RESTRICTED

S/C/M/122

1 May 2015

(15-2375) Page: 1/20

Council for Trade in Services

REPORT OF THE MEETING HELD ON 18 MARCH 2015

NOTE BY THE SECRETARIAT[1]

The Council for Trade in Services held a meeting on 18 March 2015, opened by Ambassador Choi (Republic of Korea) and chaired by Ambassador Eyjólfsson (Iceland). The agenda was contained in document WTO/AIR/CTS/2.

The agenda was adopted.

1 ITEM A - APPOINTMENT OF THE NEW CHAIRPERSON

1.1. The Chairman recalled that the election of the Chairperson of the Council for Trade in Services was normally to take place at the first meeting of the year. But the first meeting of the Council for 2015 had been held on 5 February, when the Council had convened the High-Level Meeting on the Operationalization of the LDC services waiver.

1.2. On 5 February, however, the General Council had not yet met to decide on the appointment of Chairpersons. Hence, the hand-over of the Chairmanship of the Council for Trade in Services could not happen at that meeting. It was for that reason that the Council was addressing that item as the first item on its agenda.

1.3. Based on the consensus reached in the General Council on 20 February, he was very happy to pass on the Chairmanship of the Council for Trade in Services to Ambassador Martin Eyjólfsson of Iceland. He was confident that, with his experience and wisdom, Ambassador Eyjólfsson would guide the work of the Council over the following year skilfully and efficiently.

1.4. Before inviting Ambassador Eyjólfsson to come to the podium, he, as outgoing Chairman, still had one more issue to address, namely his consultations on the appointment of the Chairpersons to the subsidiary bodies of the Council for Trade in Services for 2015.

1.5. Since the announcement he had made at the February meeting of the General Council, and the fax communication sent to Members on that same day, he had been conducting extensive consultations on the appointment of Chairpersons for the subsidiary bodies of the Council, including by holding a series of meetings, on 6 March, with delegations wishing to make proposals in that regard, individually or in a group.

1.6. In accordance with the Guidelines for the Appointment of Officers to WTO Bodies of 2002 (WT/L/510), in order to ensure balance in the proposed slate of names for the Chairmanships of the subsidiary bodies, he had also been consulting with the Chairman of the Goods Council. As there were 13 subsidiary bodies to the Council for Trade in Goods, the balance to be achieved required taking many factors into account.

1.7. In the light of all the consultations he had held, he proposed the following slate of names for the Chairmanships of the respective subsidiary bodies of the Council for 2015:

[1] This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.

Ms Brigitte LÜTH (Austria)	Committee on Specific Commitments
Ms Maha GABBANI (Saudi Arabia)	Committee on Trade in Financial Services
Mr Eog-Weon LEE (Republic of Korea)	Working Party on Domestic Regulation
Mr Donald MCDOUGALL (Canada)	Working Party on GATS Rules

1.8. The proposed slate reflected the views that he had heard in the course of his consultations with Members, subsequent discussions with nominating Members, as well as consultations with the Chairman of the Council for Trade in Goods.

1.9. He was confident and trusted that those candidates, all of whom had impressive qualifications and qualities, were fully committed to serve the Membership and perform their future functions as Chairpersons of their respective bodies in an objective, transparent and inclusive manner, strictly bearing in mind the interests and wishes of all Members.

1.10. Thus, unless there were any objections, this list would constitute the final proposal for election of Chairpersons by the respective subsidiary body.

1.11. It was so agreed.

1.12. As stipulated in the Rules of Procedure, Chairpersons were to be elected at the first meeting of the year, and the election took effect at the end of the meeting. In situations where Members had missed the deadline of the first meeting of the year, they had resorted to alternative solutions. A case in point was indeed the Chairmanship of the Council for 2015, where the election had been postponed to the beginning of the second meeting of the year, i.e. that meeting.

1.13. However, a number of delegations had informally raised the issue of the timing of the handover of the Chairmanships of the subsidiary bodies. Given that his consultations in that regard could not be concluded at a time that would have allowed the handover to take place during the March cluster of services meetings, concerns had been expressed about the delay caused to incoming Chairs in assuming their duties, particularly with respect to areas and issues that might benefit from informal consultations sooner rather than later.

1.14. Three possibilities existed in that regard. The first was to wait until the second meeting of the subsidiary bodies for 2015, and for the Chairpersons to be elected at the start of those meetings. Given that the second cluster of meetings for 2015 was presently scheduled for June, this would imply a long delay. The second was to hold a formal meeting for each of the subsidiary bodies before June, exclusively devoted to the election of the respective Chairpersons. This solution, however, involved the significant cost of hiring interpretation for the four meetings, all of which would have just one item on the agenda. The third solution, which he personally found preferable, was for the subsidiary bodies to elect their respective Chairperson via written procedure. If Members agreed to this third solution, he would ask the Secretariat to initiate the written procedure. The Secretariat would accordingly send out a fax with a deadline, which he proposed be that Friday, 20 March. If no objections were raised by that deadline, the Chairpersons would be deemed to have been elected by the respective subsidiary body. The Secretariat would then circulate a communication to that effect.

1.15. It was so agreed.

1.16. As the outgoing Chairperson of the Council, the Chairman said that, during the previous year, he had enjoyed working with Members and had truly appreciated their cooperative and constructive spirit in fulfilling the mandate of the Council. He was particularly encouraged by what Members, collectively, had achieved with regard to the implementation of the Bali Decision on the operationalization of the LDC services waiver, especially with regard to the High-Level Meeting held the previous month. He had also appreciated the assistance provided by the Secretariat under the leadership of DDG Yi and Mr Mamdouh. He wished yet again to underscore the importance of services trade in the changing world economic environment. Although the services negotiations were making very slow progress in the WTO and plurilateral negotiations were on-going outside the WTO, he was confident that the Council for Trade in Services had an important role to play in

advancing dialogue and discussion amongst Members, and would continue to do so under the Chairmanship of Ambassador Eyjólfsson. He then proposed that the Council elect Ambassador Eyjólfsson by acclamation as its new Chairperson.

1.17. The Council elected Ambassador Eyjólfsson by acclamation.

1.18. The new Chairman, Ambassador Eyjólfsson, thanked Ambassador Choi on Members' behalf for his hard work during the previous year. He also thanked Members for their trust and support. He was both honoured and humbled to take over the Chairmanship of the Council. He expressed the hope that they would be able to move the work of the Council forward over that year and looked forward to working with all Members.

1.19. All delegations who spoke at the meeting thanked Ambassador Choi for his work and congratulated Ambassador Eyjólfsson on his appointment as Chairman of the Council, welcoming him to his new position.

2 ITEM B - NOTIFICATIONS PURSUANT TO ARTICLES III:3 AND V:7 OF THE GATS

2.1. With regard to the notifications made pursuant to GATS Article III:3, the Chairman drew the Council's attention to the communications received, respectively, from the Republic of Guinea, in documents S/C/N/775-784, and South Africa, in document S/C/N/788. He proposed that the Council take note of the notifications made.

