the long term, synchronized, and does not affect our opportunities to reduce development gaps.

24.75. The response of trade and the WTO to the climate crisis must be collective and negotiated. The measures we are discussing, and other similar measures, are, however, quite the opposite. In Colombia's view, they are not an adequate public policy response to global environmental concerns. On the contrary, they fragment the response, open the door to possible disputes, and negatively affect collective confidence. The so-called "green fortresses" are therefore not the right answer.

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

24.77. The Kingdom of Saudi Arabia thanks the proponents for raising the subject matter of the CBAM. From its perspective, while Saudi Arabia understands that the proposed mechanism will be in conformity with the WTO rules and other international obligations, the European Union has yet to provide an explanation of how it aims to achieve this. While the EU intends to address the risk of investment leakage from the EU to other countries, Saudi Arabia considers that its main objective is in fact to maintain the competitiveness of EU industries.

24.78. The Kingdom of Saudi Arabia's very preliminary reviews indicate that the proposed mechanism raises very serious concerns due to its potential medium- and long-term negative implications on global trade. Indeed, Saudi Arabia believes that the EU's measures are unilateral and trade protectionist in nature, providing specific protection to the EU's domestic industry. The consistency of the CBAM with the fundamental rules of the WTO is questionable. Therefore, the burden of proof to confirm that this mechanism is consistent with the EU's WTO obligations and commitments regarding MFN, national treatment, rules of origin, and NTBs, lies on the EU itself. Furthermore, monitoring and collecting the information on the carbon emissions included in the products covered by the CBAM is not a straightforward task, and many details of the calculation methodology are not yet clear.

24.79. As far as the Kingdom of Saudi Arabia understands, the EU ETS implies effective financial contribution measures, while the guidelines of EU member States provide compensation for a reduction in indirect GHG emissions. This scheme looks to Saudi Arabia as if it is a specific subsidy, which is prohibited by the WTO Agreements. Therefore, Saudi Arabia requests the European Union to provide further clarification on this matter. In particular, Saudi Arabia kindly requests the EU to specify the articles from the WTO Agreements that allow it to adopt this unnecessarily complicated mechanism. Saudi Arabia also urges the EU to further engage and include consultation with Members in order to ensure the full compliance of the CBAM with the WTO rules and agreements, and to ensure that the proposed mechanism would not create unnecessary barriers to trade, be used as a means of arbitrary or unjustifiable discrimination, or as a disguised restriction on international trade, or be applied in a manner that constitutes a protection to EU domestic industries. Finally, Saudi Arabia looks forward to receiving further details and reflections from the EU on its proposed mechanism. Saudi Arabia stands ready to engage with the EU and other interested Members in this regard.

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

24.81. The European Union thanks Members for their comments. Deforestation is a main driver of climate change and biodiversity loss. The European Union contributes to deforestation by consuming a significant share of products associated with it. The EU, therefore, has the responsibility to contribute to ending it. And with the proposed new EU law on deforestation and forest degradation, the EU aims to foster transparent and deforestation-free supply chains.

24.82. The draft Regulation is based on the following principles: (i) transparency, accountability and sound scientific and methodological basis; (ii) consistency with agreed international commitments; and (iii) non-discrimination. The rules will apply equally to commodities and products produced inside and outside the European Union.

24.83. The draft Regulation is part of a broader set of policies. It will be implemented hand-in-hand with other measures, including, where appropriate and feasible, support to producing countries,

dialogue with other large consumer countries, and cooperation at international level, especially in the relevant multilateral forums.

24.84. The Regulation is the opportunity, together with the EU's trading partners, to create more sustainable supply chains. The legislative process for the adoption of the Regulations is in its final phase. As per usual practice, the Commission will keep WTO Members updated on the developments of the proposal in the Committee on Trade and Environment.

24.85. As regards the European Union's CBAM, the EU will reply under Agenda Item 40.

24.86. The Council took note of the statements made.

25 AUSTRALIA – INVESTIGATION AND REVIEW OF ANTI-DUMPING DUTIES ON A4 COPY PAPER – 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 would like to thank Australia for its response at the CTG's previous meeting. Nevertheless, as there have been no changes since that meeting, Indonesia again raises its concern regarding the initial investigation and sunset review of the imposition of an anti-dumping duty by Australia on A4 paper products from Indonesia.

25.4. With this imposition, Indonesia has lost access and market share for its paper products in Australia. Indonesia wishes to receive further clarification from Australia regarding whether the losses to Australia's domestic industry were caused by Indonesian A4 paper, or by other factors, considering that, statistically, Indonesia's exports of A4 paper to Australia have dropped dramatically since 2017. Indonesia requests Australia to re-evaluate its imposition of anti-dumping duty on A4 paper products from Indonesia.

25.5. The delegate of Australia indicated the following:

25.6. Australia is happy to provide an update on the two cases raised by Indonesia. Australia welcomes that Indonesia has raised the two cases at the Committee on Anti-Dumping, which was held on 26 October. Australia also appreciated the bilateral meeting held with Indonesia in the margins of that meeting, and Indonesia's very positive engagement. This enabled us to explain the two distinct cases that Indonesia has referenced today.

25.7. On 17 October 2022, the Minister for Industry and Science made his decision to accept the recommendations to apply anti-dumping duties on A4 copy paper exported by one Indonesian exporter. This decision related to a new anti-dumping investigation into A4 copy paper imported from Indonesia, specifically relating to one Indonesian exporter, and was triggered by a duly documented application from Australia's domestic industry.

25.8. Australia's approach in this new investigation took into account the findings of the WTO dispute settlement panel in DS529, and was conducted in strict conformity with Australia's WTO obligations. Australia emphasizes that the investigation concerned a range of different factors distinct to that of DS529, including different fact patterns and periods of investigation. Interested parties were able to seek merits review up until 21 November 2022, being 30 days after public notice of the Minister's decision, and can consider judicial review avenues.

25.9. Separately, on 29 August 2022, the Minister for Industry and Science made his decision on merits review of a decision on 19 April 2022 to continue anti-dumping measures on imports of A4 copy paper, including from certain exporters from Indonesia. This merits review was triggered by an application from exporters to Australia's independent merits review authority, the Anti-Dumping Review Panel. The Minister affirmed the decision to continue measures on certain exporters from Indonesia. Interested parties were able to apply for judicial review of that decision within 28 days of its publication.

25.10. Australia also notes that the continued measure does not apply to the two Indonesian exporters who were the subject of DS529; nor does it apply to the one Indonesian exporter who was the subject of the separate original investigation.

25.11. As Australia clarified both at the Committee on Anti-Dumping and at its bilateral meeting with Indonesia, Australia is committed to ensuring that its anti-dumping system and any measures imposed are consistent with WTO rules. Australia's anti-dumping investigations are transparent, independent, and evidence-based. All affected overseas producers and exporters have a full and fair opportunity to provide evidence and make representations during the investigation process in line with Australia's WTO obligations.

25.12. The Council took note of the statements made.

26 VIET NAM – ANTI-CIRCUMVENTION DUTY ON SUGAR – 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 states its concern regarding Anti-Circumvention Duties imposed by Viet Nam to Indonesian sugar products under HS Codes 1701.13.00, 1701.14.00, 1701.91.00, 1701.99.10, 1701.99.90, and 1702.90.91. The anti-circumvention duties are in the form of anti-dumping duties and anti-subsidized duties. With the imposition of the anti-circumvention duties, Indonesian businesses cannot export refined sugar products to Viet Nam due to the high tariffs imposed.

26.4. Indonesia believes that the anti-circumvention discipline is not regulated in the provisions of the WTO or the ASEAN Trade in Goods Agreement (ATIGA), such that the validity of the application is still debatable (arguable) within the framework of international trade law.

26.5. Indonesia believes that Viet Nam's domestic regulations stipulate that one of the factors to implementing anti-circumvention is by proving a loss for the domestic industry based on the findings of the Vietnamese Investigating Authority. Nevertheless, Indonesia sees that Viet Nam's domestic sugar industry has not suffered losses and has instead experienced profits as seen from a significant increase in net profit, revenue, return on assets, prices, and other economic indicators.

26.6. Indonesia regrets that the decision to implement the anti-circumvention measure by Viet Nam was arbitrary. The Decree of the Minister of Industry and Trade of Viet Nam on Anti-Circumvention was issued on 1 August 2022, while the final report on the results of the investigation (final report) was issued on 19 August 2022. According to Viet Nam's domestic regulations, the Decree of the Minister of Industry and Trade Viet Nam can only be issued no later than 15 days after the final report is issued. Therefore, Indonesia wishes to request further explanation and clarification from Viet Nam.

26.7. The delegate of Viet Nam indicated the following:

26.8. Viet Nam notes that this matter appropriately relates to the Anti-Dumping and SCM Committees. During the meetings of these committees, Viet Nam had provided relevant information regarding Indonesia's concerns. Nevertheless, Viet Nam is happy to update the Council on the issue raised by Indonesia.

26.9. Viet Nam conducted the anti-circumvention investigation in an objective and transparent manner, in compliance with the provisions of its domestic laws, as well as with its international commitments, including all WTO regulations. Therefore, the final determination found only that only the use of sugar materials importing from Thailand currently subject to anti-dumping and countervailing duties for refining in a third country and then exporting into Viet Nam constitutes a circumventing act. The use of sugar canes to produce and export sugar to Viet Nam does not constitute a circumventing act.

26.10. Upon such findings, some producers and exporters, one of which is an Indonesian company, were eligible for exclusion from the imposition of anti-circumvention measures. Other Indonesian

producer importers were not eligible due to significant discrepancies, inconsistencies, and/or misleading information in their questionnaire responses. Viet Nam notes that the final determination included detailed analysis of each participating Indonesian producer exporter. Indeed, Viet Nam's Ministry of Industry and Trade had duly noted, analysed, and responded to the submission from Indonesia in its final determination. Viet Nam's trade remedies system is transparent, independent, and non-discriminatory. Viet Nam is committed to ensuring that its trade remedy system, and any measures imposed, are consistent with the rules of the WTO. Viet Nam remains willing to meet bilaterally with Indonesia, and to provide appropriate information to further clarify Indonesia's concerns.

26.11. The Council took note of the statements made.

27 PHILIPPINES – INVESTIGATION OF SAFEGUARD DUTY ON HIGH-DENSITY POLYETHYLENE (HDPE) PRODUCTS – 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 wishes to state its concerns regarding the Definitive General Safeguard Measures document for High-Density Polyethylene (HDPE) products issued by the Department of Trade and Industry (DTI), of the Philippines, on 30 September 2022. In this document, the Philippines' DTI determines the amount of safeguard duty for HDPE products for three years, namely Php 1,338/MT for the first year, Php 1,271/MT for the second year, and Php 1,208/MT for the third year.

27.4. Based on Annex A of the document, Indonesia is not included in the category of *de minimis* developing countries that are excluded. Previously, the Tariff Commission (TC) on 27 June 2022 had recommended DTI to charge a Safeguard Duty of 2% (*ad valorem*) for three years; however this safeguard duty was not imposed for HDPE products originating from developing countries with a share of imports from *de minimis* (below 3%). Based on the Annex M Final Report issued by the TC, Indonesia is included in the list of developing countries with a *de minimis* export value so that Indonesia is excluded from this safeguard duty.

27.5. Indonesia considers that the Philippines' DTI should exclude Indonesia from the list of countries subject to safeguard duty based on the results of the TC investigation, which has been based on calculations of injury to the Philippines' domestic industry during the investigation period. This is also a practice that has been carried out by the DTI thus far, where DTI determines the safeguard duty based on the recommendations submitted by the TC. Therefore, Indonesia perceives that the DTI has violated WTO regulations, specifically Article 4.2(a) and 4.2(b) of the Agreement on Safeguards. In addition, based on domestic regulations in the Philippines, the establishment of an Order from the DTI should have been made 15 days after the TC's recommendation. Indonesia wishes to seek the Philippines' further explanation of this issue.

27.6. The delegate of the Philippines indicated the following:

27.7. The Philippines thanks the delegation of Indonesia for its interest in the Philippines' safeguard measure on high-density polyethylene pellets and granules (HDPE), and notes Indonesia's view that its share of imports of HDPE during the period of investigation falls below the *de minimis* volumes. The Philippines wishes to inform Indonesia that the data collected by its Tariff Commission on Philippine HDPE imports from 2017 to June 2021 was used only as a basis in the determination of the *de minimis* level. However, the Philippines' investigating authorities used the updated volume of imports using the full year 2021 data, which shows that the volume of the Philippines' HDPE imports from Indonesia increased beyond the *de minimis* threshold, at 4.85%, based on Electronic Import Entry Declarations from the Philippines' Bureau of Customs.

27.8. The decision was issued beyond the 15-day period as the Philippines' investigating authorities considered additional comments from interested parties relevant to the Tariff Commission's report. The delegation of the Philippines will continue to coordinate this matter with Capital, and the Philippines stands ready to further discuss this issue with Indonesia moving forward.

27.9. The Council took note of the statements made.

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

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

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

28.3. The Russian Federation reiterates its concerns regarding the amendments to the EU basic regulation on protection against dumped imports introduced by Regulation (EU) 2017/2321 and Regulation (EU) 2018/825. At previous CTG meetings, the Russian Federation pointed out the discriminatory nature of the amendments, which can be illustrated by the following points. First, the European Commission may punish the exporters twice for the same situation, labelled by the amendments as "significant distortions" and "raw material distortions". And second, the European Commission has issued only two "reports" on so-called "significant distortions" in two particular exporting countries. This clearly shows the discriminatory nature of the EU's approach regarding the application of anti-dumping measures. Without going into further detail, the Russian Federation reiterates its systemic concern about the WTO-inconsistency of the amendments. Russia urges the European Union to abstain from its application and not to violate its WTO obligations.

28.4. The delegate of China indicated the following:

28.5. China has clearly expressed its position on multiple occasions, namely that Article 2(6a) of the Basic Regulation is not consistent with the WTO's rules. China wishes to reiterate its comments on these issues. Article 2(6a) of the Basic Regulation introduces a novel concept, "significant distortion", and six elements of such distortion. After introducing the concept, it goes on to stipulate that, when it is not appropriate to use domestic prices and costs due to significant distortions, the normal value shall be constructed. However, such a method is contrary to Article 2.2 of the Anti-Dumping Agreement, which provides an exhaustive list of situations where the normal value can be constructed, namely: (a) where there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country; (b) because of a particular market situation in the domestic market of the exporting country, such sale does not permit a proper comparison; and (c) because of the low volume of the sale in the domestic market of the exporting country, such sale does not permit a proper comparison. "Significant distortion" falls within none of the listed circumstances.

28.6. Article 2 (6a) allows for the use of data from an appropriate representative country or international prices to construct normal value. This is also inconsistent with GATT Article 6.1(b) and Article 2.2 of the ADA, especially Article 2.2.1.1. The WTO rules require using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits when constructing normal value. However, Article 2(6a) of the Basic Regulation broadened the scope of data source to include the costs of production and sale in an appropriate representative country, or international prices, costs or benchmarks. But this goes well beyond the scope of the WTO's rules.

28.7. Therefore, whether the EU Basic Regulation 2(5) is in line with the WTO rules or not, the Commission should not construct normal value when there is so-called "market distortion" based on the authorization of the Basic Regulations Article 2(6a). The GOC requests the Commission to amend its legislation to make it consistent with the WTO's rules.

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

28.9. The European Union takes due note of the statement by China, and notes that the EU's statement delivered on this issue when it was last discussed still holds.

28.10. The Council took note of the statements made.

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

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

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

29.3. As the Russian Federation's concerns remain unaddressed, Russia reiterates its statements made during the previous meetings of WTO bodies regarding the European Union's cobalt classification as a carcinogen 1b for all routes of exposure. The Russian Federation stresses that the measure was adopted in the absence of sufficient scientific justification, either laboratory or epidemiological, and without taking into account the grounded comments and opinions of WTO Members and businesses. At the same time, the European Union had previously informed Members of its intention to adopt the gastric bioelution protocol at the EU and OECD levels. However, the EU has not adopted this methodology, and has not incorporated its use into the CLP Regulation as a regular practice of classifying, *inter alia*, alloys and compounds that will allow to exclude many cobalt-containing products from the scope of further restrictions to be developed within the implementation framework of this classification decision. Furthermore, the EU has not provided any updates on the adoption status of bioelution at the EU level. For these reasons, the Russian Federation urges the European Union to incorporate bioelution into the CLP as soon as possible, as well as to provide an update on the status of its adoption.

29.4. The Russian Federation notes the European Union's lack of engagement on this trade concern in this body. In Russia's view, this is not the best strategy to resolve differences with regard to a situation of systemic concern. Russia recalls that transparency is an important pillar of this Organization, and that provision of explanations on various measures and policies in the CTG is part of the transparency mechanism. Therefore, a refusal to respond to the trade concerns raised is in stark contrast with the EU's own rhetoric on the importance of transparency in this Organization.

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

29.6. For the sake of clarity, the European Union would like to insist that it has provided its position very clearly under Agenda Item 14.

29.7. The Council took note of the statements made.

30 INDIA – IMPORT RESTRICTION ON AIR CONDITIONERS – REQUEST FROM JAPAN AND THAILAND

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

30.2. The delegate of Thailand indicated the following:

30.3. Thailand wishes to echo Japan's concerns regarding India's import prohibition on air conditioners containing refrigerants. Thailand has also expressed similar concerns on several occasions in various WTO bodies. Thailand regrets that, unfortunately, its concerns seem to be ignored. Thailand's exports of air conditioners to India continue to be subject to this highly restrictive import measure, which is clearly inconsistent with Article XI:1 of the GATT 1994.

30.4. According to India, the ban at issue serves to protect the stratospheric ozone layer within the meaning of the Montreal Protocol, and is, therefore, justified under the exceptions in Article XX of the GATT 1994. Like India, Thailand is dedicated to protecting the stratospheric ozone layer, as required by the Montreal Protocol. Thailand, however, fails to see any rational connection between India's ban and the objective of protecting the ozone layer.

30.5. India's Notification No. 41/2015-2020 merely lists two HS Codes for air conditioners that are subject to India's import prohibition if they contain refrigerants. The Notification does not specify the types of prohibited refrigerants, or, for instance, explain whether these are the ozone-depleting substances listed in the Montreal Protocol. Nor does this Notification refer to India's legislation on

the protection of the stratospheric ozone layer. There is thus no clear nexus between this measure and India's obligations under the Montreal Protocol, as required under Articles XX(b) or XX(g) of the GATT 1994.