2.2. It was so agreed.

2.3. The Chairman additionally noted that Switzerland and the EU had also recently submitted notifications under Article III:3, in documents S/C/N/793 and S/C/N/794-802, respectively. As the notifications had been circulated after the issuance of the airgram, they would be taken up at the next meeting.

2.4. Moving on to the notifications made pursuant to GATS Article V:7, the Chairman drew Members' attention to the communications received from: Costa Rica, Panama, Iceland, Liechtenstein, Norway and Switzerland (S/C/N/774); the Russian Federation (S/C/N/785); the Republic of Korea and Australia (S/C/N/786); Japan and Australia (S/C/N/787); Canada and the Republic of Korea (S/C/N/789); Armenia and the Russian Federation (S/C/N/790); Canada and Honduras (S/C/N/791). He proposed that the Council take note of the notifications and refer the agreements notified to the Committee on Regional Trade Agreements for consideration.

2.5. It was so agreed.

2.6. Thereafter, the Chairman invited Members to consider the Note by the Secretariat containing an "Overview of notifications made under relevant GATS provisions", circulated as document JOB(09)/10/REV.5. He recalled that, in February 2014, Members had agreed that the Secretariat would update the note on an annual basis.

2.7. A representative of the Secretariat introduced the Note, highlighting two elements. First, there had been an increase in the number of notifications submitted by African countries, which was very welcome. Second, with regard to the notion in Article III:3 that Members were to notify measures that "significantly affected" trade in services, he noted that some Members had added a caveat to their notifications, to the effect that these were without prejudice to the interpretation of the GATS wording in question. As always, the Secretariat would welcome any comments or factual corrections on its Note.

2.8. The Chairman suggested that the Council take note of the presentation made.

2.9. It was so agreed.

3 ITEM C – OPERATIONALIZATION OF THE LDC SERVICES WAIVER

3.1. The Chairman recalled that, on 5 February 2015, the Council had convened a High-Level Meeting (HLM) on the Operationalization of the LDC services waiver, pursuant to the relevant Decision Ministers had adopted in Bali.

3.2. The HLM had been an important stepping stone towards the operationalization of the LDC services waiver. At the meeting, several developed and developing countries had indicated services sectors and modes of supply where they were considering providing preferential treatment to services and service suppliers from LDCs. A significant level of engagement had emerged from the meeting.

3.3. Two elements were agreed in terms of next steps. First, that a sub-item would be included on the agenda of the Council, on the "Assessment of the results of the LDC services waiver High-Level Meeting". Accordingly, an item to that effect had been added to the agenda.

3.4. Second, it was agreed that Members shall endeavour to submit notifications of preferential treatment for services and services suppliers of LDCs at the earliest possible date, and no later than 31 July 2015. The Council had received its first notification with respect to the waiver Decision, from Canada, in document S/C/N/792.

3.5. The representative of Qatar, speaking on behalf of the GCC Members, welcomed the positive steps taken at the HLM, which was, in effect, a step forward towards finalising the DDA, and had been encouraged by the event and Members' high level of engagement. The GCC concurred with the LDC Group that meaningful preferences could greatly impact the lives and the livelihoods of LDC citizens. Preferences were a necessary element to integrate LDCs into the multilateral trading system. The GCC had met with LDCs bilaterally to discuss the results of the HLM and to see how GCC Members could contribute. He indicated that domestic consultations in that regard were still on-going in many GCC countries.

3.6. The representative of Bangladesh said that the HLM had fulfilled one of the elements of the MC9 Decision on the operationalization of the LDC services waiver. On behalf of the LDC Group, he reiterated his thanks for the remarks made, at the end of the meeting, by the Honourable Minister of Uganda and supported by the Honourable Minister of Bangladesh. The intentions announced on that day by many Members, both developed and developing countries, to accord preferential treatment to LDC services and service suppliers were in the right direction. If notified in accordance with the letter and spirit of the MC8 waiver Decision, those intentions could provide an important deliverable for LDCs in the WTO and promote their integration into the multilateral trading system. After those introductory remarks, he wished to pass the floor to Uganda, who was the LDC Group services focal point, to deliver the presentation of the LDC Group assessment of the results of the HLM.

3.7. The representative of Uganda, speaking on behalf of the LDCs Group as requested by the Group's Coordinator, Bangladesh, wished to deliver the presentation of the Group's assessment of the results from the HLM on the LDC services waiver Decision.

3.8. He started off by recalling the mandate of the MC8 LDC services waiver Decision. As per paragraphs 1 and 2 of the Decision, all Members had agreed to create a waiver that would allow Members, in a position to do so, to provide preferential treatment to LDC services and services suppliers. He highlighted the specific references, in those paragraphs, to the waiver of GATS Article II:1 (MFN) and to preferential treatment for LDCs. The LDC Group understood that the waiver only protected the preference-granting Members from exposure to dispute settlement and that it was up to these Members to decide how to accord the preferential treatment notified. It was normal in WTO practice to have waivers of that kind and Members were well aware of their impact on the goods side.

3.9. With the mandate in the MC9 Decision to operationalize the LDC waiver, Ministers had been consistent and clear. In paragraph 1.2, he underscored the reference to preferential treatment, both when preparing the collective request and when indicating intentions at the HLM. The same reference was found with regard to the preferences Members chose to notify at their own initiative pursuant to paragraph 1.3 of the MC9 Decision.

3.10. He then explained the approach taken to assess the results of the HLM and the services market access objectives set out in the LDC collective request. When the LDC Group had embarked upon the preparation of its collective request, the Group had first considered the interests of its suppliers from the perspective of the common goals that all countries sought to obtain in services market access, such as existing and potential trade, leap-frog technology, diversification of the economy, employment and support to goods trade.

3.11. The LDC Group had conducted and analysed surveys of suppliers in a number of selected countries, questionnaires, reports from institutions, trade data, LDC submissions since the beginning of the services negotiations, LDC service suppliers' target markets. It had examined RTAs and DDA offers that matched interests of a cross-section of LDCs, as well as common threads of sectors, crafting its collective request to the diversity of its Membership and to the Members that could be in a position to grant preferences.

3.12. LDCs had submitted their collective request on 21 July 2014, with the expectation that Members would fashion creative or exact preferential treatment responses to their collective interests, pursuant to paragraph 1.2 of the MC9 Decision to operationalize the waiver.

3.13. At the HLM, LDCs had appreciated the opening remarks made, and were delighted that Honourable Amelia Anne Kyambadde, Minister of Trade, Industry and Cooperatives of Uganda and Honourable Tofail Ahmed, Minister of Commerce of Bangladesh had attended and addressed the meeting. An assessment agenda item for that meeting of the Council for Trade in Services, and a deadline to aim for notifications, had been agreed.

3.14. Looking at the results of the HLM based on announcements of Members at the meeting, he said that those 25 Members had expressed intentions. Out of that number, 18, both developed and developing Members in a position to do so, had announced specific indications of preferences. While most of those indications were very specific, the details had to be analysed in the notifications themselves, and another assessment of the actual notifications might be necessary. Those Members that had not provided specific details at the HLM, but had indicated that they were still consulting and would be discussing further with the LDC Group or would come later with a notification, had also been charted.

3.15. More than 65% of the collective request was covered in the specific intentions expressed. Indications had been grouped in terms of breadth; number of preferences; modes of supply; sectors; announcements beyond GATS Article XVI; and technical assistance and capacity-building in order to orient suppliers to benefit from the preferences. LDCs had also appreciated that many Members had followed the agenda and given indications about the timing of their notifications. They were further delighted that Members could agree on a target date to notify the preferential treatment announced at the HLM.

3.16. Announcements concerned market access measures and measures beyond market access, covering national treatment and administrative burdens, including excessive paperwork and fees. The bulk of the sectors in table A40 and the Annex of the LDC collective request were addressed. A significant number of preferences were announced in mode 4. Mexico, Brazil, India, China, Chinese Taipei, the European Union, Iceland, New Zealand, and possibly Canada, appeared to have announced intentions to grant the broadest preferences in terms of range across the collective request pillars. Thailand and others addressed specific subsectors requested by the LDC Group, such as entertainment and recreational services. In the case of Canada, however, the Group had taken note of their recently submitted notification and would revert to it, as LDCs had issues to raise with the Canadian delegation.

3.17. Most of the sectors announced were in professional and business services, logistics/transport, BPO/ICT, tourism and tourism-related services, followed by entertainment services. The mode most announced was modes 3, followed by mode 4. A few Members announced intentions of providing preferential treatment, but did not state the mode of supply. Another few expressly announced national treatment in addition to market access. Those were, for example, the European Union, Iceland, Norway and, possibly, Canada. One Member, namely Korea, appeared to announce principally mode 4 in several sectors identified in the collective request and in the contractual service supplier category requested by the LDC Group. Some

Members announced in single sectors, such as Norway, in transport/logistics, and Singapore, in cleaning and dyeing services.

3.18. In mode 4, a few Members announced preferential treatment for LDC suppliers for contractual services suppliers and independent professionals, which the Group had requested. For example, Members indicating intentions included the European Union, Australia, India, Norway, Korea, Chinese Taipei and Japan. Several Members appeared to introduce preferential treatment for LDC services suppliers in the form of extending the time of stay for many visa categories. A few responded to the LDC request for installers or servicers (e.g. India, New Zealand and Norway). Preferences to LDC graduate trainees were elaborated by the European Union. Preferences to LDCs for trainees in intra-corporate transfers were announced from Norway, for example. Preferences to LDCs in the elimination of Economic Needs Tests (possibly Canada and Japan) and labour market tests (Japan) were also announced. These elements were also specifically covered in the LDC collective request.

3.19. The Group was very happy to hear the intervention of India, which went further still, to indicate the elimination of visa fees for LDC individuals applying for Indian business or employment visas, and the establishment of a 250 exclusive quota for LDC tour guides. LDCs also appreciated Norway's announcement of preferences on the elimination of residence permits for installers. The LDC Group also applauded Japan's announcement of preferences to LDC suppliers in the elimination of stamping that a visa had been denied, and elimination of resident permit fees. Korea announced that their notification would cover simplification of procedural requirements, to diminish additional approval procedures in favour of LDCs.

3.20. He recalled that some Members had told the LDC Group that visas and other services non-tariff barriers impacting mode 4 were outside of the scope of the GATS. The LDC Group had reminded Members that the GATS and other regulatory and procedural measures were indeed relevant, including the GATS Annex on Movement of Natural Persons, GATS Article VI and Article VII. LDCs were very pleased that a few Members had come forward in response to the LDC collective request on these areas of importance to their services suppliers.

3.21. Paragraph A.6 of the LDC collective request addressed horizontal mode 3 restrictions raised by a number of LDCs. A number of preferences were indicated in favor of LDCs in mode 3, for example by India, Brazil, Liechtenstein, Japan, Chinese Taipei, Mexico, New Zealand, Singapore, possibly Switzerland and possibly Canada. It was not clear if Hong Kong, China's statement concerned mode 1, mode 3 or both, and hence if it covered mode 3 preferences. The LDC Group also acknowledged mode 1 announcements, in particular with regard to ICT and BPO preferences.

3.22. As concerned granting to LDCs the treatment from RTAs and FTAs, if Members drew from such arrangements, the LDC Group welcomed this. However, the Group kindly requested granting Members to ensure that those preferences responded to the request and interest of LDCs. For example, a couple of Members, namely Mexico and the United States, had mentioned the possibility of according LDCs the treatment from TISA. Chile and others had also mentioned according FTA preferential treatment to LDCs.

3.23. In that regard, LDCs wished to obtain details about which elements from those agreements matched elements from their collective request. LDC suppliers would need to know that the treatment in those agreements was workable for them. Therefore, it was important to spell out details from those agreements that related to the request. It did not matter from what basket the preferences came from; what was important was that the treatment granted be preferential, related to the specific requests of LDCs and notified and operable by July that year.

3.24. The Group had also reviewed announcements concerning technical assistance and supply-side capacity-building. While all infrastructure and assistance in services sectors was critical on the supply-side, as reflected in the MC8 and MC9 Decisions, the LDC submission also specifically addressed assistance to orient and assist LDC suppliers to utilize the preferences announced. Approximately 10 Members had addressed technical assistance and capacity-building in their remarks at HLM. However, most had referred to existing programmes and broader initiatives, such as Aid for Trade, and not to initiatives specific to the preferences intended. India and China had most clearly linked their announcements of new support and assistance to the announced preferences. Australia had referred to the introduction of new research initiatives.

3.25. Many of the preferential treatment intentions announced were complementary to research and analyses conducted over time by the LDC Group and partners, individual LDCs, and various institutions such as ITC and UNCTAD. Direct linkages made between preferences and the collective request helped LDCs better assess the seriousness of the intentions announced and the benefits their suppliers could pursue. If the preferences, once notified, were without any insurmountable conditions on LDC suppliers, they had the potential to increase LDC employment, supply of services, economic growth, facilitation of trade in goods and services, and consumer choices. Responses to paragraph 3.2 of the collective request had to be concrete, at a minimum to orient suppliers in all LDCs on how to utilize the preferences and assist in matchmaking with consumers of those services.

3.26. About next steps, although the July 2015 deadline was a best endeavour one, the LDC Group urged all Members who had announced preferences at the HLM to notify them by the end of July. The LDC Group was open to the granting Members choosing their own format for the notification, and encouraged the WTO Secretariat to assist with relevant information. However, the Group had been asked a few times by potential grantors about the format. The Group had provided one format in document JOB/SERV/194, and encouraged Members to use this format as well. The LDC Group reserved the right to evaluate the content of the notifications made.

3.27. On behalf of the LDC Group, he wished to profoundly applaud, once again, the very constructive and promising indications made by several Members. The Group's wish was for the good news about the results of the HLM to be included in their dossier for 2015 in the form of concrete notifications delivering on preferential treatment for their services suppliers. This would not only become a success story on the implementation of another Bali Decision, but also a contribution to concluding the DDA in its development dimension for the WTO's poorest Members. In the operationalization of the waiver, they expected the same operability found in preferential treatment on the goods side. They understood that the waiver provided cover against MFN dispute challenges; however, the preferences requiring a waiver had to be, in the first place, in the instrument of notification to utilize the waiver.