30.6. Moreover, India's Ozone Depleting Substances (Regulation and Control) Rules, read together with their 2014 Amendment, provide for many exceptions for India's domestic products that contain ozone-depleting substances, including air conditioners. This suggests that India fails to apply its import ban "in conjunction with restrictions on domestic production or consumption" within the meaning of Article XX(g) of the GATT 1994, and instead applies its ban "in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail" within the meaning the chapeau of Article XX of the GATT 1994. Thailand provided many examples of these exceptions for India's domestic products during the meeting of the CMA of 19 October 2022.

30.7. For all these reasons, Thailand is convinced that India's prohibition on air conditioners is inconsistent with Article XI:1, and cannot be justified under Articles XX(b) or XX(g) of the GATT 1994. Thailand, therefore, insists that India's import prohibition on air conditioners, which has been in force for over two years, must now be amended or immediately repealed.

30.8. The delegate of Japan indicated the following:

30.9. Japan continues to express its concerns that India's import ban on air conditioners, including refrigerants, introduced in October 2021, is a measure that unreasonably imposes a restructuring of corporate supply chains. Japan is seriously concerned that this measure is likely to constitute an import ban that is inconsistent with Article XI:1 of the GATT, as well as Article 2.1 of the TRIMs Agreement.

30.10. India responded in previous CTG meetings that the measure was consistent with its obligations under the Montreal Protocol. However, Japan considers this import ban to be superfluous and irrational in that it covers a wide range of air conditioners that use refrigerants. Furthermore, these air conditioners are not subject to India's reduction, elimination obligations under the Montreal Protocol, or the regulation for freon gas causing ozone layer depletion under India's domestic regulation.

30.11. Although it was explained during the CTG's previous meeting that consideration was given to "reduce the risk to the human body, animals, and plants, etc.", it can be said that the fact that the measure covers all air conditioners which contain some kind of refrigerant is clearly an excessive regulation. In this regard, and after considering India's previous responses, Japan submitted written questions to the TRIMs Committee meeting in September 2021 to request more detailed explanations from India; no response was received, however. In order to move forward constructively in future discussions, Japan expects India to provide faithful and prompt answers to its questions.

30.12. In addition, and as previously mentioned, with regard to the IS Mark certification system based on the Quality Control Orders for air conditioners and their parts, which will come into effect in January 2023, and in order to prevent delays in the certification procedure for imported products, Japan requests that the BIS conduct smooth overseas factory inspections; or if it is difficult to travel overseas, Japan requests India to consider alternative procedures for certification other than overseas factory inspection.

30.13. The delegate of India indicated the following:

30.14. India thanks the delegations of Japan and Thailand for their continued interest in this issue. India has already shared details of these measures with the delegation of Japan, including their intention and ongoing developments. India draws Members' attention to notification G/LIC/N/2/IND/21 made by India to the Committee on Import Licensing under Article 5.1-5.4. This notification clearly spells out the details of the restricted import policy for hydrofluorocarbons, which are relevant to this agenda item.

30.15. The points raised by the delegation of Japan on inspection procedures have been addressed during the previous meeting of the TBT Committee. India also thanks the delegation of Thailand for

sharing relevant data during the previous meeting of the CTG, the previous meeting of the CMA, and again on this occasion. These questions are currently being examined by Capital.

30.16. The Council took note of the statements made.

31 KINGDOM OF SAUDI ARABIA, KINGDOM OF BAHRAIN, UNITED ARAB EMIRATES, THE STATE OF KUWAIT, OMAN, AND QATAR – SELECTIVE TAX ON CERTAIN IMPORTED PRODUCTS – REQUEST FROM SWITZERLAND AND THE UNITED STATES

31.1. The Chairperson recalled that this item had been included on the agenda at the request of the Kingdom of Saudi Arabia, the Kingdom of Bahrain, the United Arab Emirates, the State of Kuwait, Oman, and Qatar.

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

31.3. The United States, along with Switzerland, the European Union, and Japan, circulated questions in March 2021 to GCC member state Governments regarding the status of the selective tax on beverages. While the US appreciates the information provided at the Council's previous meeting, as well as in separate discussions with member State officials since then, the US notes that it has still to receive written responses to the questions from March 2021. The US requests the GCC member States to update the Council as to when such responses to those questions will be provided. As the US has conveyed before, it requests a substantive update on revisions to the GCC excise tax model and its implementation plan under the GCC Unified Excise Tax Agreement, and notes the importance of engagement with interested parties regarding this issue.

31.4. The delegate of Switzerland indicated the following:

31.5. As in the CTG's previous meeting, in July, Switzerland thanks the GCC member States for its previous contacts. Since its last meeting with the GCC authorities last May, Switzerland has reiterated its interest in receiving an update on the current state of play of the selective tax reform. Switzerland notes that, unfortunately, a decision by the GCC finance ministers, which was due during the autumn, is still outstanding. Switzerland is aware that the reform of the excise tax on beverages is a complex process. However, Switzerland would appreciate any information from our GCC colleagues as to why the implementation of the reform has been delayed, and on the date that is currently targeted.

31.6. Since the selective tax entered into force in June 2017, almost five and a half years have elapsed, and Members still know very little about the content of the new excise tax, and the date of its entry into force. Therefore, Switzerland would welcome another meeting with the GCC authorities in the beginning of 2023. Switzerland hopes that this trade irritant will be resolved in the near future.

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

31.8. The European Union welcomes the fact that the GCC excise tax system is under review and that a volumetric tax model based on international best practice is being considered based on the "Tax Reform Study". The EU understands that the "Tax Reform Study" commissioned by the GCC countries on the future GCC excise tax reform is expected to be finalized very soon, and that it will serve to inform the decisions of the GCC Ministers of Finance. The EU would ask if the finalized study report is going to be made public, and if the GCC could share the study with the EU. In addition, the European Union highlights the importance of a robust stakeholder consultation process with respect to forthcoming GCC proposals on the excise tax reform.

31.9. The European Union considers that the taxation of energy drinks at 100% under the present GCC excise tax regime is discriminatory and not in accordance with international legal obligations. It would therefore be important that the reform equalize the tax rate of energy drinks with the tax rates applied on other soft drinks with immediate effect. The EU will continue engaging with the GCC on this important issue.

31.10. The delegate of the Kingdom of Saudi Arabia, speaking on behalf of the Gulf Cooperation Council, indicated the following:

31.11. 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, the Kingdom of Saudi Arabia thanks the delegations of the European Union, Switzerland, and the United States for the interest they attach to 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.

31.12. As for the timeline of the ongoing process of the new GCC excise tax model and its implementation, the Kingdom of Saudi Arabia 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 a high standard excise tax model. In conclusion, an appropriate procedures and timeline will be adopted by the GCC member States for the revision of their excise tax regime. Once the process has been completed, the relevant information will be immediately shared with WTO Members.

31.13. The Council took note of the statements made.

32 UNITED STATES – THE RUSSIAN FEDERATION'S MARKET ECONOMY STATUS IN ANTI-DUMPING PROCEEDINGS – REQUEST FROM THE RUSSIAN FEDERATION

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

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

32.3. On 11 November, the US Department of Commerce, for the first time in its history, reversed the so-called market economy status of a WTO Member, Russia, and determined that non-market economy methodology should be applied to Russian exports. This event took place just a year after a decision of 2021 to retain the market economy status of the Russian economy in the context of an anti-dumping law. This impressive decision was based on equally impressive conclusions, among which Russian wishes to highlight some of the most memorable.

32.4. First, the US Department of Commerce considered as "non-market" those measures that were taken by Russia to stabilize its monetary and financial situation in response to US unilateral measures taken against it earlier in the year. Does the United States see its illegal bans to deal with Russian economic operators as market economy tools? If so, why then was Russia's reaction to such measures considered as evidence of non-market behaviour? The Department of Commerce totally ignores the elephant in the room. The root cause of Russia's stabilizing measures are offensive actions by Washington and its allies. Moreover, the Russian Federation did not do anything that had not been done by the US itself, or by its OECD partners, in cases of balance-of-payments issues. What is the problem with using the same policy tools as other Members in similar situations?

32.5. Second, the US Department of Commerce considered the draft law on possible nationalization of the property of foreign companies in Russia to be a non-market action. However, this draft has been in the State Duma for months without movement. It has not been adopted, quite simply; and it is simply not a measure in legal terms. However, according to the US Administration, a draft law already constitutes a reasonable sign of non-market behaviour. Remarkable wisdom. How shall we qualify the intention of the US and its allies to illegally confiscate the private property of Russian persons? How shall we treat freezes of Russian assets? Billions of dollars are at stake. Apparently, these steps should be considered as truly market behaviour because they were made by the US and its allies, right?

32.6. Third, concerning mustard – yes, mustard, one of the accusations for the change in market economy status was based on a newspaper review that had said that the company, which had bought the McDonalds business in Russia, "even used old McDonald's mustard packets rebranded with the new logo". It seems that, in the view of the US DoC, in market economy conditions the company should have burned the mustard packets for which it had paid money, and scattered their ashes in

the wind instead of just using rebranding the material for the ordinary operations of the newly acquired business. Is that right? It seems so in the US DoC's way of thinking.

32.7. Finally, the Russian Federation was not surprised that the Department of Commerce could not pass the references to control over Russian internal natural gas control pricing, even if this measure had existed for decades and been thoroughly described in the context of Russia's accession to the WTO. Suddenly, in 2022, it became a non-market factor. Just one thought pops up in the latest newspaper headlines. How about the US and its allies that are imposing, right now, price controls on imported oil and gas globally? Their actions are strengthening market relations in the global energy sector, right? Are we definitely missing something here?

32.8. It is unfortunate that a founding WTO Member, which claims leadership positions in our Organization, takes such poorly written decisions, with such weak economic rationale, which are based neither on rules nor common sense. And the icing on the cake – these decisions cannot be challenged. These decisions cannot be challenged, first, because the US has directly prohibited appeal decisions on market economy status, and second, because the same Member has unilaterally paralyzed the WTO's Appellate Body. And this is what a group of Members representing only around one eighth of the global population calls the rules-based international order.

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

32.10. For reasons that are self-evident to all, the United States will not engage with Russia in a business-as-usual manner. The United States continues to condemn Russia's premeditated and unprovoked invasion of Ukraine and its attempt to annex parts of Ukraine's sovereign territory.

32.11. The Council took note of the statements made.

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

33.1. 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.

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

33.3. It is unfortunate that, despite the United States and other WTO Members raising significant concerns with the CSAR and its implementing measures in the past ten TBT Committee meetings, and the past four meetings of the CTG, China has not sought to work with the United States and other WTO Members to reach a resolution.

33.4. The United States maintains that it has serious concerns with the CSAR and its implementing measures' likely inconsistency with China's TBT Agreement obligations, including unequal treatment for imports, overly burdensome and disproportionate information requirements, lack of procedures to ensure the protection of confidential and proprietary information, duplicative in-country testing, and continued challenges with transparency.

33.5. The United States refers to previous US statements for its unresolved concerns and questions.[79] However, the US once again raises this specific trade concern (STC) on the Council's agenda due to the pressing challenges that US industry is facing in trying to understand and comply with China's often unrealistic implementation timelines for CSAR and its various technical regulations, a situation that has been complicated even further by COVID-19 shutdowns. For example, NMPA requires product claims and some safety testing to be conducted at China Metrological Administration (CMA)-accredited labs. However, many of these labs have delays of four months or more due to the demand created by CSAR filing deadlines and COVID-19 shutdowns. US companies report that their test samples are also getting stuck when ports shut down.

[79] See, for example, document G/C/M/143, paragraphs 8.7-8.15.

33.6. The United States understands that some NMPA provincial offices are allowing companies to apply for individual product extensions, but this appears similarly burdensome, as companies must still meet initial CSAR deadlines and request approval for incomplete documentation.

33.7. Instead, the United States asks that China consider extending by two to three years the national CSAR implementation deadlines, including extending the deadlines that have already gone into effect, for the following measures: Guidelines for Cosmetic Safety Assessment (1459); Administrative Measures on Cosmetics Labeling (1515); Specifications for Cosmetics Efficacy Claim Evaluation (1526); and the Specifications for Registration and Filing of New Cosmetic Ingredients (1525). This will allow companies a realistic timeline to implement the extensive new requirements introduced by CSAR and would align more closely with the transition periods provided in other markets for extensive regulatory updates.

33.8. The United States also asks that China consider how it can rely more upon international recognition schemes for conformity assessment to reduce the costs and timelines for companies to comply with the extensive changes introduced by CSAR. For example, NMPA could accept claims and safety testing and documentation from overseas labs that are certified to good laboratory practices or good clinical practices per the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) guidelines.

33.9. US companies have also requested a means to engage with NMPA on questions arising from CSAR implementation, including regarding the new requirements and use of NMPA's new online platforms for product and ingredient filings. Does China have any plans for this? The US notes that China did not address its question about this in the TBT Committee earlier that month.

33.10. The United States requests that China continue to consider how these trade concerns expressed by the United States, and many other WTO Members, may be resolved in the implementation of its CSAR.

33.11. The delegate of Australia indicated the following:

33.12. Australia respects the right of Members to implement technical measures for legitimate policy purposes and in accordance with their WTO obligations. Australia, however, remains concerned that measures under China's CSAR and various implementing regulations, which entered into force on 1 May 2021, are more stringent than necessary for low-risk cosmetics. In that context, Australia asks that China pursue its objective of ensuring the safety and quality of imported cosmetics using less trade-restrictive measures.

33.13. Australia requests that China provide a reasonable transition period for cosmetics manufacturers to consider the regulation's requirements and make adjustments to their processes. Australia also requests that China clarify why it has maintained its requirement for mandatory animal testing of cosmetics products to be used on children, regardless of the level of risk presented by individual products.

33.14. Australian exporters are concerned about stringent and inflexible measures under the CSAR framework, particularly regarding testing, registration requirements, and requirements to provide detailed information on production processes and other aspects of their intellectual property. Australia also seeks clarification as to why "Good Manufacturing Practice" certification is deemed necessary for low-risk general cosmetics, and why governments need to provide such certification when commercial providers are equally capable of doing so.

33.15. Australia reiterates that it is a reliable supplier of high-quality and safe cosmetics products, domestically and to international markets. As it has said on previous occasions, the Australian Government stands ready to work with China to discuss the CSAR and our respective systems for cosmetics regulation.

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

33.17. The European Union would like to reiterate its concerns already shared in previous meetings of the CTG (July and November 2021, and April and July 2022) with regard to the Cosmetic Supervision and Administration Regulation in force since 1 May 2021.

33.18. On the mandatory disclosure of commercially sensitive information, touching on the intellectual property rights (IPR) of companies involved, in the registration process, the European Union requests China to consider the possibility to require continuous access to inspect the sensitive information of the companies' files, but without imposing the obligation to submit it to an external database.

33.19. On 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, the European Union notes, in particular, that the Chinese legislation requires both the specification issued by the raw materials manufacturer and the ingredient composition reported by the cosmetic companies in their product application to be exact matching figures, with any mismatch between the information provided by the raw material producer and the cosmetic companies making the application of the latter invalid. Given that the exact composition of raw materials is never completely stable, but may vary/evolve over time within certain limits, it is almost impossible to guarantee complete consistency between the figures. Furthermore, access to this database would reveal cosmetics' formulation. The EU encourages China to accept a range of values instead of exact matching figures.

33.20. On the need to publish a detailed summary of efficacy evaluation, which may impact business secrets, the European Union believes that these requirements are unnecessarily stringent to ensure consumer safety and traceability of the ingredients used in cosmetics, diverging from international practice. Such an extensive level of information is not required elsewhere in the world for notification and registration purposes, and the safety of consumers is always ensured.

33.21. Besides, the European Union reiterates that a differentiated approach is needed between new products and products already on the market. This would avoid a situation where product supply could be interrupted for an extended period of time due to insufficient preparation time for both industry and supervision authorities.

33.22. Finally, the European Union recalls that no laboratories have been accredited in EU countries. This means that, even if the CSAR rules do not impose local testing upon arrival in Chinese territory, *de facto* importers of cosmetics are forced to test their products in China. This requires sending samples only for these purposes, then undergoing the approval procedure, and only later importing cosmetics for sale. The EU would encourage China to facilitate the accreditation of laboratories in other countries, notably in the EU.

33.23. The delegate of Japan indicated the following:

33.24. Since the March 2019 meeting of the TBT Committee, Japan has continued to express its concerns about China's CSARs, as well as the related implementing regulations. Japan requests the following in terms of the safety and efficacy evaluation of cosmetics: (i) to accept the test results of overseas inspection institutions that have the same qualifications and capabilities as the domestic cosmetics registration inspection institutions in China; (ii) to approve test methods that are internationally recognized by the OECD, the ISO, and others, in order for the regulations not to be overly regulated; and (iii) for cosmetics registrants/notifiers themselves to be able to make individual judgements based on scientific validity so that efficacy appeal evaluation methods do not become unnecessarily strict requirements.

33.25. Japan is of the view that there is a problem in that, when a cosmetics manufacturer registers cosmetics with the authorities, it is required to provide information about the raw material manufacturer of the cosmetics. This practice is a heavy burden both on the cosmetics manufacturers and raw material manufacturers. Therefore, appropriate action is required so as not to make excessive demands in light of legitimate purposes. In addition, Japan requests that the labelling rules be consistent with international practice, so that the measures do not unnecessarily restrict trade. In conclusion, Japan requests that, when implementing new regulations, a sufficient grace period is provided before enforcement, so that manufacturers can newly adapt their products in accordance with the new requirements.

33.26. The delegate of New Zealand indicated the following:

33.27. New Zealand has raised this issue at the WTO on a number of occasions, including in the Council's previous meeting, in July, and in the July and November TBT Committee meetings. New

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

33.28. New Zealand's concerns in relation to China's regulatory system for cosmetics are well documented. In particular, New Zealand wishes China to consider additional measures to allow for the following: the exemption of animal testing requirements through non-government regulatory authority-issued GMP certification or other trade facilitative mechanisms for providing product assurances; providing flexibility in respect of product testing requirements – in particular, New Zealand encourages China to accept test reports from accredited laboratories situated outside of China; and further limitations on product disclosure requirements, particularly in relation to sensitive information – that is, information limited to that which is required to assure product safety in China's domestic market, so as not to compromise intellectual property.