3.28. LDCs encouraged those Members who had done well, and would do well, to honor the letter and spirit of the MC8 and MC9 waiver Decisions, to stay the course and expedite their domestic procedures to convert those preferential treatment indications into notifications. They urged Members having given indications at the HLM to improve on them and submit clear and precise notifications. Those notifications had to imply preferential treatment and not introduce new obstacles and conditions that would make it again difficult for LDC suppliers to avail themselves of any benefits in the services pillar.

3.29. Some Members had given partial indications, or stated that the HLM had been a learning exercise for them. The LDC Group urged those Members to improve on any intended preferential treatment in favor of LDCs, and include in their upcoming notifications additional preferential treatment in sectors and modes identified in the LDC collective request. Further, if there were any gaps in the specifics concerning the modes, LDCs looked forward to Members providing precise notifications in that regard.

3.30. The LDC Group further stressed that, in mode 4, the reduction of administrative barriers and reduction in the application of fees for visas, work permits and residence permits that did not require legislative changes should be doable for Members having problems with mode 4 market access offers. Elimination or reduction of economic needs tests and labor market tests for LDC suppliers who had bona fide offers or contracts to provide services in the host Members would also be welcome. The facilitation of, or the creation of a better enabling environment for the recognition of LDC degrees and qualifications should also be part of a development-focused response to the LDC request, and an objective that would enhance notifications.

3.31. Moreover, the LDC Group wished to request that Members having yet to provide details of their intentions specify them as soon as possible to the Group, before submitting their respective notifications. The Group was conducting post-HLM bilaterals with Members, with the purpose of gaining a better understanding of the intentions voiced and to urge Members who had not yet expressed preferential treatment for LDC suppliers to do so in the form of notifications.

3.32. The LDC Group then turned to the notification submitted by Canada under the waiver Decision. This was very important, as LDCs urged all other Members to prepare notifications that followed the mandate of the waiver Decision and that helped maintain the high note LDCs were eager to express that day as they delivered their assessment of the results of the HLM.

3.33. Canada was the first Member to submit its notification of intentions expressed at the HLM. However, the LDC Group wished to seek clarifications about the notification. At the HLM, Canada had spoken of "treatment" to be provided in their notification. LDCs had understood that the notification concerned would be a notification pursuant to the agreement at the HLM and paragraph 2 of the MC8 Decision. To that end, therefore, they wished to seek clarification from the Canadian delegation on three issues:

a. Could Canada confirm that the notification contained preferential treatment extended to LDC services and services suppliers in accordance with the letter and spirit of paragraphs 1 and 2 of the MC8 Waiver Decision and paragraph 1.2 of the MC9 Decision?

b. Which elements were preferences in favour of LDC services and services suppliers?

c. If those were the preferences notified in favour of LDC services and services suppliers, did the third unnumbered paragraph in the introduction of the Canadian notification mean that those preferences applied as of the date of the notification, but that future legislative and regulatory changes might modify those notified preferences?

3.34. If the Canadian notification contained no preferences in favor of LDCs requiring a waiver of GATS Article II, the LDC Group requested that Canada revise the notification to contain preferential treatment extended to LDC services and services suppliers in accordance with the MC8 and MC9 Decisions.

3.35. All delegations who spoke thanked the LDC Group for its assessment of the results of the HLM.

3.36. The representative of China said that Uganda's comprehensive presentation was useful for Members to assess the HLM. In his delegation's view, the HLM had produced encouraging results, with many Members announcing preferential treatment in favour of LDCs. This was an important step towards the implementation of the Bali Package. The HLM had spoken to the joint efforts of the international community to provide support for LDC development, and had demonstrated the substantive progress made in implementing Special and Differential Treatment under Article IV of the GATS.

3.37. At the HLM, China had announced that the new preferences it would give to LDCs would fall into the areas of capacity building, construction of service facilities, market access and domestic regulation. Currently, his delegation was undertaking the preparatory work necessary to submit a notification, in line with domestic procedures. China would endeavour to make a formal notification to the Council for Trade in Services as soon as possible.

3.38. The representative of Australia said that the HLM had demonstrated Members' commitment to delivering on LDC issues. Members had obviously carefully considered the LDC collective request and many had been in a position to provide detailed indications of the preferences under consideration, including in areas that were sensitive for many Members; the level of engagement on mode 4 had been particularly striking. She hoped that the LDC Group was encouraged by the many different ways Members were considering in order to respond to the LDC collective request.

3.39. She agreed with the LDCs' message that the HLM was just the start of the process. Members needed to deliver on the good work undertaken until then and submit notifications as soon as possible once domestic processes were completed, before the agreed 31 July deadline.

3.40. On the references to Australia in the LDC presentation, she noted that if one took the current level of openness of the Australian market, together with the specifics announced at the HLM, access to the Australian market would cover roughly 90% of the collective request. She also indicated that her delegation had designed technical assistance around activities that would assist LDCs take advantage of preferences provided. Her authorities were working with domestic

agencies to progress Australia's notification, would keep LDCs up to date with progress in their domestic processes and would submit their notification as soon as possible.

3.41. Her delegation also looked forward to continuing discussions with LDCs on how their priorities could be addressed in the post-Bali work programme, in a way that would contribute further to increasing LDC participation in trade in services. Australia recognised that notifications would be an important first step, but was certain that they would be only the beginning of a broader discussion on how LDCs could integrate further into global services trade.

3.42. The representative of Nepal echoed the statements by Bangladesh and Uganda on behalf of the LDC Group. His delegation had been encouraged by Members' indications at the HLM and had appreciated their positive gestures. He hoped that, by July, commercially meaningful preferences would be notified, instead of vague ideas that were difficult for LDC service suppliers to understand. Following the HLM, LDCs had continued to engage with Members, to clarify the indications given as well as the LDC collective request, and they were ready to engage further to this effect. They expected that the notifications would indicate the starting date for the preferences, and in this regard he wished to ask Canada when the preferences it had notified would take effect and whether these would be subject to further revisions. He then called on all Members to notify their preferential treatment as soon as possible, and preferably before the end of July.

3.43. The representative of Paraguay was pleased to see the progress that had been made with regard to the LDC services waiver. His delegation had been following discussions on this issue since MC8, including at MC9 and at the HLM. From a systemic perspective, the services waiver could be a concrete deliverable of the DDA, given that it was based on paragraph 42 of the Doha Ministerial Declaration, the 2003 Modalities for the Special Treatment of LDCs and Annex C of the Hong Kong Ministerial Declaration of 2005. Similarly, the waiver served to advance the implementation of the Bali package and the conclusion of the DDA, thereby fulfilling the mandate established at MC9.

3.44. From the perspective of a landlocked developing country like Paraguay, services were fundamental in achieving the commercial objectives identified in the Vienna Programme of Action for Landlocked Developing Countries for the decade 2014-2024, as reflected in document WT/L/942. The implementation of the services waiver would be very important for LDCs, and in particular for those LDCs that were landlocked. An effective implementation of the waiver would also advance the Vienna Programme of Action for landlocked developing countries. In fact, both the LDC collective request and the Vienna Programme of Action aimed at developing similar areas in the services domain, including market access, transport, logistics, ICT.