33.29. New Zealand appreciates its recent constructive bilateral engagement on cosmetics issues and looks forward to engaging further with China on its CSAR to address these issues.

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

33.31. The Republic of Korea reiterates its concerns with the CSARs and its implementing measures, and refers to its statement delivered at the most recent meeting of the TBT Committee. Korea respects China's right to ensure product safety and appreciates its continued cooperation in responding to Korea's comments. However, Korea remains concerned with several points which China failed to fully address in its finalized specifications and regulations. As previously mentioned, Korea's businesses are still facing many issues in fulfilling requirements, particularly in relation to testing laboratories, labelling requirements, and the scope of information disclosure, which impose negative effects for both nations' industries. For these reasons, Korea requests China to harmonize its regulation with widely recognized international practices so as not to raise unnecessary barriers to trade. Korea remains ready to continue its constructive engagement with China to resolve these issues.

33.32. The delegate of China indicated the following:

33.33. As the same trade concern was raised and discussed in the most recent meeting of the TBT Committee, just one week before, China asserts that, for the time being, it has no further update on this issue. Therefore, China wishes to refer to its statement made in the TBT Committee meeting of 17 November.

33.34. The Council took note of the statements made.

34 MEXICO – CONFORMITY ASSESSMENT PROCEDURE FOR CHEESE UNDER MEXICAN OFFICIAL STANDARD NOM-223-SCFI/SAGARPA-2018 – 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 remains highly concerned with Mexico's revised measure. Could Mexico provide a timeline for when it will respond to WTO Members' comments? Could Mexico please provide an update on the status of this measure and an estimated time-frame of when the revised measure will be notified to the WTO?

34.4. The United States reiterates its request that Mexico consider allowing fatty acid analysis to be voluntary rather than mandatory. Currently, there are no internationally well-accepted biomarkers to differentiate milk fat from vegetable fat. Additionally, there are no relevant Codex or other international standards available for this type of analysis.

34.5. The United States is concerned this measure may conflict with the ongoing redrafting of the corresponding cheese standard. How will Mexico harmonize its update to the NOM-223 cheese standard with the NOM-223 cheese CAP notified to the WTO on 8 February 2022? Once finalized, will implementation of the measure move forward based on Mexico's Quality Infrastructure Law or the law it replaced, the Federal Law on Metrology and Standardization? Could Mexico provide clarification on the different roles that each Ministry will play in the monitoring, compliance, and verification activities listed in the draft measure? Has Mexico considered extending its eventual timeline for implementation of the measure to a period of 12 months or more? If Mexico proceeds with implementation of the current measure, the United States (Government and industry) would need at least one year to launch systems to comply.

34.6. The United States urges Mexico to indefinitely delay implementation of the measure and consider less trade-restrictive alternatives as previously proposed by the US Government, other WTO Members, and industry stakeholders.

34.7. The delegate of New Zealand indicated the following:

34.8. New Zealand welcomes the opportunity to again speak in support of this STC raised by the United States, and notes that it has also done so in the TBT Committee. New Zealand considers that the conformity assessment procedures that Mexico has set out for cheese under NOM-223 are more trade restrictive than necessary, with some aspects of the conformity assessment procedure creating unnecessary obstacles to international trade and likely to cause difficulties for New Zealand's exporters. New Zealand supports the request for Mexico to consider less trade-restrictive alternatives to the measures. New Zealand looks forward to receiving a response from Mexico to the concerns raised, and an update on the status of any revised version of the Conformity Assessment Procedure.

34.9. The delegate of Mexico indicated the following:

34.10. Mexico thanks the delegations of the United States and New Zealand for their comments. As mentioned during the previous week's meeting of the TBT Committee, Mexico reaffirms its commitments on transparency in the TBT Agreement and its correlatives in the free trade agreements to which it is a party. As noted, the competent standard-setting authorities are currently continuing the process of analysing the comments received during the public consultation period. Once the authorities have exhausted this process, the final version of the measure will be duly shared and notified to WTO Members. In addition, the Government of Mexico reaffirms its commitment to ensure that the entry into force and the implementation process of the measure will be carried out in accordance with the Quality Infrastructure Law, which provides for compliance with the principles contained in the TBT Agreement, and its correlatives in the free trade agreements to which Mexico is a party.

34.11. The Council took note of the statements made.

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

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

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

35.3. As it had noted most recently at the November 2022 meetings of the TBT and SPS Committees, the United States once again reiterates its serious concerns with India's measure mandating "non-GM (genetically modified) origin and GM free certificates" for certain agricultural imports into India, notified on 2 September 2020, as document G/TBT/N/IND/168, and a later notified entry-into-force date of 1 March 2021. To date, India has not responded to US questions regarding its rationale for requiring a non-GM certificate on a consignment basis.

35.4. India has previously referenced its Environment Protection Act (1986), Rules 1989, and the absence of Genetic Engineering Approval Committee (GEAC) approvals for the 24 crops listed in the Order as evidence that the non-GM requirement is neither new nor trade restrictive.

35.5. The United States must stress that, while India's authority to regulate "GM" foods is neither new nor in question, the requirement of a non-GM certificate from a competent authority on a consignment basis was first ordered in 2020 and caused trade disruptions to US apple and rice shipments in 2021. The absence of approvals from GEAC highlights the lack of transparency and inefficiency in the approval process, compounding the burden India is placing on its trading partners.

35.6. The United States again encourages India to accept its offer for technical cooperation to explore alternatives to this measure.

35.7. The delegate of Argentina indicated the following:

35.8. Argentina reiterates its concern over this measure and once again stresses that there is no scientific explanation to support it. As Argentina has expressed previously in this Council and in the TBT Committee, it is concerned that this requirement would set a precedent for other products or even their derivatives to be included in the future, and that this requirement becomes an obstacle to trade.

35.9. The delegate of Paraguay indicated the following:

35.10. Paraguay wishes to register its support for this concern, which it also supported at the most recent meetings of the SPS and TBT Committees, and in the interests of time, and given the lengthy agenda for the Council at this session, requests that the records of the meeting reflect its previous interventions.[80]

35.11. On this occasion, Paraguay wishes merely to stress that this measure, which purportedly seeks to achieve safety and human health objectives, has not been notified to the SPS Committee; accordingly, Paraguay urges India to notify this measure to the SPS Committee immediately. Similarly, Paraguay recalls that the conventional counterparts of GMOs do not provide different properties from a safety point of view, or additional benefits for human health based on science and, therefore, Paraguay sees no scientific justification for this regulation. Paraguay once again urges India to provide the scientific justification and relevant risk analyses underpinning the measure and, in the event that it cannot do so, that it withdraw the measure as soon as possible.

35.12. The delegate of Canada indicated the following:

35.13. Canada thanks the United States for placing this item on the agenda. Canada wishes to reiterate its concerns raised at previous meetings of the TBT Committee, the SPS Committee, and the CTG, regarding India's non-GM Order, which mandates that a non-genetically modified (non-GM) or GM free certificate accompany imported consignments of 24 imported food products. Canada is concerned with the lack of scientific support for India's measure given the broad scientific consensus that GM products are as safe as their conventional counterparts. Canada is equally concerned with the undue burden and negative commercial impact the measure imposes on exporting countries through unjustified certification requirements. Canada requests once again that India suspend the implementation of this measure and permit trade to continue without a GM-free certificate requirement. This would enable India to engage with Members to discuss and consider alternate, less trade-restrictive approaches that would meet India's objectives and minimize impacts on trade.

35.14. The delegate of Japan indicated the following:

35.15. Japan expresses its concern that there may be a possibility that this would constitute a trade-restrictive measure that is not based on scientific evidence. Japan requests that agricultural products exported from exporting countries that exercise proper control of their genetically modified agricultural products be excluded from this requirement.

[80] See document G/C/M/143, paragraphs 30.14-30.15.

35.16. The delegate of India indicated the following:

35.17. India thanks the delegations of the United States, the European Union, Australia, and Canada for their continued interest in this issue. The statements delivered in previous CTG and TBT Committee meetings still hold. In addition, India wishes to make the following points.

35.18. The Environment Protection Act (1986) and its Rules prescribe that no person shall import or export genetically engineered organisms/substances or cells except with the approval of the GEAC.

35.19. DGFT Notification No. 2 (RE-2006)/2004-2009, dated 7 April 2006, on "Import of Genetically Modified Food" states that import of GMOs/LMOs for Food will be governed by the provisions of the Environment Protection Act, 1986 and Rules 1989.

35.20. The GEAC has so far not approved any of the crop varieties of Genetically Modified/Engineered origin listed on the Order mentioned above.

35.21. To date, exporters from several trade partners, including the United States, the United Kingdom, Australia, Canada, Turkey, Iran, China, Thailand, and the European Union, including Italy, Germany, and France, are already providing requisite certificates. Hence, in India's assessment, this order is not trade-restrictive.

35.22. On similar lines, India also issues such certificates for its own exports to other countries. The Government of India has authorized the Export Inspection Council (EIC) to be the nodal agency for issuing Non-GMO certificates for export consignments.

35.23. The EIC has issued more than 9,000 Non-GMO certificates for the export of primary food crops, as well as processed food products, for export to several countries.

35.24. Against this background, India requests the interested delegations to share specific issues being faced with respect to this order.

35.25. The Council took note of the statements made.

36 PANAMA – ONIONS AND POTATOES HARVEST LIFE AND SPROUTING – REQUEST FROM CANADA AND THE UNITED STATES

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

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

36.3. The United States continues to raise its concerns on Panama's newly implemented technical regulations for onions and potatoes. Since the last meeting of the CTG, the US has continued its attempts to constructively engage with Panama on this issue. Panama continues to be unresponsive to these requests, and has still not provided the scientific justification for these measures. The US maintains its availability and commitment to work with Panama to refine the measures so that they meet Panama's legitimate objectives while not being unnecessarily restrictive. In the interim, the US 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.

36.4. The delegate of Canada indicated the following:

36.5. Canada wishes to raise this STC regarding Panama's new quality requirements for fresh potatoes established by the Ministry of Industry and Commerce on 20 February 2020. As a long-standing supplier of fresh potatoes to Panama with year-round exports, Canada continues to be concerned that implementing these new quality requirements could have a direct impact on its ability to export potatoes to Panama.

36.6. Canada recognizes that Panama delayed the implementation of these measures to allow for further consultations with trading partners and is appreciative of Panama's participation in a bilateral

technical meeting which was held in September 2021, to address elements of concern on this issue. However, despite this positive engagement, Canada notes that its concerns were not taken into account by Panama in the latest version of its quality requirements, which were implemented on 17 February 2022, and for which notification to the WTO was provided after the fact, on 21 February 2022.

36.7. On 14 April 2022, Canada provided comments to Panama's Ministry of Commerce (MICI), on Panama's notification to the WTO, reiterating its concerns with restrictive time-limits for storage and marketing, as well as the zero tolerance for sprouting. To date, Canada has not received a response from Panama. Therefore, Canada wishes to know when Panama will respond to Canada's comments. Canada respectfully requests that Panama pause the enforcement of these requirements to allow for additional technical dialogue to occur, and to ensure that Panama's quality standards do not create unintended barriers to our mutually beneficial bilateral trade in agriculture.

36.8. The delegate of Panama indicated the following:

36.9. Panama thanks the delegations of the United States and Canada for their comments and takes note of their concerns. Panama has been receptive to comments from its trading partners, as evidenced by the extension granted to the onion measure. As Panama stated to the US delegation at a recent bilateral meeting, as well as in the TBT Committee, it reaffirms its commitments on transparency, and points out that the Panamanian authorities continue to address this issue in Capital with all the relevant government bodies, including the Ministry of Trade and Industry, the Panamanian Food Authority, and the Ministry of Agriculture. Panama reiterates that any updates will be duly shared and notified to this Council.

36.10. The Council took note of the statements made.

37 EUROPEAN UNION – DRAFT COMMISSION REGULATION AMENDING ANNEXES 2 AND 5 TO REGULATION EC NO. 396/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS TO MRLS FOR CLOTHIANIDIN AND THIAMETHOXAM IN OR ON CERTAIN PRODUCTS – REQUEST FROM THE UNITED STATES

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

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

37.3. The United States shares the European Union's concerns about pollinator health and is actively working to protect bees and other pollinators in the United States. To date, the global scientific and regulatory community has found that complex interactions among multiple factors affect pollinator health, including the health of bees.

37.4. Given the critical importance of the pesticides identified in the Regulation as part of integrated pest management, or IPM, programs on crops that are exported to the EU by many countries, the proposed measure appears to pose a significant obstacle to international trade and production of agricultural products.

37.5. Use of pesticide MRLs is intended to manage the food safety risk of treated imported food products upon arrival into a market. MRLs are not intended to be an environmental safety management tool, and their use for this purpose may have unintended consequences that could undermine the development and use of international standards for food safety.

37.6. In the November SPS and TBT Committees meetings, the United States asked the European Union to explain how the conclusions from these risk assessments supported the reduction of MRLs to the limit of determination (LOD) for the impacted products. The US further asked the EU to provide any analysis and studies that it conducted to review production systems outside the EU.

37.7. The United States is concerned by the apparent lack of the scientific or technical information that demonstrates how the reduction of these MRLs to the LOD contributes to the objective of the protection of pollinators, including bees. The US is also uncertain about the objective criteria the EU

will use in assessing applications for import tolerances under this Regulation, and asks that the EU provide more detailed information on such criteria.

37.8. In the absence of scientific or technical information indicating how the reduction of MRLs to the LOD on the impacted products contributes to the objective of protection of pollinators, including bees, the United States requests that the European Union maintain its current MRLs for clothianidin and thiamethoxam.

37.9. Complex environmental challenges require collaboration across the global community; unilateral approaches based on incomplete science may complicate or further delay meaningful progress on these pressing issues while unnecessarily affecting agricultural production and trade. In place of the European Union's proposed regulation, the United States would welcome a collaborative approach to protecting pollinators and the opportunity to contribute resources, scientific expertise, and new ideas.

37.10. The delegate of New Zealand indicated the following:

37.11. New Zealand supports the European Union's overarching ambition to mitigate climate and environmental challenges as set out in the policies presented through the Green Deal. However, New Zealand holds concerns that unilaterally imposing prescriptive import measures that do not account for the realities of food production in different geographical and climatic contexts may hinder efforts to address global environmental challenges. For example, the proposed import measures may undermine efforts to achieve sustainable food systems through impacts on food security and rural development, particularly in developing and least developed countries. Policy measures and tools, particularly those with a global impact on trading partners, need to identify tensions and trade-offs between objectives and carefully consider their impacts across the food system.

37.12. New Zealand encourages the European Union, and all WTO Members, to address global environmental issues, including sustainable pesticide use, by working with trade partners in multilateral forums and recognizing that different production and regulatory systems can deliver similarly desirable environmental outcomes.

37.13. Given the complex nature of global food supply chains, it is New Zealand's view that countries must act together to improve the sustainability and resilience of food systems. Like the European Union and other Members, New Zealand is invested in tackling those barriers that impact beyond borders. However, New Zealand urges Members to develop environmental measures in a way that supports transparent and open dialogue, including through proactive and regular engagement with trading partners. Such an approach recognizes that there is no "one-size-fits-all" model for addressing global environmental issues, and that tailored solutions, accounting for differences in production systems, can be more effective and durable in delivering desirable environmental outcomes.

37.14. New Zealand further encourages Members to use measures that are founded on sound science, are risk based, take a least trade restrictive approach, can be applied flexibly and realistically, and which genuinely achieve the legitimate and intended outcome. International limits and guidance should be adopted where available. New Zealand is also interested in understanding the European Union's rationale and justification for using an SPS tool to introduce proposed measures with the stated aim of addressing a global environmental concern.

37.15. The delegate of Paraguay indicated the following:

37.16. Paraguay wishes to express its support to this item and recalls that it has covered this issue extensively under Agenda Item 6. In this line, Paraguay requests to clarify, given that it has received questions in this regard, that the questions circulated to the European Union and its member States were posed in the circumstances of the most recent meeting of the SPS Committee, and are included in document G/SPS/GEN/2076. These questions were formulated following up on, and because of, document G/SPS/GEN/2038, circulated by the European Commission.

37.17. Paraguay reiterates that some of these questions had already been addressed to the Commission in March, particularly those relating to emergency authorizations in general. Given the Commission's evasiveness, Paraguay is presenting them again, and this time addressed, on some

occasions, to individual member States. This last set of questions is relevant to this trade concern, as it includes specific matters related to emergency authorizations for neocotinoids, and EFSA's evaluations for the determination of justification for said authorizations, in the specific cases cited. Finally, Paraguay requests answers from the European Union as soon as possible.

37.18. The delegate of Ecuador indicated the following:

37.19. Ecuador thanks the United States for including this concern on the Council's agenda. Ecuador reiterates its concern in relation to this matter, in line with the statements it made in relation to Agenda Item 6, and at the SPS and Market Access Committees. It is relevant to recall that MRLs are trading standards developed to ensure there are no unacceptable risks to the health of consumers as a result of pesticide residues in food. At the same time, the standards promote good agricultural practice in food production.

37.20. The primary objective of the European law in establishing MRLs was to "ensure a high level of consumer protection". The new proposal for a regulation would distort the objective of Regulation 396/2005, since it would shift the approach to "European consumer" protection and add unilateral consideration of "environmental factors" in countries outside the territory and jurisdiction of the European authorities.

37.21. If that approach were to gain acceptance, third parties' points of view would not be included, especially the views of autonomous specialist technical bodies that are independent of their trading partners. This method of working could lead to the imposition of unilateral practices which, without providing a right to reply or giving a proper hearing to dissenting points of view, are likely to affect farmers' competitiveness adversely, for example farmers in developing countries who are facing specific, demanding scenarios with regard to agricultural production. The extraterritorial nature of the measure calls into question the capacity of third countries' authorities to care for and manage their natural resources, and to use production methods and tools appropriate to their social, economic, and environmental circumstances.

37.22. Moreover, adjusting to new MRLs is likely to increase the cost or quantity of fertilizers and pesticides. The development of new substances to replace those that would be withdrawn from the market is either in the experimental stage or comes at such a high cost that they are unaffordable to small and medium-sized producers. In practice, the absence of a replacement would lead to a return to the use of lower tech products with greater toxicity that must also be applied more liberally with a much bigger environmental footprint. We ask whether this is how we want to protect the environment?