3.45. Finally, preferences for LDCs would demonstrate that the WTO could, and indeed had to, take into account the priorities of those Members who faced specific challenges and difficulties in meeting their trade policy and development objectives. That was why his delegation hoped that issues of interest to the most vulnerable Members would be addressed.

3.46. The representative of the Republic of Korea said that the level of participation at the HLM had gone beyond expectations. Members had participated actively, in a dedicated manner. Many had provided indications of preferences and a notification was on the table. Korea was certain that the collective efforts made would result in concrete deliverables and preferences for LDCs. The operationalization of the waiver would be a crucial boost to stimulate discussions on the services component of the Post-Bali work programme.

3.47. Following up on its presentation at the HLM, Korea was still considering the best format in which to capture its preferences, since it believed that the notification had to be simple but specific, easy to understand but detailed at the same time. His delegation would work with the format proposed by LDCs, but amend it so as to include more information for LDCs to enjoy the preferential treatment more effectively. Korea would submit its notification before the end of July.

3.48. The representative of Brazil also expressed his delegation's satisfaction with the HLM, which had been very positive, seen broad-based participation and, having listened to the LDC Group's assessment, lived up to expectations. The preferences announced were extensive, intensive and, more importantly, commercially meaningful for LDCs. Brazil had taken up its share of responsibility

as a developing country in a position to do so, as highlighted in the LDCs' assessment. Brazil's offer, which was commensurate with its level of development and regulatory capacity, covered a wide range of sectors in W/120. His delegation was cognisant that the HLM was only a stepping stone, albeit a critical one, towards the operationalisation of the waiver. Mindful of the end July best-endeavour deadline, his delegation would do its outmost to ensure that the necessary domestic procedures for the approval of preferences run as smoothly and expeditiously as possible.

3.49. The representative of India also noted the encouraging outcome of the HLM. India's offer at the HLM signified its commitment to the LDC cause and the development dimension of the DDA. Similarly to India's position in goods, where a fully functioning duty-free-quota-free scheme was in place with duty-free market access on about 96% of tariff lines and preferential duties in another 2.2%, totally around 98.2% of tariff lines, in services India had also tabled a substantive offer to LDCs. India had provided indications in keys areas of importance to LDCs in market access, especially in mode 4 and professional services. India believed that its offer catered to the specific LDC requests mentioned in the collective request. India had also offered access in new sectors, deepening its existing commitments. A detailed section on technical assistance had also been included in India's offer.

3.50. Despite commitments in mode 4, actual access could only be realised only if implicit barriers to mode 4 trade were addressed, and visa fees could be an important bottleneck for LDC service suppliers. For that reason, her delegation had decided to wave visa fees for LDC individuals applying for business and employment visas to India.

3.51. On the notification, her delegation had started the necessary process and would be notifying as soon as the internal requirements had been completed. India was conscious of its WTO obligations, which mandated that LDCs receive a special priority in sectors and modes of interest to them; given the development agenda of the Doha Round, that issue was all the more important. India had more than 300 million people living with less than US$1 per day, and in that sense it was the world's largest LDC. Given its economic reality and capacity, India had made its utmost effort to deliver on the LDC cause, both in goods and now in services as well. She urged other Members who had not done so, and especially those who were capable to deliver, to come forward and deliver on this long awaited promise to LDCs.

3.52. The representative of Japan stressed the importance of Members addressing the waiver issue collectively, with a view to enhancing the integration of LDC into the global services trading system. His delegation had highly appreciated the outcome of the HLM, in that the preferences indicated by many Members demonstrated the significant level of momentum maintained among Members. Japan was preparing for its own notification in line with what it had indicated at the HLM, and would submit it as soon as possible.

3.53. The representative of the European Union said that the LDC Group's comprehensive assessment of the HLM was very useful in keeping Members focused and preparing their notifications. The EU shared the LDC Group's positive evaluation; very comprehensive signals had been given by a wide range of Members. The representative encouraged those Members who had not yet come forward, to do so. Internal procedures in the EU were on-going to finalise its notification of preferential treatment. The EU was mindful of the indicative time-frame agreed at the HLM and would do its best to notify in that time-frame if possible.

3.54. The representative of Iceland thanked the LDC Group for the useful assessment of the HLM they had shared with Members. The HLM had been very positive and had highlighted a broad and constructive engagement by a large number of delegations to operationalise the waiver. He was also grateful to Canada for being the first Member to submit a notification. His delegation was looking at the format of its own notification and aimed to submit it by the indicative timeframe of end-July.

3.55. The representative of Chile said that his authorities were working on Chile's notification, whose format was still being discussed. Chile's notification would satisfy the indications it had provided at the HLM. The aim was for the notification to be submitted by the indicative deadline of end-July or shortly thereafter.

3.56. The representative of Mexico echoed the positive assessment made of the HLM. Her authorities were working intensively domestically to prepare Mexico's notification, and she stood ready to consult with LDCs on all the indications Mexico had provided at the HLM.

3.57. The representative of Haiti echoed the statements delivered by Uganda and Bangladesh on behalf of the LDC Group, as well as the intervention of Nepal. His delegation wished to thank all Members who had participated in the HLM. While the indications provided at the HLM had been encouraging, that were just the start of the process. Haiti wished to encourage all Members who had shared indications of preferences to try to notify them by the end of July at the latest, as agreed at the HLM. It was important to bear in mind that those preferences could truly help promote development for LDCs, in line with the spirit of the collective request submitted by LDCs in July 2014.

3.58. The representative of Norway was also satisfied with the HLM and pleased that so many Members had taken the floor, many indicating concrete sectors and modes where they were considering preferences as well as further concrete projects on technical cooperation. The HLM had represented an important milestone in Members' progress towards the operationalisation of the waiver. While work to that effect had just started, the HLM would serve as a solid base for Members' continued efforts. Her delegation also thanked Canada for its notification to the Council.

3.59. From its side, Norway had offered, as a basis, to give LDCs preferences equivalent to what Norway had negotiated in its most liberal FTA. The details would come forth in its notification. Her authorities were still in the process of internal consultations, and would submit the notification as soon as those were finalized and in line with agreed procedures. They aimed to notify by April. Norway believed that LDC exports would get an extra boost from its preferences as well as preferences in other areas that would be indicated in the Norwegian notification. However, given the supply-side constraints of LDCs, Norway would also note the importance of a continued focus on trade-related assistance and regional efforts. She thanked LDCs for the open and constructive dialogue they had had with her delegation in that process. Norway looked forward to continuing that important work in close cooperation with the rest of the Membership and LDCs in particular.

3.60. The representative of the United States welcomed the assessment provided by LDCs, and had similarly found Members' engagement at the HLM positive. As Norway had said, the HLM was just a start, but it had significantly highlighted and elevated the importance of services for development, something his delegation had been stressing for a long time. The United States supported continuing to look at ways to help expand LDC participation into the global services market, including trying to find ways in which preferences would help in that regard. His authorities were continuing to consult internally on additional areas they might consider, and as always, they were willing to meet with LDCs to consider their interests.

3.61. The representative of Switzerland said that domestic consultations were well under way and that his delegation was confident that it could meet the indicative deadline of July to submit its notification, which would be based on the most recent FTAs concluded by Switzerland.

3.62. The representative of South Africa said that his delegation had indicated in its bilaterals with LDCs where its preparations stood. South Africa intended to present its response by July.

3.63. The representative of Chinese Taipei thanked LDCs for their assessment and expressed his delegation's satisfaction with the HLM. He also thanked Canada for its notification. His authorities were working intensively in capital in order to table Chinese Taipei's notification by July, if not earlier.

3.64. The representative of Canada thanked Uganda and the LDC Group for their assessment of the HLM and their interest in Canada's notification. Canada strongly supported efforts within the WTO to increase the participation of LDCs in world trade and the global economy. Canada’s duty-free-quota-free treatment of LDC goods covered 98.6 percent of tariff lines and included flexible rules of origin. Canada had also contributed CND$20 million to the Enhanced Integrated Framework to help LDCs take advantage of those trade opportunities.

3.65. When it came to services, Members collectively had more work to do. Canada was proud to be the first Member to submit a notification relating to the LDC waiver. Canada’s notification

should provide LDCs with a clearer understanding of the opportunities available in the Canadian market.

3.66. He wished to take some time to explain the approach Canada had taken in developing its notification. It was important to be mindful of the starting point: Canada maintained a liberal services trade regime. In the sectors identified by LDCs in section A.40 of the LDC collective request, for modes 1 and 3, Canada had notified market access that was equivalent to that provided in the Canada-EU Comprehensive Economic and Trade Agreement (CETA).

3.67. His delegation had treated mode 4 separately, due to the different nature of mode 4 commitments, where, rather than scheduling on a sectoral basis, Members scheduled horizontally, based on categories of business persons. As the notification made clear, Canada met many elements of interest to LDCs, and offered some GATS-plus market access. His delegation had gone beyond market access in its notification.

3.68. Many of the elements included in the LDC collective request were outside the scope of the waiver. However, Canada had consulted domestically on those items and had been able to respond to many of them. There were a number of good practices captured under those elements, and Canada hoped that Members found that information useful.

3.69. Canada's notification represented a sincere effort to respond to the LDC collective request, and Canada hoped that it made a useful contribution to the work of the Council. His delegation also looked forward to continued engagement with LDCs, including at the bilateral meeting they has already scheduled for the following week.

3.70. To respond to the questions from Uganda regarding the preferential treatment in Canada's notification, as he had noted, the notification highlighted the numerous areas in which Canada's current regime met the many elements of the LDC collective request. This was important, as it provided a clear understanding of the opportunities available in the Canadian market for LDCs.

3.71. The representative of Uganda expressed its appreciation to Canada for its notification and looked forward to further engaging with Canada during their bilateral meeting. His delegation would revert to the issue at the following meeting of the Council.

3.72. The Chairman said that delegations had shared their assessment of the HLM, which was overall very positive. Many had expressed appreciation for Canada's notification, with respect to which some further clarifications had been sought. Several Members had indicated that they were still working on their domestic processes, with the aim of meeting the indicative deadline of July to submit their notification. He suggested that the Council take note of the statements made, and revert to the item at its next meeting.

3.73. It was so agreed.

4 ITEM D – WORK PROGRAMME ON ELECTRONIC COMMERCE

4.1. Turning to the Work Programme on Electronic Commerce, the Chairman recalled that, in November 2014, the European Union had submitted a communication on electronic authentication and trust services, in document S/C/W/358. The EU had also delivered a presentation, on its new "Regulation on electronic authentication and trust services for electronic transactions within the EU". The presentation was subsequently circulated to delegations in document JOB/SERV/197.

4.2. The United States had also circulated a communication for the e-commerce Work Programme just before the November 2014 meeting of the Council. The US communication, which had been originally circulated as document JOB/SERV/196, was subsequently reissued, on 17 December 2014, with the document symbol S/C/W/359.

4.3. The representative of the United States said that, in line with the MC9 Decision on Electronic Commerce, the United States submission sought to reinvigorate work under the Work Programme. The submission was designed to enhance Members' understanding of the importance of maintaining an open trade environment on the internet and avoiding imposing barriers that might stifle its growth and development. Therefore, the focus of the US submission was on the trade-

related issues associated with topics such as data flows, localisation, privacy, and cloud computing.

4.4. It was worth noting at the outset what the submission was not designed to do. First, the submission was not part of a post-Bali work programme, though certain aspects of it could be addressed in the services negotiations on cloud computing. Second, nothing in the submission proposed the adoption of new rules, although future discussions might explore whether measures adopted to address legitimate public policy objectives were the least-trade restrictive. Third, the submission was not asking the WTO to be a privacy forum, nor to undermine the legitimate public policy objectives of protecting privacy; in fact, the GATS already contained a provision related to privacy, and imposed disciplines on how privacy-related measures should be imposed.

4.5. The US submission was instead designed to engage in an exchange of views and experiences among Members on the trade-related aspects of the issues surrounding data flows, localisation and privacy. In particular, it asked how Members balanced those interests, in light of the ongoing debates surrounding online trade, with those of privacy protection. As discussions took place on privacy or other matters, how should commercial and trade interests also be taken into consideration?

4.6. As the paper stated, the United States was seeking a better understanding, and possibly a common understanding, of the issues raised in its submission. It was through further discussion and exchange of views that Members could reach that understanding. Only by being informed would policy-makers be able to engage in smart and reasoned policy-making.

4.7. Legitimate public policy objectives and concerns needed to complement, and not impede, the opportunity and growth potential the internet offered to enrich lives, build businesses, and widen choices for consumers. Those benefits resulted in significant commercial gains from optimizing the use of the internet to expand trade opportunities. Virtually every business nowadays relied on the internet in some way to conduct its affairs. Thus, data flows were an essential aspect of doing business online. Removing or preventing barriers to cross-border data flows was critical to the operation of the internet as a platform for international trade.

4.8. Indeed, those barriers could have huge implications for all smartphones and devices used today to download music, movies, access services online and so on, or in terms of enabling businesses to use data internally to manage global production networks, conduct analysis, or even perform secure payments. The mobile banking seminar held in 2014 had also shown the real advantage of such a service to address the problem of the unbanked and to achieve financial inclusion. Where would such services be if data flows had been restricted or there had been a requirement to locate a server in every country as a condition of supplying those services?

4.9. So, while protecting privacy was indeed a worthy objective, it needed to be balanced against the undesirable effects of impeding the development of evolving business models. Indeed, the United States was most concerned about restrictions on cross-border data flows that were simply used to provide a competitive advantage to domestic companies, by restricting flows of information or data, including the blocking access to foreign websites.

4.10. In sum, while his delegation recognized the legitimate public policy objective of protecting privacy, as well as other domestic policy objectives, it believed there were also legitimate ways to achieve those objectives in least trade-restrictive ways. A further discussion and exchange of views on that issue would lead to more informed decision-making for policy-makers.