37.23. Sustainability rests on three pillars: social, economic, and environmental. It is crucial not to lose sight of the convergence of these three aspects. When adopting measures on MRLs, account must be taken of the negative effects that they will have on the other sustainability pillars in the European Union's trading partners, particularly if they are developing countries. When it comes to its member States, even the European Union itself is no stranger to this flexibility. Where necessary, European producers are able to make emergency use of substances that are officially "not authorized". Therefore, Ecuador stresses that there are sufficient regulatory and technical grounds, as well as sufficient grounds of principle, for the European Union to maintain the current maximum levels for third countries as import tolerances.

37.24. The delegate of Japan indicated the following:

37.25. The reduction of MRLs for two active ingredients for the purpose of protecting pollinating insects outside the region is clearly different from the conventional method of setting MRLs for the purpose of protecting human life or health. It deviates from the international harmonization of MRLs. When introducing new approaches to measures that affect non-EU countries, such as MRLs, it is necessary to fully discuss these approaches with them, including through the SPS Committee.

37.26. Regarding the protection of pollinators around the world, rather than uniformly forcing each country and region to follow the methods proposed by the European Union, the most rational and effective measure is for each country and region to consider its own climate, soil conditions, pesticide usage, as well as other environmental factors, judging from the results of environmental impacts

and feasibility thus far. Japan has submitted its comments on the TBT notification, and kindly requests the European Union to consider these comments carefully.

37.27. The delegate of Brazil indicated the following:

37.28. Brazil believes that the current EU proposal runs contrary to Article 2.2 of the TBT Agreement as it goes beyond the scope of the TBT Agreement's unilateral policy support aimed at protecting the environment in third countries. Besides the need for further discussion, on a sound scientific basis, about the risks that both substances may have on the bee population worldwide, Brazil understands that one could not expect to extend to all countries of the world trade restrictive measures that do not consider the variety of local conditions, including climate and soils. Furthermore, there are different needs and challenges caused by agricultural production in each country. The EU affirms that its restrictive measure would seek to avoid a transfer of adverse effects on bees from production in non-EU countries. However, for Brazil, the EU's approach is not properly considering that many countries, including Brazil, have their own procedures. Furthermore, Brazil believes that due to its extra-territorial effects, the EU's proposed regulation goes against the rules and jurisprudence of the multilateral trading system. In Brazil, the state of Sao Paulo is the main producer of citrus and is also where 84% of honey production is concentrated. In that state, there is no evidence of a decline in the number of pollinators. On the contrary, honey production in that region has increased by 136% in the last 15 years.

37.29. The delegate of Australia indicated the following:

37.30. At the outset, Australia wishes to refer to its statement delivered at the most recent meeting of the TBT Committee. Australia recognizes the right of WTO Members to regulate agricultural imports for legitimate policy purposes. However, 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 does not support using MRLs on imported products to achieve environmental outcomes outside the EU's borders. This extra-territorial approach impacts on the ability of third countries to implement environmental policies consistent with their unique environmental circumstances. Indeed, national authorities of third countries are best placed to ensure that pesticide application is undertaken in a responsible and sustainable manner in each country. Australia also refers to its earlier statement under Agenda Item 6.

37.31. The delegate of Argentina indicated the following:

37.32. Argentina fully shares the European Union's genuine interest in the strategic importance of pollinators for the global environment, especially bees for ecosystems and biodiversity. Likewise, as a major food producer, it recognizes the significant contribution they make to agriculture and global food security. This is why, like many other countries, Argentina has taken extreme measures to provide producers with the tools needed for adequate plant protection, so as to enable them to continue producing food while at the same time, through good agricultural practices, reducing the effect on pollinators from the use of certain products. However, everything seems to suggest that this measure notified by the European Union will, rather than protect the environment or pollinators, result in the creation of an obstacle undermining the ability of third-country producers to export to the EU.

37.33. Various studies from around the world show that the decline in the number of pollinators has multifactorial causes and that neonicotinoids, clothianidin and thiamethoxam are safe for bees when used following good agricultural practices and are absolutely necessary to control certain pests in extensive farming. In this case, the notified measures are not based on a risk analysis of the toxicity levels in all food and feed notified and the consequent effect on human health and life of both neonicotinoids within EU-member-State territory. Instead, the draft Regulation in question appears to be based on risk assessments of the exposure of bees to these neonicotinoids used outdoors, as the EU's stated objective is to address an environmental concern of a global nature, namely the decline in pollinators worldwide. Seen in this light, the draft Regulation would be inconsistent with the EU's obligations, as it has failed to provide a scientific assessment under the terms of the SPS Agreement (Articles 2.2 and 5.1) to justify the adoption of the measure in question.

37.34. Irrespective of whether or not the objective sought is legitimate, the European Union's measure will result in a virtual ban on access to its market for a wide range of food and feed products,

which would seriously affect any exporters to the Community market that failed to ban the outdoor use of clothianidin and thiamethoxam in their respective territories within 36 months from the application of the new MRLs. Argentina therefore believes that the trade-disruptive impact that the reduction of the MRLs would have on all the products covered by the measure would not be proportional to the objective sought by the EU. In this regard, the draft Regulation would be contrary to the obligations set out in Articles 2.1 (to ensure that measures are applied only to the extent necessary), 5.4 (to minimize negative trade effects), and 5.6 (to avoid unnecessary trade-restrictive measures) of the SPS Agreement.

37.35. Equally of concern to Argentina is that implementing the measure would amount to a disguised restriction on international trade, contrary to the provisions of Article 5.3 of the SPS Agreement. This observation is based on the fact that the performance of pollinators does not depend exclusively on the two substances banned by the European Union, as well as the fact that the many emergency uses authorized by the EU under conditions that could not be extrapolated to third countries (export).

37.36. For these reasons, Argentina has submitted a number of comments on notification G/TBT/N/EU/908, to which it is awaiting the European Union's reply.

37.37. The delegate of South Africa indicated the following:

37.38. South Africa thanks the United States for placing this item on the Council's agenda. South Africa shares the concerns raised under this agenda item, including those delivered under related agenda items, particularly with regard to the European Union's CBAM and the EU green deal in general. South Africa is concerned about the systemic implications of unilateral environmental measures that the EU is increasingly adopting to the detriment of exports, especially of developing countries. South Africa joins the United States and other Members that have spoken before it to raise concerns with the EU Regulation on import tolerance regarding MRLs for clothianidin and thiamethoxan (pesticide and active substance) in or on certain products.

37.39. South Africa is committed to sustainability in all its dimensions and efforts towards environmental protection and climate change mitigation in line with relevant multilateral environmental agreements in the appropriate international multilateral forums, including the principles thereto, that is, CBDR and Respective Capabilities.

37.40. While South Africa shares the European Union's goals for food systems transformation, and the commitment to address climate change and biodiversity loss by continuing to pursue more sustainable and resilient food systems, South Africa however underlines that addressing issues of global commons requires multilateral solutions and not unilateral and extra-territorial trade measures such as those being introduced by the EU that seek to impose its own domestic regulatory approaches on trading partners.

37.41. South Africa notes that the lowering of MRLs for clothianidin and thiamethoxan substances expands the scope of existing MRLs regulations beyond consumer protection to environmental considerations. The proposed measure of lowering MRLs for clothianidin and thiamethoxan substances will have an adverse effect on agricultural and agri-food exports to the European Union. Ultimately, the proposed measure will unnecessarily restrict trade of safe agricultural products, disrupt production, and negatively affect the livelihoods of small and rural producers in South Africa.

37.42. Countries have unique sustainability objectives and challenges. Amongst other related climate challenges, South Africa has high pest and diseases pressures due to a combination of heat, humidity, and moisture emanating from different weeds, pests, and fungi. Addressing these challenges requires the use of diverse methods, tools, and technologies to sustainably meet the world's growing demand for food and feed in the face of climate change.

37.43. South Africa calls for transparency as well as science and risk-based decision-making driven by available data to enhance sustainability in agriculture and urges the European Union to take cognizance of climate conditions, crop-pest matrices, and the socio-economic conditions of developing and underdeveloped economies in the development and implementation of the measure.

37.44. South Africa also reminds the European Union that it raised similar concerns at the most recent meeting of the TBT Committee, including questions that we trust the EU will respond to. These included: (i) confirmation that, if this regulation is enforced, the MRLs will decrease to 0.01 mg/kg for all products? If not, what are the applicable product specific levels; (ii) confirmation that the EU has banned the use of clothianidin or thiamethoxam in all applications, including the use in permanent greenhouses. If not, will these products also have to adhere to the new MRLs; and (iii) since the EU has implemented the ban on the outdoor use of clothianidin or thiamethoxam, what alternatives are used in the EU and what was the cost implications to farmers?

37.45. The regulations include the following statement: "in order to meet the needs of international trade, applications for import tolerances for clothianidin or thiamethoxam may be submitted pursuant to Article 7 of Regulation (EC) No. 396/2005 and should provide relevant information to demonstrate that the good agricultural practices applying for the specific uses of the active substances are safe for pollinators".

37.46. What is the process to be followed and what is the proposed turn-around time?

37.47. The delegate of India indicated the following:

37.48. India wishes to thank the European Union for notifying Members, via document G/TBT/N/EU/908, of its MRLs for clothianidin and thiamethoxam, and the United States for putting this item on the Council's agenda. India understands that the EU is considering lowering existing MRLs for pesticides no longer approved in its jurisdiction due to environmental concerns, such as some neonicotinoid insecticides, to the default value and not considering new requests for import tolerances. This approach is not restricted to this notification, and for many products, the residual pesticide limits have been set at 0.01 mg/kg. EFSA has noted that the default MRL of 0.01 mg/kg applies to nearly 690 pesticides that are not explicitly mentioned in the MRL legislation.

37.49. As is evident from the comments by other trading partners, there are concerns with the setting of default MRLs for many products because this imposes a standard that may need to be sufficiently scientifically founded on imports from other countries. Some of the products not grown in the European Union face these thresholds. This disregards the competence of the other countries' chemical regulators and artificially subjects them to a requirement that is neither scientific, evidence-based, nor practicable to be commercially employed. The EU often cites concerns related to protecting its citizens. However, even that remains questionable as citizens of other countries are found to be comfortable without those requirements; at the same time, the studies relied on by the EU are noted to need to be sufficiently representative of the EU citizen pool in some cases. For cases where environmental concerns are cited, India reminds the EU that it is important to respect each Member's right to set its regulations for environmental protection.

37.50. This approach adopted by the European Union also fails to recognize the efforts of international scientific panels and standard-setting bodies, such as the Joint FAO/WHO Meeting on Pesticide Residues and the *Codex Alimentarius*, in establishing a safe and harmonized level of pesticide residues in agricultural products. In these circumstances, India urges the EU to revise its practices and avoid unnecessary trade disruption, ensuring compliance with its obligations under the WTO while setting MRLs and considering requests for import tolerances. India also requests the EU to respect the regulatory authorities of other countries and their positions, especially when more than a few countries share a common understanding, and not to impose arbitrary MRL standards, preventing unnecessary disruption to trade in safe products.

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

37.52. The European Union takes note of the interest by the United States on this issue. The draft Regulation on lowering the MRLs for the two neonicotinoid substances clothianidin and thiamethoxam was notified to the TBT Committee on 6 July 2022 (G/TBT/N/EU/908). The comments were shared with the EU member States and discussed at the meeting held in September 2022, where the member States endorsed the proposal. The Regulation will now be scrutinized by the Council and the European Parliament. If no objection is raised, the European Commission will adopt the Regulation in early 2023.

37.53. This draft Regulation is the first one implementing the new policy announced in the European Green Deal, and more specifically the Farm to Fork Strategy, on imported food in relation to pesticides residues. The environmental aspects that this Regulation targets are those related to the protection of pollinators. This is an issue of global concern, which cannot be solved through actions at EU level alone. The Regulation is lowering the MRLs for the two neonicotinoid substances clothianidin and thiamethoxam. These substances are known to contribute significantly to the decline of pollinator populations because of their intrinsic properties that lead to adverse effects on pollinators independent of where they are used geographically.

37.54. The European Union considers that currently there is no alternative to the lowering of the MRLs of clothianidin and thiamethoxam which would be less trade restrictive and equally contribute to the objective of protecting pollinators. Based on current knowledge, reducing the use of neonicotinoids is an effective and preventable action to tackle the decline in pollinators. According to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), a clear consensus exists regarding the fact that both wild and managed bees are exposed to pesticides (mainly through nectar and pollen, in the case of the neonicotinoids), and that the range of sub-lethal effects is quite broad.

37.55. The European Union acknowledges that the decline in pollinators worldwide is sufficiently supported by solid scientific evidence; multiple factors explain the decline. In this regard, the draft Regulation is coordinated with other EU programmes and international activities such as: (i) the European Union pollinators initiative, which aims to improve scientific knowledge about insect pollinator decline, tackle its main known causes, and strengthen collaboration between all the actors concerned; and (ii) the active EU collaborations with FAO in its "Global Action on Pollination Services for Sustainable Agriculture", and with the International Union for Conservation of Nature (IUCN) on projects to address the decline of pollinators.

37.56. The European Union wishes to clarify that the draft Regulation is not requiring third countries to ban the use of clothianidin and thiamethoxam in their own territory. If the harvested crop, however, is destined to be placed on the EU market, it will have to comply with the MRLs in place in the EU. The EU is bound by the WTO rules and is acting accordingly. The WTO rules allow Members to adopt measures necessary to achieve a legitimate objective, which in this case is the protection of pollinators, a global environmental concern.

37.57. With regard to possible trade impacts: (i) the draft Regulation includes trade facilitating provisions, mainly to defer the application date of the Regulation to 36 months after entry into force (instead of six months, which is the standard period foreseen by WTO rules) and to allow products placed on the market before the application date to remain on the market until the end of their shelf life; and (ii) the European Union acknowledges that third countries may face production conditions and pest pressures different from those in mainland Europe. Therefore, import tolerances can be granted to active substances not authorized in the EU provided that the submitted information demonstrates that the use is safe to pollinators.

37.58. The European Union remains available to discuss this matter further with any interested Member.

37.59. The Council took note of the statements made.

38 AUSTRALIA – 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's concern on this issue remains, as Australia continues to implement market access restrictions on relevant Chinese 5G products without providing any reasonable rationale and concrete evidence. These discriminatory measures are inconsistent with WTO rules and seriously affect the operation and legitimate interests of relevant Chinese enterprises. Therefore, China urges

Australia to bring its measures into line with the WTO rules, and to provide a fair, transparent, and non-discriminatory environment for Chinese companies to operate in Australia.

38.4. The delegate of Australia indicated the following:

38.5. Australia notes China's statement. Since China first raised this issue in the WTO, in late 2018, Australia has engaged constructively with China to explain the rationale for its position on 5G networks. Australia also notes that other WTO Members have taken similar decisions in their national interest on equipment for national 5G networks. As Australia has previously stated, its position on 5G networks is country agnostic, transparent, risk-based, non-discriminatory, and fully WTO consistent. Australia looks forward to continuing to engage with China to explain the rationale for its decisions, and to allay any concerns.

38.6. The Council took note of the statements made.

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

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

39.2. The delegate of China indicated the following:

39.3. China regrets to have to raise this issue again, as Sweden has not yet provided China with any credible explanations and evidence regarding Sweden's non-transparent, discriminatory measures against the products of Chinese companies Huawei and ZTE, which have been operating in Sweden for more than 20 years. China urges Sweden to bring its measures into line with WTO rules, and provide a fair, transparent, and non-discriminatory environment for Chinese companies to operate in Sweden.

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

39.5. The European Union notes that the matter raised by China in relation to the recent Swedish 5G spectrum auction is under legal proceedings under the bilateral investment agreement between Sweden and China. The EU also notes that Huawei has initiated a claim under the International Centre for Settlement of Investment Disputes (ICSID) about the matter at issue. In light of these proceedings, the EU will not enter into details on this issue in the Council's current meeting.

39.6. The Council took note of the statements made.

40 EUROPEAN UNION – CARBON BORDER ADJUSTMENT MECHANISM – REQUEST FROM CHINA

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

40.2. The delegate of China indicated the following:

40.3. China takes note that the internal discussion on the CBAM is still ongoing. According to the statement made by the European Union at the CTG's April meeting, a CBAM monitoring and reporting system would apply from 2023 and finish at the end of 2025. As 2023 is just around the corner, and the final contents of the CBAM are still not yet available, China would like to know whether the EU still plans to implement its CBAM from 1 January 2023, and when the EU will publish the final contents of its CBAM.

40.4. China shares the European Union's view that Members need to take concrete actions to tackle climate change. This is why China has announced the timetable and roadmap for carbon peak and carbon neutrality, and updated its more ambitious National Determined Contribution, for example, by 2030, when China's carbon dioxide emissions per unit of GDP will have dropped by 65% compared to 2005. However, China believes that, in order to effectively address the challenge of climate change, the principle of "Common but Differentiated Responsibilities and Respective Capabilities"

should be adhered to. In particular, Members should bear in mind the specific and different national conditions and challenges faced by developing Members and LDCs, and when necessary, provide financial and technical assistance to developing Members and LDCs.

40.5. China shares concerns similar to those expressed by other Members about the consistency of the CBAM with the WTO rules and the Paris Agreement. There seems to be no scientific basis for implementation of the CBAM. Many studies have pointed out that the EU-ETS does not lead to carbon leakage, and that the CBAM makes little contribution to a reduction in global emissions. UNCTAD reports indicate that the CBAM can only reduce 0.1% of global emissions or 0.9% of EU emissions.

40.6. The European Union's CBAM will have a negative impact on developing Members, especially those with a relatively simple trade structure. This is against the "Common but Differentiated Responsibilities and Respective Capabilities" stipulated in the Paris Agreement.

40.7. The European Union's CBAM seems to violate WTO rules, including the elimination of the free quotas of ETS, the additional import licensing requirements for imported goods, exemption arrangements for specific EU member States, and the method of measuring the actual carbon content of imported goods. All of these may not be compatible with the MFN and national treatment principles, the general elimination of quantitative restrictions, and the applicable conditions of relevant exception clauses.