4.11. The second part of the US submission addressed the issue of cloud computing, which had been discussed earlier that same day in the CSC. Cloud computing lowered the amount of capital required to start an IT-enabled business; could free entrepreneurs from the need to purchase expensive servers, software or other IT infrastructure; and was particularly important for SMEs, including SMEs from developing countries.

4.12. In terms of next steps, the United States was willing to meet with interested parties to explore how best to craft a constructive dialogue on the issues highlighted. It suggested examining, by exchanging information and experiences, what Members were doing domestically and in regional or bilateral FTAs in terms of striking a balance between ensuring privacy while

adhering to the tenets of free trade, including the adoption of privacy measures in the least trade-restrictive manner. Were there international examples of reasonable approaches to privacy? His delegation was open to the idea of organising a seminar or a dedicated discussion, possibly at a future time, and would urge the Chairman to consult further on those ideas. His delegation would also consult with interested Members.

4.13. The representative of Ecuador said that the presentation by the United States of the aims of its own submission had been helpful to better understand the submission itself. He recalled that his delegation had supported the reinvigoration of the Work Programme from the perspective of favouring development. With other developing countries, it had sponsored a submission in the CTD on the effective participation of developing countries in e-commerce as a means of alleviating poverty, and had promoted the holding of a seminar on e-commerce, development and SMEs of developing countries. It was from that perspective that Ecuador was looking at the US submission. As his authorities were still consulting on the paper, he might revert to the issue again in the future.

4.14. Although his delegation recognised the importance of some of the issues in the US submission, it concurred with those Members who had, in previous occasions, expressed the concern that the submission seemed to propose market access negotiations under the Work Programme, which, he recalled, did not contain a negotiating mandate. The US communication referred to the restrictive effects of localisation requirements on cross-border data flows, including when such requirements were aimed at the protection of personal information. It also underscored the importance of open and competitive markets for the growth of cloud computing services, which clearly implied market access aims for those services.

4.15. Privacy and data protection were a priority for Ecuador and were of ongoing concern for relevant domestic institutions. However, similarly to many other developing countries, national regulatory frameworks on those issues were still under development in Ecuador. This rendered it impossible, at least for the time being, for Ecuador to consider entering into agreements on mutual recognition of provisions relating to privacy or the protection of personal information, as suggested in the US submission.

4.16. As concerned localisation requirements, the US paper noted that information security might be increased through external storage, where economies of scale in specialized security practiced by better data processors could surpass what was available in storage facilities within one particular jurisdiction. However, in light of the development dimension of the Work Programme mandate, Ecuador suggested that it would be more appropriate to help increase the capacity of developing countries to arrive internally at the same levels of security as offered by external suppliers.

4.17. Ecuador disagreed with the statement in the US submission that localisation requirements stifled innovation, trade and development. The growth of e-commerce was not affected by measures adopted to protect privacy and data. Actually, the opposite was true, such policies could promote the development of e-commerce. Along similar lines, Ecuador was not convinced that a liberal framework for cloud computing could facilitate the development of e-commerce to the benefit of SMEs in developing countries. As the e-commerce seminar held by the CTD in April 2013 had shown, the low participation of SMEs from developing countries in the benefits provided by e-commerce was owed to different reasons, such as the limited understanding of the potential of e-commerce, the absence ICT-related knowledge, the level of security and privacy of transactions and the absence of adequate infrastructure.

4.18. The representative of China offered preliminary comments on the US submission. First, with regard to cross-border information flows, China recognised their importance for international trade, investment and the development of global value chains, but also noted that many countries had put in place restrictive measures to manage these flows. For instance, the United States imposed certain restrictions on cross-border information flows when it came to the export of technical data, as reflected in its Export Administrative Regulations and US International Traffic in Arms Regulations.

4.19. Second, as concerned local infrastructure issues, the representative noted how, in recent years, after the exposure of the US surveillance programme, the issue had come to the fore, as in

many cases the requirement to use local infrastructure enabled the information-outflow country to supervise suppliers outside of its territory more effectively for the purpose of protecting its national information security and personal privacy.

4.20. Third, to better understand the different types of requirements on local infrastructure, China agreed that an information-sharing exercise on policies related to forced localisation, as suggested in paragraph 4.6 of the US submission, would be useful. It also agreed with the proposal, in paragraph 4.3, that Members share views and experiences on how they balance the two objectives of cross-border data flows and privacy protection. China could support both of those US proposals, provided that such exercises were voluntary and without prejudice to Members' positions on those issues.

4.21. Fourth, with regard to cloud computing services, as indicated in the CSC meeting that morning, China disagreed with the US assertion that these were computer and related services, because some had the nature of telecommunication services. Finally, China would be interested to further discuss in the Council the issues of privacy, personal data and consumer protection as well as electronic signatures with other like-minded Members.

4.22. The representative of Canada said that his delegation supported discussions under the Work Programme on data flows and protection of personal data. Given the importance of international flows of data and information, Canada was supportive of efforts to ensure that companies and individuals could move and maintain information and data across borders in a reliable and secure manner, while ensuring that legitimate privacy and security rights were protected. The protection of personal information was also very important to Canada.

4.23. The coverage of services provided through cloud computing was not a significant concern for Canada. As he had mentioned at the CSC that morning, in Canada's view the "Understanding on the scope of coverage of CPC 84 - Computer and Related Services" already provided a useful clarification on the scope of commitments taken under the GATS relating to many of the services provided through cloud computing, such as data storage or processing services. However, there were other services that were provided through the use of software in the cloud, such as online taxation preparation services, that would be classified elsewhere under the GATS. This was the enabled versus enabling services debate that Members had had that morning. As such, any attempt to clarify the classification of the coverage of cloud computing should not create new ambiguities on the coverage of other software-based services. Further promotion of the Understanding might be a useful means to provide further clarity to the issue.

4.24. The representative of the Republic of Korea thanked the United States for tabling a concrete proposal to move the discussion forward in the e-commerce area. In general, his delegation supported more substantive discussions on those issues. As to the specifics of the US proposal, on data flows and privacy issues, Korea's position was that both issues were important and had to be discussed in conjunction. As to cloud computing, his delegation recognized the importance of that service *per se* for the development of SMEs. Different domestic systems treated cloud computing differently, and this might be based on legitimate policy objectives. Korea believed that it was constructive to have a discussion on cloud computing and the development of SMEs in general, along with the classification issue that the United States had identified. Korea had treated cloud computing both as Computer and Related Services (CRS) and telecommunications in its schedules and was open to any discussion that might bring clarity to the existing classification system. In discussing that issue, the protection of privacy should be dealt with in parallel, including in terms of strengthening the liability of the data processing entities, proper damages if privacy was intruded and international cooperation that could frame the discussion in an overarching context.

4.25. The representative of Uruguay stressed the importance of discussing privacy and the protection of personal information. More analysis was needed of those issues, and the discussion should also address consumer protection.