40.8. China is willing to continue engaging with the European Union, through both bilateral and multilateral channels, in order to understand how the EU will cooperate with other WTO Members to ensure the CBAM's compatibility with the EU's multilateral obligations.

40.9. Finally, China notes that the previous week's G20 Bali Leaders' Declaration pointed out: "We believe that trade and climate/environment policies should be mutually supportive and WTO consistent and contribute to the objectives of sustainable development". At COP27, Director-General Okonjo-Iweala also said the following: "[The] world cannot afford to leave trade and [the] WTO behind in climate actions". For the same reason, China believes that Members need to strengthen their cooperation and coordination on trade-related climate policy to minimize trade frictions and investor uncertainty arising from unilateral climate actions. The WTO can play a valuable role as a venue in this area.

40.10. The delegate of Thailand indicated the following:

40.11. Thailand joins China and previous speakers in expressing its concern over the European Union's Carbon Border Adjustment Measure. Thailand fully recognizes and shares the firm commitment of the international community to addressing the pressing global issue of climate change. But at the same time that we rise to this global challenge, Thailand also thinks that it is important to ensure that international rules and principles, including those under the WTO and the UNFCCC, are respected. This is Thailand's reason for raising its flag and echoing the concerns of other Members over the EU's CBAM.

40.12. According to the existing regulation, some could argue that the European Union's CBAM treats products made in the EU differently from like products imported into the EU from other Members that employ different process and production methods, or different emission reduction schemes, from those of the EU itself. How could the EU reconcile its current CBAM regulations with the WTO's basic principle of non-discrimination enshrined in the GATT 1994's most-favoured-nation and national treatment obligations?

40.13. Moreover, Thailand firmly believes that such a global problem as climate change is best addressed by multilateral cooperation, and that a measure such as CBAM should be thoroughly discussed in a multilateral setting before being implemented to ensure that it is WTO consistent and in line with the principle of "Common but Differentiated Responsibilities and Respective Capabilities" enshrined in the Paris Agreement and the UNFCCC. However, as just stated by several other Members, the European Union's CBAM is a unilateral action by the EU that is applied extra-territorially, and also in a punitive manner, arguably. How could the EU reconcile its CBAM regulations with such principles as those of collaborative spirit, supportive multilateral cooperation, and mutual respect to socio-economic differences and historical emissions among

Members, as firmly established in the international community in the context of tackling climate change in the present day?

40.14. These observations are non-exhaustive and merely based on Thailand's preliminary assessment. Also, Thailand recognizes that the proposed regulation is still subject to change, given the European Union's ongoing internal process. However, when asked in the interview with Bloomberg in the COP27 summit whether the EU's CBAM is WTO-legal, the WTO Director-General responded that "the "devil is in the detail of how it gets implemented". Therefore, Thailand wishes to encourage other Members to thoroughly examine the regulations and to see for themselves if the devil can actually be found in the details of the EU's CBAM; and if so, what can we do about it?

40.15. Finally, like other Members, Thailand looks forward to receiving an updated description of the European Union's CBAM regulations, as well as further explanation from the EU about the compatibility of its CBAM with the WTO rules and the well-established practices in the international community for fighting against climate change. Thailand is willing to engage constructively with the EU and interested Members on this issue.

40.16. The delegate of Paraguay indicated the following:

40.17. Paraguay notes that it has already addressed this matter extensively under Agenda Items 24 and 50.

40.18. The delegate of Brazil indicated the following:

40.19. Brazil refers to its statement from the Council's previous formal meeting in July, as its earlier concerns remain valid.[81]

40.20. The delegate of Türkiye indicated the following:

40.21. Combating climate change and achieving a green transition are objectives that Türkiye shares with the European Union. In addition to its domestic policies to attain those objectives, Türkiye also welcomes increased efforts at the global level to mitigate the impacts of climate change, as this is an issue of global effect. At the end of the day, all Members hope to achieve the massive transformation needed to attain environmentally sustainable economic growth globally, in an inclusive and just manner.

40.22. Türkiye is closely following the European Union's Green Deal, and the CBAM regulation in particular, due to its significant effects on Türkiye's trade with the EU. In this sense, not only at this Council, but also in other committees, such as the Committees on Trade and Environment and Market Access, Türkiye has been voicing its expectations from the EU regarding its drafting and future implementation of the CBAM. At this point, Türkiye would also like to thank the EU for its transparent approach and constant information-sharing efforts on the Green Deal.

40.23. As Türkiye has very recently raised its questions regarding the ultimate form the CBAM will take, it will not repeat them here. Rather, it will suffice that Türkiye states once more its expectations from this policy measure. Türkiye wishes to underline that unilateral mechanisms, such as the CBAM, should not create unnecessary barriers to trade and place undue burden on developing countries and LDCs. The measure's proportionality relative to the perceived risk of carbon leakage, strict observance of the rules based on the WTO Agreement, and adhering to the principles of the multilateral environmental agreements, are all needed to ensure the mechanism's credibility. Otherwise, Türkiye is concerned that measures such as the European Union's CBAM risk creating trade barriers and retaliations that, in turn, could harm the rules-based international trading order, and have negative repercussions on Members' climate change mitigation efforts.

40.24. The delegate of Japan indicated the following:

40.25. Japan considers climate change to be one of the world's most important issues. Countries must raise their ambitions and policy efforts to achieve carbon neutrality worldwide by 2050, while

[81] Document G/C/M/143, paragraphs 41.2-41.22.

at the same time ensuring a level playing field and preventing carbon leakage. Therefore, policy coordination is important for the production and introduction of products with low carbon intensity.

40.26. When discussing policy coordination, each country has been making reduction efforts in the past according to its own circumstances, such as energy source constraints and the industrial environment and, in principle, the focus should be on "carbon intensity" as the "result" of such reduction efforts. In other words, if the "carbon intensity" of a country or sector is low, this would be the result of that country or sector having taken sufficient measures, such that there are no problems in terms of the level playing field or carbon leakage. In this regard, the European Union's CBAM is designed to charge at the border based on the level of specific policy, such as an explicit carbon price, at the present stage. In this case, even if the product has the same actual carbon intensity and does not cause any carbon leakage, taxation will occur due to the explicit difference in carbon price.

40.27. In this respect, the environmental objective itself cannot be justified from the viewpoint of preventing carbon leakage, but sufficient consideration is required from the viewpoint of ensuring fair, competitive conditions. In addition to the above-mentioned institutional design issues, it is a prerequisite that this measure be designed consistently with the WTO rules, as has been repeatedly stated.

40.28. With regard to the European Union's CBAM measures, Thailand understands that an expert meeting on methods for measuring product CO_2 emissions has kicked off. We hope that the CBAM will not be introduced without the EU having first ensured a sufficient international understanding of it. Otherwise, the EU's CBAM could potentially lead to international trade disputes.

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

40.30. The Republic of Korea recognizes that climate change is one of the most pressing issues that all WTO Members should continue to jointly focus on, finding effective ways to tackle it. While having initiated its nationwide emissions trading scheme since 2015, Korea is sparing no effort to achieve carbon neutrality by 2050. In addition, Korea actively participates in various international forums to cooperate in combating climate change. However, trade measures targeted for this purpose, such as the European Union's CBAM, ought to be consistent with WTO rules, and be carefully designed so as not to function as an unnecessary trade barrier. Moreover, such a mechanism should take trading partners' individual efforts to address the issue of climate change fully into consideration.

40.31. Korea will continue to follow the CBAM's legislative process closely, while encouraging the European Union to provide those subject to its measure with sufficient information and opportunity to comment. Furthermore, Korea looks forward to advancing the multilateral conversation on trade measures aimed at climate change.

40.32. The delegate of Kazakhstan indicated the following:

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

40.34. The delegate of South Africa indicated the following:

40.35. South Africa thanks China for placing this item on the agenda, and shares the concerns raised by other Members over the European Union's CBAM. While South Africa supports global efforts to mitigate climate change, it believes that these should be made in a balanced and evidence-based manner that ensures that trade measures do not undermine coherence in multilateral trade and climate policy making.

40.36. In this regard, South Africa refers to the UNCTAD Report of July 2021 which demonstrated that a CBAM, as envisioned by the European Union, holds minimal climate mitigating benefits (that is, a CBAM is predicted to cut only 0.1% of global CO_2 emissions), but on the contrary would inflict

disproportionately high costs and impact on trade and exports, especially of developing countries.[82] South Africa is also worried about the compliance of the EU's CBAM with the WTO's rules, and hopes that the EU will take into account the concerns raised by a number of Members in this regard.

40.37. Addressing the effects of climate change requires global cooperation, and solidarity remains critical. This is an issue of global commons and cannot be addressed through unilateral measures.

40.38. Carbon border taxes that close off export markets will shift the burden and penalize already resource and financially constrained economies, making the move towards lower carbon-emitting economies even more challenging. This will be the case for many developing and least-developed economies that stand to be disproportionately impacted by the EU's CBAM on the basis of their export profile and geographical locations to destination markets.

40.39. South Africa underscores that the transition towards carbon-neutrality must be just and equitable and must promote not just climate resilience, but also prioritize economic development. More importantly, it must be based on the principles agreed in the Paris Agreement and other instruments under the UNFCCC, that is, the CBDR and Respective Capabilities, and that the polluter pays.

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

40.41. The European Union has been regularly updating various WTO bodies on the developments of its CBAM measure. Indeed, the EU has spared no efforts to engage with Members on this issue, notably in the context of the Committee on Trade and Environment. In this regard, the EU refers Members to its presentation delivered at the meeting of the Committee on Trade and Environment of 17 October 2022. The EU values such engagement with Members and has taken due note of Members' comments.

40.42. On this occasion, the European Union will therefore focus on updating Members on its domestic process. The EU's three institutions – the European Commission, the European Parliament, and the Council – entered into a trialogue negotiation in July 2022, with negotiations regularly taking place. The next political discussion between these three institutions will take place on 12 December 2022, with the aim of reaching an agreement by the end of the year. The EU will continue to keep Members informed as its domestic process proceeds.

40.43. The Council took note of the statements made.

41 UNITED STATES – EXPORT CONTROL MEASURES FOR CHINESE ENTERPRISES – REQUEST FROM CHINA

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

41.2. The delegate of China indicated the following:

41.3. China has to raise this issue again because the United States continues to abuse export control measures to suppress Chinese enterprises in the name of so-called "national security". As of 31 October 2022, there were 461 Chinese entities listed on the "Entity List" of the US Department of Commerce. The relevant export control measures taken by the United States disregard the basic and fundamental WTO rules, undermine market principles and fair competition, and endanger the security of global supply chains. China firmly rejects them. China urges the United States to stop its erroneous practice and remove Chinese companies and academic institutions from its "Entity List" as soon as possible in order to create sound conditions for the relevant enterprises and institutions from both sides to carry out normal business cooperation.

[82] A European Union Carbon Border Adjustment Mechanism: Implications for developing countries (https://unctad.org/webflyer/european-union-carbon-border-adjustment-mechanism-implications-developing-countries).

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

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

41.6. The Council took note of the statements made.

42 UNITED STATES – DISCRIMINATORY QUANTITATIVE RESTRICTION ON STEEL AND/OR ALUMINIUM IMPORTS – REQUEST FROM CHINA

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

42.2. The delegate of China indicated the following:

42.3. China takes note that the United States made bilateral arrangements with the European Union, Japan, and the United Kingdom in 2021 and 2022, respectively, and imposed tariff quotas on the import of steel and/or aluminium products from these Members, which were previously covered by Section 232 tariffs. In this regard, China refers to its statements made at previous meetings, including at those of the CMA and the CTG, and notes that its concern over this issue remains.

42.4. China would like to know when the United States intends to notify these arrangements to the relevant committees, in accordance with the WTO rules. China is expecting the US to lead by example in fulfilling its transparency and notification obligations. In addition, China seeks further clarification from the United States on the following questions. Could the United States elaborate how these bilateral arrangements could address the so-called "national security" concern of the US? What criteria does the United States use to determine which Members will be able to enter into such bilateral arrangements with the US, and which Members will be excluded? How could these differential treatments to WTO Members be justified under the WTO rules?

42.5. The delegate of Türkiye indicated the following:

42.6. As expressed at the previous meeting of the CTG, as well as that of the CMA, Türkiye would like to take this opportunity to reiterate its concern with regard to the Section 232 tariffs that have been imposed by the United States on imports of steel and aluminium products since 2018. Türkiye once again notes its concern over the compatibility of the measures with the core WTO rules and principles, as enshrined by the WTO Agreement on Safeguards, as well as the GATT 1994.

42.7. Türkiye is of the view that the developments towards exclusion of some Members, as opposed to others, from Section 232 tariffs on a selective basis further exacerbates the problem, violating one of the core principles of the multilateral trading system. Bearing in mind that there exists no convincing reason for lifting the so-called measures for some Members, while excluding others, the measures being applied continue to be a source of concern for the smooth functioning of the multilateral trading system. In the way that they have been applied, quantitative restrictions go against the letter and spirit of the core WTO principles by favouring some as opposed to others. On the basis of the foregoing, Türkiye would like to seize this opportunity to recall its request for the total elimination of all additional duties and quantitative restrictions, without losing any further time, in order to ensure that the multilateral trading system operates in an effective manner.

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

42.9. The United States takes note of the comments and questions raised by China and Türkiye regarding the WTO consistency of the Section 232 measures. The US has invoked Article XXI(b) of the GATT 1994 and the actions are therefore wholly consistent with the WTO. Regarding questions related to the operation of the Section 232 quotas, the United States refers Members to the proclamations issued by the President under Section 232, and to quota implementation information published on the website of US Customs and Border Protection.

42.10. The Council took note of the statements made.

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

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

43.2. The delegate of China indicated the following:

43.3. As the Council is aware, China first raised this concern in 2019 because the United States had adopted rules to restrict market access to the ICT products and services provided by countries that the US considered as "foreign adversaries". China has serious concerns over this issue and firmly opposes the wrong practice of the US in discriminating against Chinese companies by abusing the concept of national security and defining China as a "foreign adversary".

43.4. ICT products' manufacturing and related services are crucial to technology innovation and the digital economy. This industry is one of the most interconnected in the world. If this industry is improperly disrupted, it will negatively affect global supply chains and cause uncertainty to the global economy. This is why many ICT companies, including relevant US companies, are closely monitoring the development of the US measures.

43.5. Despite repeatedly seeking detailed explanations and clarifications from the United States on these measures, including on the WTO consistency of the measures, the US often responds by saying that the CTG is not the proper forum for discussing national security issues. China wishes to point out that, for many decades, mutual restraint was exercised on national security exceptions. However, in recent years, the concept of national security has been increasingly invoked, over-generalized, and abused, principally by the US. China understands that we should not prohibit measures that are needed purely for security reasons, but should also avoid taking measures with an essentially protectionist and commercial purpose, under the guise of security. It is a question of balance. To strike the right balance, one of the basic principles we believe is that Members should not abuse the concept of national security, but carry it out in good faith. If any Member can justify its protectionist and unilateral measures by arbitrarily invoking the national security exception, without any boundaries, why bother to limit the circumstances in which it is available in the text of Article XXI of the GATT? Why is Article XXI in the WTO rules at all if Members can invoke the national security exception without any boundaries?

43.6. Having said that, China urges the United States to bring its measures into line with the WTO rules, and to stop abusing the concept of national security, which is seriously undermining the multilateral trading system, and turning international trade into what the former Appellate Body Chairperson, James Bacchus, called a black hole of exceptions.

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

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

43.9. The Council took note of the statements made.

44 CHINA – DRAFT OF CHINESE RECOMMENDED NATIONAL STANDARD (GB/T) FOR OFFICE DEVICES (INFORMATION SECURITY TECHNOLOGY-SECURITY SPECIFICATION FOR OFFICE DEVICES) – REQUEST FROM JAPAN

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

44.2. The delegate of Japan indicated the following:

44.3. Regarding the draft of this national standard, Japan has already expressed its concerns at the TRIMs Committee, the CMA, and the TBT Committee. Japan has confirmed that a notice by the National Information Security Standardization Technical Committee, TC260, had indicated that the draft work for the standard had been completed. Japan understands that this development means that work is under way to revise this standard. Japan has repeatedly expressed its concerns about

this. Nevertheless, it is regrettable that the internal work for this revision is proceeding steadily. Japan would also like to point out that, at the October meeting of the CMA, China had stated that it had no plans to revise this national standard.

44.4. At the relevant committees, Japan has expressed its concerns regarding the amendment of the Recommended National Standards of China (GB/T) for office devices, such as multifunction peripherals and printers, that are procured by the operators of critical information infrastructure, if it would be the case that the standard virtually would require that: (i) office devices such as multifunction peripherals and printers, including their components, are required to be developed, designed, and produced in China; and (ii) information must be disclosed to prove that office devices and/or their components are developed, designed, and produced in China.

44.5. These national standards raise concerns that foreign products will be discriminated against by other countries, that trade will be restricted more than necessary, and that technology transfer will be forced. The standards may also be inconsistent with various WTO Agreements, including the Article 2.1 of the TRIMs Agreement, Articles 2.1, 2.3, and 5.1.2 of the TBT Agreement, Article III:4 of the GATT, and also Article 7.3 of China's Accession Protocol.

44.6. Japan requests China to share the facts regarding its intention to revise this national standard, including its definition of critical information infrastructure operators, and the content of the proposed national standard, such as development requirements within China. Japan sincerely hopes that revisions to China's National Standards, and related systems and guidelines, will not be realized as outlined above. Rather, Japan hopes that the measures incorporating similar requirements will not be formulated and introduced, either in the field of multifunction peripherals and printers, or in other fields.

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

44.8. The European Union would like to follow-up on the exchange that took place in various subsidiary bodies. At the TBT Committee in July, China noted that the recommended national standard was not being revised but if it were to be the case, public opinion would be solicited.

44.9. At the November meeting of the TBT Committee, China had explained that, if the administrative department for standardization approved the revision of the standards, a notice of project approval would be published through the National Public Service Platform for Standards Information. During the process of revision, China would solicit public comments. Nevertheless, the European Union understands from information posted early in November on the website of China's National Information Security Standardization Technical Committee that a process aimed at revising the Recommended National Standards is now under way. And it appears that, according to the revised requirements, office devices and their components procured by critical information infrastructure operators would *de facto* need to be developed, designed, produced, and manufactured in China. If enacted, these standards would prevent overseas office device providers from participating in government procurement in China, as most of their products rely heavily on overseas components. The European Union would like to emphasize that not all office equipment can be classified as "critical information infrastructure". At the same time, the EU urges China not to take similar measures in other sectors or for other products.

44.10. The delegate of China indicated the following:

44.11. China refers to its response to the same concern raised by Japan at the previous week's meeting of the TBT Committee. At present, the Standardization Administration of China has not approved the project initiation of revision plan of the recommended national standards related to printers and copiers. China would like to highlight that it has always remained open and transparent in the process of establishment and revision of national standards. If the revision process of the recommended national standards related to printers and copiers is initiated, China will publish it on the official website of the Standardization Administration of China and solicit public comment. All interested Members, including Japan, will have an opportunity to make comments on the revised standards at that time.

44.12. The Council took note of the statements made.

45 CHINA – DRAFT REVISION OF CHINESE GOVERNMENT PROCUREMENT LAW – 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. In July of this year, China published a public hearing draft for the revision of its Government Procurement Law. With regard to the scope of the revised law, in addition to "state agencies, business units and organizations" in the current Article 2, "other procurement entities" has been added in Articles 2 and 12. With consideration to "other procurement entities", Article 12 of the revised bill refers to "public interest state-owned enterprises that engage in public works and operate public infrastructure or public service networks to realize public purposes", and adds that, "other procurement entities to which this Law applies and their specific scope of procurement shall be determined by the State Council." If the scope of application of the Government Procurement Law expands to include even procurement beyond "procurement by governmental agencies", as stipulated in Article 3.8(a) of the GATT, and a local content requirement is made based on Article 23 of the revised law, foreign products, including those from Japan, may be treated in a discriminatory manner, thus violating Article III.4 of the GATT. In light of this, Japan requests China to ensure that the State Council's definition of "other procurement entities" under Article 12 of the revised bill not be expanded without limit.

45.4. In addition to the existing LCR regulation, Article 23 of the revised bill, which clearly includes "support for domestic industries", adds a new LCR that gives preferential treatment in government procurement for products with a high added value ratio within China. Japan would like to point out that this, too, is not permitted under the government procurement exception of Article III.8(a) of the GATT, unless it truly falls under the category of government procurement. Japan notes that this LCR may also violate Article 2.1 of the TRIMs Agreement, and Article III.4 of the GATT. In this regard, Japan intends to carefully monitor the scope of this Article.

45.5. These new provisions in China's draft amendments do not meet the standards required by the WTO Government Procurement Agreement (GPA), which China has already been negotiating to join for many years. In fact, these new provisions represent a move in the opposite direction. Therefore, Japan is obliged to question whether China is willing to meet the standards of the GPA, and other agreements maintaining high standards, to which it has applied for membership.

45.6. The delegate of China indicated the following:

45.7. Supporting domestic products through government procurement is a common international practice. Indeed, many Members exercise a similar practice in their government procurement. In drafting the amendment to China's government procurement law, China has taken other Members' relevant practices and experiences into account in order to streamline its own government procurement law. China reiterates that it treats the products and services provided by both foreign-invested enterprises and local Chinese enterprises in government procurement equally; the only exception is for those projects involving security and state secrets. As it is in the process of GPA accession, China is willing to discuss this issue with Japan under the framework of China's accession negotiation to the GPA.

45.8. The Council took note of the statements made.

46 CHINA – EXPORT CONTROL LAW – 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 continues to have concerns over China's Export Control Law, which entered into force in December 2020. The details of China's export-controlled items, as well as the details of China's regulations and operations, still remain unclear to Japan. As Japan has stated in past CTG meetings,

and taking into consideration the objective of the law to safeguard national interests, Japan wishes to reiterate its concerns on the following three points in particular. First, Japan is concerned there might be a possibility that the scope of products subject to export control is excessive. Second, Japan is concerned there might be cases that require unnecessary disclosure of its technical information during classification and end-user or usage investigations. And third, Japan is also concerned that the provisions on countermeasures against discriminatory export regulations by other countries have been maintained in the law.

46.4. Japan is concerned that the aforementioned export restrictions stipulated in this law may constitute an overly stringent export regulation or be unnecessary in light of the international export control regime. They may therefore fall into the category of export restrictions prohibited under Article XI of the GATT, and consequently be inconsistent with the WTO Agreement.

46.5. In April 2022, a draft ordinance for the Dual-Use Item Export Control (draft of public consultations) was published regarding the operation of the law concerning dual-use products. The opacity of the legal operation has not been resolved at all in relation to the scope of items subject to regulation and disclosure requirements of techniques, and Japan will continue to request explanations on the details of the regulations related to the law.

46.6. In relation to this, Japan wishes to reiterate the following two points, as pointed out in previous meetings of the CTG. First, Japan has concerns with regard to the fact that the draft regulations on rare earths published in January 2021 mentioned a plan to set out strategic reserves. Japan believes that this plan could mean there is a possibility China might introduce controls on exports of rare earth-related products in accordance with the aforementioned Export Control Law. Second, regarding the "Unreliable Entity List" and export prohibition list based on the external trade law, Japan is concerned by the lack of clarity in the relationship between the entity list in the Export Control Law and the items covered in the law and the technology list.

46.7. China previously explained that the regulatory list and unreliable entity list provided in Article 18 of this law are constructed from different legal systems. However, Japan requests a clearer explanation as to what kind of legal system each is based on, and whether or not they are related. In particular, with regard to the "Unreliable Entity List" measures, Japan is concerned about whether the fairness and transparency in terms of the recognition of foreign entities and the content of measures taken against foreign entities would be ensured. Japan notes that there might be a possibility that this measure would be inconsistent with Article X of the GATT, among others.

46.8. Japan understands that China explained at the Council's previous meeting that it had accelerated the formulation and amendment of the supporting laws and regulations to the Export Control Law in order to provide clearer and more specific guidance for all parties to implement and abide by the Export Control Law. China had also explained that it welcomed Members to continue to engage with China and put forward their comments and suggestions during the public consultation period for laws and regulations.

46.9. Japan will continue to closely monitor the details of the regulations on implementing the law and hopes that its concerns will be addressed accordingly in the final draft of the regulations. In addition, Japan is of the view that countermeasure provisions should be removed from the law. Japan requests China to provide information on the detailed regulations and their timeline with full transparency, while providing ample time for their consideration.

46.10. The delegate of Australia indicated the following:

46.11. Australia notes the statement by Japan in relation to China's Export Control Law. As set out in Australia's submissions to China's consultations with interested parties ahead of the adoption of this law in December 2020, and draft regulations published in April 2022, Australia welcomed efforts to codify the regulatory framework for defence export controls. Australia also welcomes China's efforts to clarify aspects of its export control regime through the publication of a White Paper in December 2021.

46.12. Australia still has concerns about the broad scope of China's Export Control Law. Australia encourages China to continue 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 development of future measures. Australia looks forward to working closely with China to resolve these concerns.

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

46.14. The United Kingdom thanks Japan for tabling this item on the agenda and would also like to express concerns regarding China's Export Control Law measure, and enquire further into its intended use. The UK notes that since the law's adoption in December 2020 China has published further information regarding the regulations that will underpin the use of the Export Control Law, and the publication of a White Paper in December 2021.

46.15. Export restrictions on goods inevitably disrupt global supply chains. The global trading systems only works if each Member is committed to avoiding protectionist measures in international trade and promotes a market-led approach to supply chain resilience, especially in critical goods including critical minerals. As the United Kingdom has noted before, unfair and market-distorting trade practices can undermine both the integrity of, as well as the trust in, the multilateral trading system, and could directly harm business and citizens worldwide.

46.16. The United Kingdom requests clarifications from China regarding what it would define as its "national interest" for the purposes of this law and how this would relate to any export restrictions arising from it. The UK seeks further information on how China would decide which "other goods, technologies, services" should come within the scope of this law, and what the limits are on this. The extra-territorial application of Article 44 could negatively affect global supply chain resilience. How does China envision the law being applied to "any organization or individual outside the territory of the People's Republic of China"? The United Kingdom would join calls for further transparency around this law's implementation.

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

46.18. The European Union reiterates its concerns previously expressed at the Council's meeting in July 2022 over China's export control regime, notably as regards: extra-territorial application; rules on deemed exports and re-exports; objectives and scope of controls; and risk assessment with regard to destination countries or regions and control lists. The EU would like to invite China to consider amending the relevant legal provisions, to provide legal clarity, and to address these concerns in upcoming implementing measures. The EU will continue to closely monitor new developments relating to China's export control regime.

46.19. The delegate of Canada indicated the following:

46.20. Canada reiterates its concerns expressed in previous CTG meetings. Canada encourages China to circumscribe the application of the Export Control Law (ECL) through its upcoming regulations and implementation with a view to harmonizing the practices with international standards.

46.21. The delegate of China indicated the following:

46.22. China is still working on the supporting complementary laws and regulations of its Export Control Law. From 22 April to 22 May, the Ministry of Commerce of China publicly solicited public comments on the "Draft Regulation on the Export Control of Dual-Use Items". China welcomes the comments submitted by the Government of Japan, and other Members, as well as those from relevant industry representatives. China is now conducting a comprehensive review of these comments. China will continue to engage with Japan and other interested Members on this issue.

46.23. The Council took note of the statements made.

47 EUROPEAN UNION – PROPOSED MODIFICATION OF TRQ COMMITMENTS: SYSTEMIC CONCERNS – REQUEST FROM URUGUAY

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

47.2. The delegate of Uruguay indicated the following:

47.3. Uruguay wishes to reiterate its trade and systemic concern about the issue of unilateral modifications of the European Union's tariff rate quotas under Article XXVIII of the GATT following Brexit, in particular with respect to the fact that they are not necessary and lack any legal basis under the WTO Agreements.

47.4. Uruguay regrets that, even though it participated actively and constructively in the process from the beginning, demonstrating the injury that its agricultural sector, and its economy as a whole, would suffer as a result of the apportionment, the European Union rejected even the most modest and reasonable requests for compensation that were submitted. This is why Uruguay wishes, once again, to reiterate its 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.

47.5. Lastly, without prejudice to the bilaterally agreed commitments between the European Union and the United Kingdom, Uruguay once again requests that the EU unequivocally remove the UK from the potential users of its tariff rate quotas in its WTO Schedule of concessions. At the same time, as it has been almost two and a half years since the end of the transition period of the Withdrawal Agreement and the completion of Brexit, Uruguay continues to wait for the EU to proceed with the downwards adjustment of its final bound aggregate measurement of support (AMS) entitlements in its schedule of concessions, in line with the announcements made in a timely manner.

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

47.7. The European Union is pleased to report excellent progress achieved so far with agreements formally signed with seven partners and initialled with three other partners. The EU is also close to reaching an agreement with several other partners. The EU welcomes the increased engagement of many WTO Members. The EU remains fully committed to continuing these negotiations and consultations and to bringing them to a successful close expeditiously.

47.8. The Council took note of the statements made.

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

48.1. The Chairperson recalled that this item had been included on the agenda at the request of New Zealand and Uruguay.

48.2. The delegate of New Zealand indicated the following:

48.3. New Zealand continues to raise this item in the CTG, and refers the European Union to its previous statements on this matter. New Zealand has considered the European Union's response on this matter. However, New Zealand still sees a conflict in the European Commission's approach to protecting the cheese names "Danbo" and "Havarti", for which there are existing CODEX standards, and the integrity of the standards setting system that promotes reliability and consistency in international trade rules, which we would expect the EU to support.

48.4. The delegate of Uruguay indicated the following:

48.5. Uruguay regrets having to put this item on the agenda again and wishes to refer to previous interventions, while reiterating the concern about the decision of the European Union to register the term Danbo as a protected geographical indication, despite the objections raised by several Members. As Uruguay has long pointed out, Danbo cheese is a cheese-making technique, which

does not correspond to any known geographical location. This manufacturing technique is covered by standard 264 of the Codex Alimentarius, which sets out the characteristics, production method, and labelling of this type of cheese. This standard has been modified several times, and its last modification in 2007 had the participation and approval of the European Union. However, later on, the EU decided to include Danbo cheese as a protected geographical indication, which it also includes in its free trade agreements, thus indirectly excluding non-Danish producers of this type of cheese from third markets. It is for these reasons, and despite the time that has elapsed, that Uruguay will continue to maintain its trade concern.

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

48.7. The European Union takes note of the concerns expressed by Uruguay. The European Union has provided detailed replies to these concerns at previous CTG meetings. Without repeating its previous statements in full, the EU would like to underline that its previous statements remain unchanged. Notably, 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.

48.8. Generic status in the European Union can only be assessed with regard to the perception of the consumers on the EU territory. In the EU, the relevant public is comprised mainly of the reasonably well-informed members of the public and/or customers who may purchase the product or a like product. 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 (e.g. provisions related to technical standards, definitions, and labelling issues). 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.

48.9. The Council took note of the statements made.

49 UNITED KINGDOM – DRAFT GOODS SCHEDULE AND PROPOSED UK TRQ COMMITMENTS: SYSTEMIC CONCERNS – REQUEST FROM URUGUAY

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

49.2. The delegate of Uruguay indicated the following:

49.3. In addition to referring to several elements raised under Agenda Item 47, these are fully applicable to the case of the United Kingdom. Uruguay wishes to reiterate once again its position and concern with regard to the United Kingdom's claim of a significant total bound AMS of approximately five billion pounds sterling to the currency conversion proposed in that Member's draft schedule of concessions, and its practical consequences, and to the UK's intention to replicate the rights to invoke the agricultural special safeguard for all products and under the same criteria and conditions as set out in the European Union's schedule. With regard to the ongoing Article XXVIII process, Uruguay recognizes the recent constructive bilateral exchanges with the United Kingdom, and reaffirms its willingness to move forward in the negotiations with a view to reaching a mutually advantageous agreement, which would allow the United Kingdom to have an independent schedule of concessions formally established in the WTO.

49.4. The delegate of Paraguay indicated the following:

49.5. Paraguay wishes to register its support for this systemic concern about the modification of the United Kingdom's schedule of commitments and to reiterate its position that the AMS amount the UK has awarded to itself as a result of its exit from the European bloc has not yet been reflected in a proportional reduction in the EU's schedule and registered AMS amount. Therefore, Paraguay is still unable to verify that subsidy levels have not been raised and that the division is equal to the original sum of the parts. Although the UK has not reported any use of this AMS, it has already submitted DS:1 notifications that include this amount as an acquired right. Paraguay urges both parties to complete the relevant processes so that their schedules can reflect the amounts including the relevant reduction also in the EU's schedule.

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

49.7. The United Kingdom would like to thank Uruguay and Paraguay for their interest in this agenda item today. Over the preceding months the United Kingdom has held further productive discussions with the majority of relevant outstanding Members in the process. This has resulted in the UK signing with a considerable range of our partners in recent months, and indeed, recent weeks. The UK hopes to sustain this progress as it continues its discussions with the few remaining Members.

49.8. Regarding the statement made by Uruguay and Paraguay, the United Kingdom would like to refer Members to its previous statements as recorded in the Minutes of this Council, and at the CMA, which sets out the UK's position on these issues as they still stand.[83] The UK would also like to note that, following engagement at a technical level, many Members that held initial concerns over this matter have since been satisfied to remove their objections.

49.9. The United Kingdom remains open to holding similar discussions with those Members that have expressed concerns today. The UK would like to reiterate its thanks to all Members that have engaged constructively on matters relating to the UK's Goods schedule in this process. In line with WTO practice, the UK will further update Members following the conclusion of Article XXVIII negotiations.

49.10. The Council took note of the statements made.

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

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

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

50.3. The Russian Federation expresses deep concern in respect of the European Green Deal and its implementation acts. Members have already discussed the European Union's Carbon Border Adjustment Mechanism and deforestation-free products. Obviously, the Green Deal does not include just these two elements. Other aspects of the Green Deal are also of concern, and these aspects, in the form of STCs, are being raised across the meetings of various relevant WTO working bodies.

50.4. One measure that causes deep concern is the draft EU Batteries Regulation. This measure sets out product requirements for new batteries as a condition for market access to the European Union, 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 minimum level of recycled materials such as cobalt, lithium, lead, and nickel in the battery. Apparently, the requirement for a minimum level of recycled materials in batteries is intended to reduce the use of primary metals in the EU. The requirements of this draft Regulation are 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 carbon footprint over the life cycle of this product.

50.5. Through the Green Deal and Farm to Fork strategy, the European Union seeks to reduce the use of mineral fertilizers and substitute them with organic fertilizers. The Russian Federation took note of the European Commission's press release on food security issued on 9 November, which, *inter alia*, states that the "Fertilizing Products Regulation already ensures a better access in the market to fertilizers made from recovered waste and green and circular alternatives to natural gas". In its communication on ensuring the availability and affordability of fertilizers, the EU clearly explains that "Europe has an important fertilizer industry but is dependent on imports of natural gas as well as on imports of phosphates and potash" and that "the substitution of mineral fertilizers by organic fertilizers is part of the solution to reduce the EU's dependence on gas". Obviously, the goal aimed at substituting mineral fertilizers with organic fertilizers has nothing in common with the climate change issue and chases the idea of import substitution.

[83] See, for example, document G/C/M/143, paragraphs 14.6-14.10.

50.6. The European Union seeks to use the Green Deal as a cover even for its customs reform, and to establish different treatment for like products. In its "Ten Proposals to Make the EU Customs Union Fit for Geopolitical Europe", it is stated that "Customs has a responsibility and a unique position to contribute to the EU political agenda on the Green Deal" and "it can lead internationally in the efforts to reform the WCO harmonized system nomenclature so that it can promote trade in environmentally-friendly goods". The Russian Federation notes the different proposals in respect of new Customs classification of certain products in the Committee on Trade and Environment.

50.7. Of course, the European Green Deal is not limited to the above-mentioned measures. It also provides for 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, the revision of competition rules, and so on. The Russian Federation expects that the European Union will fully respect the WTO rules during implementation of the European Green Deal.

50.8. To conclude, the Russian Federation reiterates its systemic concern over the lack of engagement from the European Union on the issues raised. Transparency is an important pillar of this Organization, and the provision of explanations on various measures and policies in the CTG is part of the transparency mechanism. Refusal to respond to the trade concerns raised by Members is in stark contrast to the EU's rhetoric on the importance of transparency in this Organization.

50.9. The delegate of Paraguay indicated the following:

50.10. Paraguay wishes to underline that its interventions under Agenda Items 6 and 24 regarding aspects of the Green Deal are also valid for this agenda item.

50.11. The Council took note of the statements made.

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

51.1. 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. 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 Committee on Trade Facilitation (G/L/1468), the corresponding factual report would be submitted to the General Council directly.

51.2. The Chairperson proposed that the Council take note of the following factual annual reports: Committee on Agriculture (G/L/1446); Committee on Anti-Dumping Practices (G/L/1436); Committee on Customs Valuation (G/L/1442); Committee on Import Licensing (G/L/1433); Committee on Market Access (G/L/1439); Committee on Rules of Origin (G/L/1440); Committee on Safeguards (G/L/1435); Committee on Sanitary and Phytosanitary Measures (G/L/1443); Committee on Subsidies and Countervailing Measures (G/L/1438); Committee on Technical Barriers to Trade (G/L/1445); Committee on TRIMs (G/L/1437); Committee of Participants on the Expansion of Trade in Information Technology Products, ITA (G/L/1441); Working Party on State Trading Enterprises (G/L/1434); and the Independent Entity (G/L/1444).

51.3. The Council so agreed.

52 ADOPTION OF THE ANNUAL REPORT OF THE COUNCIL FOR TRADE IN GOODS TO THE GENERAL COUNCIL (G/C/W/821)

52.1. The Chairperson drew Members' attention to the Draft Report of this Council to the General Council, circulated in document G/C/W/821 and G/C/W/821/Corr.1. In accordance with the "Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO" (WT/L/105). He reminded delegations that all sections of the Draft Report would be updated in light of the meeting, including the adjustments to the agenda, and would be circulated to Members for comments, and that a written procedure would be followed after the meeting to approve it.

52.2. In the absence of comments, the Chairperson proposed to proceed as follows. The Secretariat would circulate by email a revised version of the Annual Report by Monday, 28 November, where the changes would be tracked. If no objection were received by the Secretariat by 13:00 of Friday, 2 December, this revised draft would be considered to be approved and the Annual Report would be circulated under the G/L document series so that it could be submitted to the General Council.[84]

52.3. The Council so agreed.

53 OTHER BUSINESS

53.1 Functioning of the CTG and its Subsidiary Bodies – Information from the Chairperson

53.1. The Chairperson drew the Council's attention to document RD/CTG/17, containing the most recent version of the annual calendar of meetings of the CTG and its subsidiary bodies for the year 2022, and the information currently available for the year 2023. He explained that the document had been compiled by the CTG team in close coordination with the Secretariat colleagues responsible for the CTG's subsidiary bodies with a view to avoiding any date clashes and to ensure an optimal programming of meetings. As previously indicated, the Secretariat would prepare an update of this annual calendar for each formal meeting of the CTG with a view to swiftly identifying any potential issue, and to permit Members to organize their activities in this regard. He noted that almost all of the meetings had taken place as previously planned and communicated to Members in previous versions of the planning and calendar of meetings, which showed that considerable progress had been made with respect to past years. The importance of this type of coordination had been emphasized at the retreat on WTO reform that had taken place in October and was mentioned by several delegations as a good practice.

53.2. However, despite their best efforts, it had not been possible to programme a correct sequence for the Committee on Trade Facilitation (CTF), whose meeting would take place after the meeting of this Council. As delegations perhaps recalled, the Committee on Trade Facilitation had to move its dates as a result of the scheduling of a meeting of the General Council. The Chair and Secretariat had twice tried to reprogramme the CTF and CTG meetings to have the correct sequence, but without success due to meetings of other bodies and a lack of available meeting rooms. The Chair and Secretariat would continue to work on the scheduling of meetings to better serve the Membership.

53.3. In this regard, he also wished to inform the Council that, at a meeting with the Chairpersons of the CTG's 14 subsidiary bodies, he had informed them that he had heard concerns with respect to the planning of meetings in October and November of that year. If he had understood correctly, the formal meetings had overlapped with many week-long training activities, workshops, and other activities, which had affected the effectiveness of the Council's work. For this reason, he had suggested to the Chairpersons that, to the extent possible, they should try to decompress next year's calendar and schedule those special activities during the first part of the year, where there seemed to be fewer meetings, and to try to avoid October and November, where there were typically many formal meetings of WTO bodies that had to take place in the context of their reporting to the General Council. He was fully aware that this might not prove possible for a number of reasons, but the Chair and Secretariat would try to work on improving this situation in the coming year.

53.4. The delegate of Paraguay indicated the following:

53.5. If we wish to improve the functioning of the Council we should then begin with the most basic issues, perhaps issues as basic as meeting dates and scheduling. Paraguay would therefore like to use this opportunity to record its displeasure at the change of dates for this meeting of the Council. Paraguay appreciates that unforeseeable circumstances can arise, and we appreciate your explanations about the efforts made, but a change was made not once, but twice, for reasons unconnected with the functioning of this Council, with a view to accommodating other meetings that are outside its competence.

53.6. The change resulted not only in delegations having to be here until 9pm on the previous day, and all of us making an effort to shorten our statements, with knock-on effects on the quality of the

[84] The Annual Report of the Council for Trade in Goods was adopted by written procedures on 2 December 2022 and circulated as document G/L/1463, dated 5 December 2022.

debate, but actually prevented my delegation from making a statement before this Council because, as will have been noted, we had to be absent for most of the morning as a result of previously scheduled bilateral consultations on other important matters had been organized for that date. This was precisely because Capital delegates would be here and there were no clashes with other meetings, a situation which changed with the shift in timing. Delegations, especially small delegations, need things to be predictable and foreseeable to ensure that they can prepare appropriately and participate effectively.

53.7. We acknowledge the efforts made by the Council's Secretary and team, as reflected in document RD/CTG/17, and we acknowledge their readiness and good will, as well as the Secretary's cooperation in reading several statements on behalf of delegations that were unable to attend. However, just imagine if we had all sent our interventions to the Secretariat, for them to read them out to an empty room, with only the interpreters, for the record. That is not what should be happening in this Organization. Instead, the Council should be a space for genuine debate between Members. We therefore urge you, as Chair of this Council, to take this message of displeasure and concern to the General Council as part of your report, and for every effort to be made in future to avoid changes to the meeting dates for one of the WTO's most important bodies, which has an important agenda to tackle that cannot be rushed but should instead have the time required for full discussion.

53.8. Before closing, allow me to refer briefly to an issue that has come to light with the schedule in the meeting document I referred to earlier, namely that the CTG of July 2023 is scheduled to take place before the SPS Committee and many of the concerns on the agenda are shared by the Committee and this Council. The fact that the debates in the Council will occur before discussions at the SPS Committee will not be conducive to making gradual and natural progress on those items.

53.9. The delegate of India indicated the following:

53.10. Chair, India appreciates the attempts made by you and the Secretariat to conduct the proceedings of this Council, and specifically this meeting, in the midst of the various scheduling constraints. It is deeply regrettable that the CTG, one of the key regular WTO bodies, has had its meeting date moved twice because of scheduling issues. The functioning of the Organization is impaired when meetings of different regular bodies clash. The functioning is further impaired when the WTO bodies that generally publish a forward-looking calendar, such as this Council, have to move their meetings because other bodies have fluid schedules.

53.11. India has also, in the past, raised its concerns in the General Council on how WTO regular bodies seem to be competing with non-multilateral initiatives. The lack of transparency on how WTO resources are being redirected away from the WTO regular bodies does not augur well. Chair, India requests, through you, that these issues be systemically addressed, including in the Council's Annual Report.

53.12. The delegate of the Dominican Republic indicated the following:

53.13. The Dominican Republic would like to thank you, Chair, for the proposed timetable that has been presented to us, and we would also like to thank you for all the efforts that have been made in requesting the reports on the ways to improve the functioning of all of the CTG's subsidiary bodies that you requested to the Chairs of these bodies. However, we would like to share the views expressed by the delegation of Paraguay. Even though we have an excellent team working on these issues in the WTO Secretariat, the issue is beyond them, and we do not know at what level it can be solved. This is why we think that it would be good for this to form part of the report of this Council to the General Council.

53.14. It is not possible that a Council such as this, one of the most important in the Organization, should have so many problems finding a room and that a meeting should have to end at 9pm. In our case, we would not have liked it at all that, had we brought a concern for the Council to hear, only to have our turn, at 8pm, to speak to an empty room, and when nobody could give their opinion or ask a question. In that sense, we would be grateful for this to be reflected in some way because this is in the record. This is not a plurilateral initiative or an informal dialogue. This is the Goods Council, which also involves capital experts, and it should be a priority.

53.15. At the same time, Chair, we trust in your good stewardship and in the good results that you can obtain in this regard, so that we are not penalized every time that meeting dates are changed.

53.16. The delegate of Brazil indicated the following:

53.17. While acknowledging the great work that you and the Secretariat have been doing in your efforts at coordinating the work of this Council, I would just like to second the motion by Paraguay, that this is a very important issue that, to the extent possible, merits predictability and a proper sequencing of meetings.

53.18. The delegate of Australia indicated the following:

53.19. Thank you, Chair, for your comprehensive report earlier, and thanks, too, to colleagues for their statements. I just wanted to talk about the unofficial room document because I was trying to find it on Documents Online recently and I could not do so. I would like to suggest that we change the document's status to that of a JOB document, or some other status, so that it is searchable through Documents Online.

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

53.21. The United Kingdom thanks the Chair and the Secretariat for their efforts outlined with a view to trying to schedule this meeting, and we appreciate that the rescheduling happened because of a knock-on, which was somewhat out of your control, and that you put a lot of effort into trying to sort this out. Like other speakers, we really do view the scheduling issue through the lens of inclusivity, so it is really important to us, and the UK's position across all committees, from the subsidiary bodies through the CTG to the General Council, that all of the meetings for next year are locked in as soon as possible, ideally, to facilitate capital participation. And we would hope, as well, that that might assist with the planning of training activities, and so on, so that we are not experiencing an overload around the meetings; and this also applies for the Secretariat. So we see the CTG and its subsidiary bodies as part of a broader picture, and we really welcome the announcement at the Reform Retreat of a new scheduling tool within the Secretariat that the DG announced. On that basis, we do hope that this new tool will help, and that through it we can lock in a schedule of meetings that, crucially, also takes account of the scheduling needs of smaller delegations.

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

53.23. The United States seconds the remarks by Paraguay. We support all of the sentiments raised today on this issue and would ask that the Chair and Secretariat give greater regard to the scheduling of all meetings of all bodies under the CTG's purview, particularly with regard to maintaining the fixed dates in the schedule versus those bodies that are more fluid. And I know that this is an issue that has improved even as long as I have been covering the Council, and we know that the Chair and the Secretariat have worked very hard on this, and that you place a lot of importance on it, so thank you. But we place a lot of importance on it, too, and we hope that it can continue to improve.

53.24. The delegate of Canada indicated the following:

53.25. I was listening to everyone here in terms of their interventions, and I think that, as the United Kingdom stated, at least from my perspective as well, that the problems that you have had, and that the Secretariat has had, in terms of organizing this meeting have been, at least from my understanding, are pretty much out of your hands. They were in many ways imposed upon you because of the circumstances of other decisions that were taken by other Councils. And I think that maybe the message you should be taking away from this discussion here is that we greatly appreciate everything that you do, and that the Secretariat does, to organize us and to try to keep that continuum of work within the subsidiary bodies that then results in a discussion at the Council, including the timing, and the coherence to everything. But I think that you should carry a message from the Council to others that, as the UK said, there is a need for some coherence from others as well to ensure that there is coherence also for us in terms of our scheduling of meetings. As we understand the difficulties in terms of this specific situation, and the difficulties in past situations as well, this Council would very much appreciate it if there were greater coherence from the entire Organization, working together, to make sure that meetings are not disrupted in this way. I would

also add that I think that the Secretariat does a lot of work, including a lot of requests from Members, and we really appreciate that and the efforts that are taken.

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

53.27. The European Union also considers that the question of the calendar is an important question, and that the needs of delegations, especially small delegations, should be understood and taken into account. We have already seen improvements, even if there are still other improvements to be considered. We think a balance needs to be struck between the need to maintain a certain flexibility, and to have a certain agility, and equally the concern around planning and organization in our work. The question of the calendar is certainly a candidate for a larger dialogue between the Goods Council and the committee Chairs of its subsidiary bodies, as well as between the other councils and committees, including the General Council.

53.28. The Chairperson indicated the following:

53.29. I agree a 100% with all that you have said. First of all, if in a partisan and subjective way, I share your affirmation of the importance of this Council in the context and work of this Organization. More seriously, the Annual Report will be updated to take this discussion into account, and will be a way to inform the General Council. This discussion will also be reflected in the meeting's minutes. In addition, I will offer an echo of these comments to the Chairperson of the General Council. Australia had also asked for the symbol of the Annual Calendar to be changed into a JOB document; and yes, this should be possible, and we will proceed accordingly. I will now pass the floor to the Secretariat to explain a difficulty that has occurred for the year 2023 in relation to the SPS Committee, one of whose meetings will take place after the Council's meeting. A last comment, regarding the Reform Retreat, not specifically in relation to the Council and its subsidiary bodies, but concerning a general preoccupation, especially this last autumn, where we surpassed even the usual planning difficulties in autumn, when we had a particular situation linked to the success of MC12. At this moment, a certain quantity of supplementary work for numerous committees was launched concerning the functioning of the Organization, the response to the pandemic, the TRIPS Council, and the different General Council special meeting, of which there were three or four informal sessions. As a result, a significant number of meetings have taken place in addition to those taking place in a standard WTO year. All that to say that this is a preoccupation shared by the quasi-totality of the Membership, and in the quasi-totality of the Organization's committees. But this makes the obligation for the General Council to address these issues with utmost seriousness all the more important.

53.30. The Secretariat (Mr Roy Santana) indicated the following:

53.31. I apologize again for all the difficulties that were caused by the reprogramming of the meeting. It was really out of our hands. We have faced some constraints that make it increasingly difficult to programme some of the meetings. As Members are aware, there are some constraints in terms of what Members would like to do in the CTG. This had to do, for example, with not having formal meetings of the CTG or subsidiary bodies at the same time. There are also constraints in terms of the sequencing because we should try to have the CTG meetings, at least the one at the end of each semester, taking place after all the committees have met. Then there are also the general guidelines for the planning and organization of meetings, where, for example, the CTG cannot meet at the same time as the General Council, Trade Policy Reviews, TRIPS Council, or Services Council, and then there are also all sorts of elements that we have to take into account. In addition, the CTG has to meet at least 15 days before the General Council meeting to ensure a proper sequencing. If there are waivers or other decisions that have to be transmitted to the General Council, these can only be placed on the agenda of the General Council if they are placed in time and the documents have to be issued and reflected in the Airgram. This means, for example, that the CTG would not be able to meet in the week of 17 July (i.e. after the SPS meeting) because then it would be far too late to be able to include documents or decisions for the General Council's consideration, which would normally meet towards the last week of that month, in this case the week of 24 July. Another element that has typically complicated our own planning is that the meetings of the SPS Committee are actually defined even two to three years in advance, programmed and coordinated with the other sister organizations as well. Thus, the problem should be self-evident. There are not many dates that meet the cumulation of all those criteria, and then sometimes there are no dates that meet all the criteria and constraints. The CTG team will get in contact with their counterparts servicing the General Council and the SPS Committee to explore

whether it would be possible to improve the sequencing, but of course bearing in mind all the constraints.

53.32. The Chairperson indicated the following:

53.33. This confirms the importance of improving our way of organizing ourselves, but this can only be done with the General Council and the Secretariat.

53.34. The delegate of Guatemala indicated the following:

53.35. I would like to excuse myself for only asking for the floor at this time, because I am coming from another meeting due to a scheduling conflict, which thankfully I could also attend over Interprefy, allowing me to quickly switch between meetings.

53.36. I would only like to note that a situation like this allows us to take action towards realizing improvements. The aim of our comments is to prevent this from happening in the future. We are very small missions, and we are in an Organisation with very big issues, so the objective is how to introduce improvements that can be taken into consideration when planning next year's meetings. We know very well that the logistics and coordination within the WTO, like ours, are also complicated, but we appreciate the steps that you are taking towards improving the coordination for next year.

53.37. The Council took note of the statements made.

53.2 Implementation Matters from MC12 – Information from the Chairperson

53.38. The Chairperson indicated the following:

53.39. On 14 October, I organized an informal meeting to present the report of the consultations that I had held, between 22 September and 12 October, on the question of whether, and if so, how, this Council should proceed with respect to the implementation of three issues resulting from MC12. My report of this meeting was circulated in document JOB/CTG/16, and my concluding remarks summarizing the outcome of this informal meeting was circulated in document JOB/CTG/17.

53.40. On 19 October, I met with the Chairpersons of the CTG's 14 subsidiary bodies to inform them about the informal meeting and request them to prepare two factual reports under their own responsibility, with the assistance of the Secretariat, concerning: (i) the activities that had been undertaken in the context of the pandemic; and (ii) the current functioning of their Committees, including actions taken over the past years to improve their work. Shortly afterwards, I sent them a written communication which was also circulated to Members in document JOB/CTG/18. These reports are intended to be factual in nature, and prepared under the responsibility of each Chairperson. Nevertheless, I suggested that drafts be shared with Members before their formal submission and official circulation. I will also be working with the Secretariat to prepare a similar report concerning the current functioning of the CTG and will share a draft with Members before its formal circulation, with an opportunity to send comments before close of business on Thursday, 1 December.

53.41. Once all the reports have been circulated, I will organize an informal dedicated session early next year so that these reports can be presented to you by the respective Chairpersons, and we can have an initial discussion on how to proceed on the two relevant issues. A room has been preliminarily booked for the presentations of the reports towards the end of January, or early February 2023. You will receive more details in writing through the usual channels.

53.42. Finally, as you have already been informed, following suggestions I received in my consultations concerning the times zones, we will experiment with a new approach. We will be holding an information session during the morning of Friday, 9 December 2022 to present the digital tools used by the CTG and its subsidiary bodies, and how they can assist delegates in their work, which will include a Q&A session. This will hopefully be more convenient for capital-based officials in the East. A temporary recording will be made available for *all* delegations to watch that afternoon or shortly thereafter, so that capital-based officials in the other time zones can watch it at their convenience. This will then be followed by an additional session for questions and answers on the afternoon of Monday 12 December, so it is more convenient to the time zones in the West. We are

endeavouring to make it easier for Members in all different time zones to have an opportunity to interact with the WTO Secretariat and pose questions in these sessions. You will be provided with more details in writing through the usual channels.

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

53.44. Thank you, Chair, for this useful update. Will the informal session you mentioned being in late January or early February be on Interprefy?

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

53.46. Thank you very much for the overview, and for all of the work you are doing across many, many subsidiary bodies on the next steps. We really appreciated the informal and the written report that you provided, and we have taken really good note of the fact that you are going to send a draft out for comments, which ensures a transparent process. I suppose, without prejudice to what that report will look like, that this kind of dedicated session to follow up with the presentations from the Chairpersons of subsidiary bodies is great in terms of the reform work on just the functioning of committees. It also takes into account what Canada has coined as a delegate-focused approach to trying to make all of our lives easier. In this regard, it would be really helpful for the Secretariat to prepare, in addition to the report that you will be sending out, a user-friendly basic table that sets out what practices are being followed in each committee. For example, if an annotated agenda is being used in that body or not; if the eAgenda is being used by that body, yes or no. This will allow us to compare and contrast the different practices that are being followed by the different committees, and we find it would really be helpful in terms of thinking a bit more and preparing for that session. I will leave the best format for the Secretariat to decide.

53.47. Secondly, thank you for organizing so swiftly the information session on the digital tools. We requested that at the informal, and we very much appreciate it, on top of everything else you are doing, trying to schedule meetings, dealing with Member requests like the one we have just made. We really hope that the outcome of that training will be that we are then able to make more efficient use of the Secretariat's time as well. One digital tool that we have found has really helped free up our resources is the eAgenda in the CMA, so we would be really interested if you could explore whether other Members have found that useful. We find that it is useful not only in the preparation of meetings, but also in being able to see which Members are tabling what STCs so we can decide if we want to co-sponsor, and especially in being able to upload our statement directly. We can also access the statements that are uploaded by other Members. It has taken us a while to get more comfortable, but it is really cutting down on the bureaucracy, especially in my Capital, so we would be very grateful to know if other delegations also find that helpful so you can consult on whether it can be adopted in this Council.

53.48. The delegate of Paraguay indicated the following:

53.49. Thank you, Chair, for your report. I would like to recognize that we have already come a long way, and in many areas, from where we were a few years ago. I am going to refer to very small and very simple things, but which have really changed delegates' lives. For example, we used to have a different password for every eAgenda we had access to instead of being able to log on with only one username and password, you required three, plus a different one for Documents Online, and a different one for www.wto.org, etc. These small and basic issues help a lot with the approach that the United Kingdom mentioned, in relation to how we can make delegate-centred improvements in this Organization. The scheduling of meetings and the fact that we have this room document in front of us today is also a result of that effort.

53.50. However, we still have a lot of things to move forward on. For example, each Committee designs their section in the WTO web page differently, and the information that is available in the section concerning the CMA is not the same, or is not placed in the same way, as in the SPS, TBT, or Agriculture Committees. And learning to navigate each of those sections in the WTO webpage, especially when you first arrive, can be quite complicated and intimidating.

53.51. Another issue and a good practice that we used to have, and left aside probably as a result of the Coronavirus and other factors, is that we used to have a session for new delegates in the different subsidiary bodies, and also in this Council. When you are new to this intimidating

Organization, which covers many issues, as the colleague from Guatemala said, and in a small delegation, learning to navigate many of the very particular matters of each Committee or each Council can be complicated. Let me use as an example the thematic sessions, the role of informal meetings, and the triennial reviews that some Committees have. All these little details take time to learn, and these introductory sessions, which we used to have a couple of years ago, used to be very helpful for new delegates, and why not, also for delegates who were not new but had not had such a session.

53.52. Those are issues that we would like to see in your consultations, Chair, and we wanted to see how we could, through small changes, incorporate this approach of having the delegate in the centre, and how to make life easier for us. Generally, we see especially in the reform discussions that we are all looking for more participation of the Membership, that it is not always the same fifteen or twenty Members who are active in all the Committees. However, it is very difficult to be active when you cover all the Committees and without these little tools to facilitate one's work. They are small, but they can go a long way.

53.53. One other improvement that I do not want to leave out, which was Colombia's work at the time, is that in eRegistration we can now see who covers what topic so that we can get in touch with our respective colleagues, and that there are mailing lists that reach out to delegates and not just to the main address of the respective Permanent Mission. These are small issues, which seem insignificant, but which have really helped us to make a lot of progress; and we believe that we can continue to make progress in this direction.

53.54. The delegate of Thailand indicated the following:

53.55. First of all, Thailand would like to thank you, Chair, for your dedication and hard work, adding that you have been cited as an icon of a hard-working Chair. Indeed, I have heard in the informal discussions that the CTG was referred to as a body that has made a lot of progress in terms of WTO reform. I certainly share with you the good work that's out there.

53.56. Secondly, I would like to echo the United Kingdom in that, during this information session, the Chair referred to the work that the CMA had done in terms of an eAgenda. Again, I would like to say that, as a former CMA Chair, we don't have a monopoly on the use of eAgenda. I think our friends in the SPS and TBT Committees have also used the eAgenda long before us, which I think helped a lot from my point of view. Speaking under my own responsibility when I was CMA Chair the eAgenda makes life a lot easier. I think maybe it is time for us to consider how we can make a delegate's life easier by using digital tools, which certainly helps. It increases transparency. It increases efficiency. I think it is good for us to see the trade concern in front of us. We don't have to relay the concern to the Secretariat to have it placed on the agenda. We can explore how to introduce it for ourselves in this Council. And I echo a lot of the speakers before me, in that, making things easier for delegates is something that we should be striving for.

53.57. Thirdly, I agree with Paraguay that there is a disparity among the 14 subsidiary committees of the CTG. Each do have their own way of doing things. However, I admire one initiative that was very successful. There is, among three committees, namely SPS, TBT, and CMA, a shared trade concerns database, meaning that you can search the trade concern that was raised in these three committees, and you can see what the issues are, what are the responding countries, what are the complaining parties, and so on. And it has been successfully used by delegates as this makes our lives easier. Transparency is a cornerstone of our operation, as you can see very much from this discussion. So I agree. And I commend your efforts, Chair, in bringing together the 14 chairs of the CTG subsidiary bodies, and I also encourage you to go further: make them talk among themselves as well. When I was chairing the CMA, which was operating in hybrid mode at that time because of the global COVID-19 pandemic, the CMA was doing something, the SPS Committee was doing something different, the Trade Facilitation Committee was doing something else, and so on. There was a lack of coordination and communication among other committees. Therefore, it would greatly help if we could share information, if we could learn from one another, and if we could share experiences and learn from each committee. After all, the world is judging us as one holistic body. Not as the SPS Committee, or as the CMA, but rather, as the WTO as a whole, and on how we respond to global challenges. So, Chair, I would like to praise you for your efforts, and also to make a suggestion to make things even better, just to make our lives as delegates easier and more efficient.

53.58. The Chairperson indicated the following:

53.59. I have also noted the General Council Chairperson's comment with regard to the work of the CTG. It is really a collective work, for which I thank you all. I have also pre-warned the General Council Chairperson that the work we are doing at the CTG is, in a certain way, very simple, very basic. We are trying to improve our day-to-day way of working, which is in our own interests. This will of course need to be a collective effort.

53.60. The delegate of Canada indicated the following:

53.61. Canada appreciates the opportunity at this point to provide a reaction to your report, Chair, and to share some thoughts from Canada for future consideration by the Council. I am speaking specifically about the functioning of the Council aspect, and not so much on the pandemic side of things. And this is especially for some of the delegates that have not been participating in the discussion that this Council has had, for quite a while. In fact, we started this discussion in late 2018. We have had at least eight meetings over the course of those four years that I was able to find references to in the minutes, greatly stimulated by the contribution of our former colleague, Carol, from Hong Kong, China. For me, it has revealed a lot of interest in improving the way the Council and its subsidiary bodies operate. That's clear from our discussions here today, and from those from back in October. Reading back through the minutes of those meetings, I have seen, I do see, some hesitance, in particular around changing mandates, or altering rights and obligations, so I would just like to be clear that, for Canada, this has never been, nor would it be, or is, an objective of this exercise.

53.62. As mentioned in the Council's informal meeting on 14 October, and as the United Kingdom mentioned just now, we continue to participate in this discussion very much with a delegate-centred approach in mind, and considering how we can best improve the practical aspects of our work. That is, what are the different challenges faced by delegates here in Geneva and in capital? We have heard a little bit of it today, in terms of planning. But especially for those from smaller delegations, or with several responsibilities in their work, how can we best facilitate their engagement in the regular work of the WTO? And how can we enhance the organization and conduct of work in those WTO bodies in order to address those challenges? So for Canada, this is about creating an environment that empowers delegates all through their work processes, that is, as they prepare for meetings, as they engage in the discussions during the meetings, and as they follow-up on the results of those meetings. What will help us to use our time wisely? There's been a lot of progress on this front, I think, including in respect to the electronic tools the Secretariat has recently put in place. Even the small improvements and practices can have a big impact, exactly as Paraguay just noted, and these small little things do add up to a lot, and they do create a lot of benefits for us as delegates here in terms of the work we do.

53.63. Another example is the access to the convening notices for informal meetings through the Documents Online system. I don't know how many of you remember this, but these convening notices were usually emailed out to delegates, and if you weren't on the email list, then you didn't get it. And so I think it has really been a big benefit to have access through the online system. And indeed, the e-Registration functionality, too, and again, I think that Paraguay also mentioned it, to find out who your counterparts are in another Member.

53.64. However, Canada does remain convinced that more can be done and that it is a win-win for both delegates and Secretariat staff. I mean, we all recognize very much the support that the Secretariat staff provides for us, and the more that helps us, I suspect, the more that's going to help them too. So we really appreciate the effort, Chair, that you have put in to contacting the subsidiary body chairs, and speaking with them, and organizing with them, in terms of the process that you outlined for us here. And I have to admit that I especially appreciate the reports that we have started to receive from the Chairs of the 14 subsidiary bodies in response to the request you mentioned.

53.65. Maybe just a couple of comments for those who have not had a chance to read these reports. I do see some useful aspects, in terms of things coming out of this. It is clear for me that not all committees have training sessions on the process and conduct of their work for Geneva delegates, and I think Paraguay mentioned that. However, in the reports it is also clear that maybe some of us didn't know that we could have them, and so we never asked for them. And I think that's part of the

process for delegates here, that is, to be active and proactive, and to ask for information not individually, but as a Council or a Committee itself. Some of the committees do use the e-Registration system more than others, and I think that more delegate effort is required for that system to become even more useful than it is already. I know that a number of chairs remind us at the end of each of these meetings to please go on e-Registration and indicate which committees and councils you are responsible for, because then it automatically allows you to be able to receive that information and for other delegates to find you when they look you up.

53.66. The reports also show that there are differences in terminology. It is clear that an annotated agenda in one committee is not always the same as an annotated agenda in another committee. They look very different, at least the ones that I have seen. And many committees do not even have one. And so I think that's another area where we should have some further discussion as to what those things could provide for us in our work going forward.

53.67. Timely issuance of minutes remains a great challenge in many cases. There's quite a variety in terms of the length of time between the dates of meetings and the actual issuance of minutes, as noted in the reports from the Chairs, and that's in large part, I would admit, due to resource constraints. I note that there's a report that's just come out from the Import Licensing Committee, which noted that one WTO staff member is assigned to edit the minutes of seven different WTO committees. So, there is a bit of a rationale behind why it takes so long; but maybe there are ways that things can be improved in this respect as well.

53.68. Lastly, and I think this is something that's started up in recent years, is the provision by Chairs and the Secretariat of advance email notices of meetings and follow-up emails to meetings on next steps. I think that has been a real welcome addition to the practices in the different committees as to making sure delegates know what is coming up, and making sure that delegates know what comes next, more than anything. In a second instance, it is also clear that the rules of procedure we follow in this Council and its subsidiary bodies, which were agreed 25 years ago, exist in a context that has changed a lot in that time. It is true that in some cases those practices and procedures have evolved in different committees as a result of delegate-driven changes, or through practical changes implemented by the Secretariat, but it also appears that little has changed in other committees, or at least there has not been any recent reflection that I can see on changes in those procedures to better respond to the needs of delegates in today's reality. So this is another important area for us to reflect on, at least, when we start digging into this discussion. And then finally, in the third instance, I think the reports that I have read so far underline the importance of this process that you, Chair, are steering. This is a great opportunity for us to engage in a coherent and horizontal discussion of what has been done, and what can be done to enhance the organization and conduct of our deliberative work in order to empower delegate awareness and engagement. In Canada's view, we see great value in being able to have a horizontal view, comparing what the 14 subsidiary bodies have done over the years. And then the results, for our discussion in this Council, can then inform discussions in the subsidiary bodies. And then it will be up to the delegates in each of those individual committees to determine what may and may not be useful for each individual committee to take on, given its particular situation and role. So I just wanted to share those initial reflections. And I very much look forward to our discussion in January or early February, and thank you. And I hope that we have some good results from this discussion.

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

53.70. I wanted to react quickly on two things. One was the suggestion by Paraguay to have orientation sessions for new delegates. I think it is a very good idea to have these types of sessions, but I also think we need to approach that with a bit of caution. These type of sessions can infringe on substance on a number of occasions, and I do not think that any of us would want to put the Secretariat in a position of making substantive judgements about how certain provisions read in certain agreements. You can imagine what a mess that would be for a number of us. Secondly, I really wanted to strongly urge caution in using terms like "delegate-centric" in these types of discussions. While some valid points were made as to improvements that can be made, we want to be careful not to be in a position where we are shifting the burden onto the WTO, and the Secretariat, and the Chairs, to say to delegates "tell me how to do my job". I mean, that, squarely, is a responsibility that does fall on each individual mission, and on specific delegates, so we need to be careful and make sure that there is a balance in these efforts.

53.71. The delegate of El Salvador indicated the following:

53.72. El Salvador fully supports Paraguay's statement regarding information sessions for new delegates. Speaking as a new delegate of a very small delegation, there is a lot of work. Therefore, this kind of initiative greatly supports the capacity of delegates and helps to empower them, particularly those from small delegations.

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

53.74. For our part, we are cognizant of the work that has been undertaken in the Council and its subsidiary bodies on MC12 implementation matters, and we especially appreciate the fact that this work is structured by regular information updates, which is important to follow this work and to bring necessary contributions. We are interested by the suggestion from the UK and Canada to have a table permitting a thematic organization of the principal points that are underlined in the Chair reports, especially if one has 14 such reports. A table would significantly facilitate the work in this area, and notably to discuss the organization of the discussion in the Council and its subsidiary bodies. We also share the positive view of the eAgenda and the digital tools that are being developed. There is certainly a discussion to have on these digital tools, but they go in the direction of reinforcing the efficacy of our work, and the session of 9 December is of course welcome. Generally speaking, there are certainly considerations around our discussion and clearly there are subjects on which to advance, and I must say that, personally, I have benefited from a certain number of training activities from the Secretariat, and that these were extremely informative. There is a discussion to have, in effect, on the experience that one can have as a delegate that will permit us to shed light on certain of the ideas proposed. So we look forward to our session in January or February.

53.75. The delegate of New Zealand indicated the following:

53.76. New Zealand also wishes to thank you, Chair, for your efforts. We look forward to further discussions on 9 December, and we support calls for a draft skeleton of the areas on which we can focus in those discussions. I would also fully support the comments made by previous speakers, particularly Canada, and also Paraguay, on having training sessions. From a small mission myself, and we are not that small, but we do benefit from having information from the Secretariat, and for me personally, I have participated in the CMA training session, and that was really useful as an overview for both old and new delegates.

53.77. The delegate of China indicated the following:

53.78. China thanks you, Chair, for your great efforts to organize the bilateral consultation in September, and also for the informal session in October on MC12 implementation matters. And we also want to thank you, and also all the chairs of the subsidiary bodies, for preparing those two reports. And I see that some of the committee chairs are already sharing their reports, such as those from the CMA, the IL Committee, and the ITA, so we are studying these reports already. We just hope that the remainder of the reports will be circulated to the Members as soon as possible, so that we can have more time to digest them, and so that we have more time to come up with our ideas based on these reports. A lot of good and useful ideas were already being shared and mentioned in today's meeting, so we just want to have more time to digest these reports, so I hope these reports can be circulated as soon as possible. We are very much looking forward to the informal discussions in January or early February.

53.79. The delegate of Türkiye indicated the following:

53.80. Thank you, Chair, and the Secretariat, for all the work that you have done. We are also looking forward to the discussions on the reports of the subsidiary bodies in January or February. As a delegate, I believe it is really important to make our work more efficient, I am just sorry that life will be better for delegates as my term is coming to an end. Just one point with regard to what Canada said on follow-up email notices, namely that, just like the summary reports after certain meetings, such as the CMA with regard to its informal meetings are really helpful. And I think that these could be replicated by some other committees. I do not mean really long reports, but brief notes describing what has happened, so that we can just see what the future work will be going forward. So they could be replicated in other bodies, and the sooner the better.

53.81. The Chairperson indicated the following:

53.82. I have the beginning of perhaps two or three preliminary responses to your questions, but these can wait for our discussions early in 2023. On the question from the United States, yes, the meeting of end-January or early February will also be accessible via Interprefy. On the idea of a comparative table, yes, we are going to try, coordinating with the chairs of the subsidiary bodies, and the Secretariat, to have a report structure that facilitates a comparison. On this basis, I think that we will be in a position to circulate a report and perhaps to compile a synthesis document or comparative table sufficiently in advance. We will do our best to accomplish this. I have also noted several references to eAgenda, which is clearly one of the questions identified during my consultations and during our exchanges of 14 October. And I think that this is one of the points that will be discussed, among others, efficiently, early in 2023. Thank you for this very positive exchange of ideas, which encourages me to continue in this direction.

53.83. The Council took note of the statements made.

53.3 Date of Next Meeting

53.84. The Chairperson indicated that the Council's next formal meeting had been scheduled for 3-4 April 2023. These dates would be confirmed in due course.

53.85. The meeting was closed.