4.26. The representative of the European Union welcomed the contribution by the United States, as it usefully put together a number of topics that, just like others mentioned previously by other Members, merited discussion under the Work Programme. The European Union would invite all Members to engage and discuss each submission on its merit and substance. The US

communication highlighted several pertinent issues, and the European Union wished to focus on two in particular, namely cross-border data flows and the classification of cloud computing.

4.27. On cross-border data flows, the European Union supported the objective of free flow of data, as already highlighted in the 2011 Trade Principles for ICT services that the European Union and the United States had jointly presented to the CTS in document S/C/W/388. In today's digital world, industry relied on, and counted on, the free flow of data. However, whether there was a need for binding general trade rules on data flows was a separate question. And, as correctly mentioned in footnote 8 of the US communication, the general Trade Principles came with an important headnote stating that those general principles were without prejudice to any necessary safeguards, such as on personal data protection.

4.28. So the European Union fully concurred with the view expressed in the US communication on the need to "strike an appropriate balance between, on the one hand, avoiding barriers for cross-border data flows and, on the other hand, safeguarding legitimate policy objectives such as privacy and personal data protection". In addition, the European Union considered that data protection rules could contribute to trust in online channels, which could in turn contribute to trade through e-commerce.

4.29. The European Union also agreed with the view expressed in paragraph 4.7 that there were ways to allow for the export of personal data while respecting the data protection rules set within the country of origin. The European Union had extensive experience in that field, via decisions on adequacy, binding corporate rules, or standard contractual clauses. It was a matter of ensuring the protection of fundamental rights of citizens. At the same time, it was also a matter of ensuring non-discrimination and creating a level playing field between users inside and outside the territory.

4.30. So it was important that the pursuit of one objective did not undermine the other, and this applied in both directions: too rigid data protection rules could lead to a block in trade, but on the other hand a too loose implementation or enforcement of the rules in a third country would fail to achieve the objective of protecting privacy and could also negatively affect trade. Striking the appropriate balance was a delicate task. This said, the European Union wished to recall its position that trade agreements should not go beyond affirming those general principles and should not set substantive standards on personal data protection.

4.31. That discussion was not limited to personal data protection. The European Union would use the opportunity to flag its concern with a number of recently implemented or draft measures that impose, or aim to impose, a wide-ranging ban on data transfers or mandate forced localisation, and were claimed to be justified under national security objectives. While the European Union did not question the legitimacy of national security exceptions *per se*, it wished to recall that national security measures should not be abused for protectionist purposes.

4.32. Moving to cloud computing, the European Union wished to commend the United States for its contribution, setting out the arguments why cloud computing ought to be regarded a CRS covered under CPC 84. Reference was made in the US submission to the 2007 "Understanding on the Scope and Coverage of CPC 84 – Computer and Related Services". That Understanding had been initiated by a EU communication of October 2002 contained in document TN/S/W/6. The term "cloud computing" was not explicitly mentioned therein, and the term had probably only started to be frequently used from 2007 or 2008 onwards. However, this did not mean that the actual service being provided would not be covered. Members needed to look at the substance of the service provided, irrespective of whatever technology buzzword was being used.

4.33. In the European Union's view, cloud services consisted of a combination of data processing, data storage and database services. In that respect, the European Union would also disagree with the view expressed by some Members that cloud computing would be a new service. The European Union also disagreed that cloud should be considered a value-added telecom service. Obviously, cloud computing made use of the internet and telecommunication infrastructure, like almost any other service did nowadays. But telecommunications in this instance were indeed only a means of delivery, not the core of the service being provided. Just like cloud computing itself could be an enabling service, e.g. allowing for a better and more efficient processing of banking data, that would not make cloud a financial service either. In conclusion, the European Union concurred with the view of the United States that cloud computing was a CRS.

4.34. The European Union looked forward to continued discussions on those pertinent issues. As had been previously expressed, the European Union was engaged and willing to take the e-commerce file to the post-Bali negotiations and explore collectively how far Members were willing to go in the WTO in designing rules to help facilitate and spur the development of e-commerce. E-commerce could be an important enabler, and the European Union agreed with the views expressed by other Members that e-commerce was not just a matter of importance to the ICT industry, but affected a very wide range of service sectors and was becoming a truly cross-cutting issue. There was a huge trade-facilitating and developmental dimension to e-commerce and the European Union invited all Members to engage.

4.35. The representative of Chile welcomed the US proposal, which was relevant to the Council's discussions under the e-commerce Work Programme. The issues raised by the proposal were trade-related, and as such should be addressed in the WTO. Starting with localisation requirements, the key issue was how to create the ideal conditions to attract and host data centres into one's country. Turning to information flows, he stated that this was an acceptable idea in principle, but also underscored that it was important to recognise that flexibilities were needed. For Chile, the issue had been sensitive both domestically and in FTA negotiations. Finally, with regard to the question of data privacy, while recognising the importance of the issue, he stressed that discussions in the WTO should be focused on trade, rather than on data privacy. Thus, although the issue played a role in information flows, the focus of Members' deliberations should be on the trade aspects of information flows.

4.36. The representative of Brazil reiterated his delegation's reservations on the US submission as expressed at the November 2014 meeting of the Council. He stressed that his delegation could not endorse any ICT principles or prescriptive language in the US communication. Having said this, after hearing the US presentation, he said that Brazil could be open-minded and agree to an experience-sharing exercise on Members' policies and regulations on data flows, localisation requirements, security, privacy and confidentiality. Such an exercise would provide the opportunity for Members to present different perspectives on how to coordinate and reconcile trade policies and public policies pursuing legitimate goals, oftentimes with a strong human rights component. In particular, it would help better understand why some countries adopted a few of those policies to achieve security and development objectives, among other goals. He added that it would be useful if the United States could consider drafting a new, more objective communication, with neutral language, with a work programme for the discussion of such policies, since the current submission was filled with normative language and any ensuing discussion would be guided by and respond to preconceived policy prescriptions. In its current form, Brazil could not support the US submission.

4.37. The representative of India said that the US explanation of the aim of its submission had been helpful. She agreed with Brazil that it would be useful if the United States could submit in writing the presentation it had just made about the objectives of its submission. Her authorities were still analysing the US submission, so she only offered preliminary comments.

4.38. She started by recalling that the original 1998 e-commerce Work Programme mandate was for four WTO bodies, including the CTS, to conduct exploratory discussions, but the Work Programme did not include a negotiating mandate.

4.39. Second, she reiterated her concerns with the US-EU ICT principles, as these had market access and domestic regulation implications that were still reflected as such in the US submission. The paper appeared aimed at developing a common set of principles for e-commerce; this would require a negotiating mandate, which just did not exist under the e-commerce Work Programme. India was not ready to engage in any discussion to arrive at a common set of principles on the elements mentioned in the US submission. She was equally concerned by the absence of any development elements in the US paper, especially bearing in mind that the increasing participation of developing countries was part of the mandate given to the CTS under the Work Programme Decision. Unless the submission included a discussion of how developing countries could increasingly participate in the benefits of e-commerce, it remained unbalanced. For most developing countries, including India, e-commerce-related laws and regulations were still evolving, and it was therefore premature to get into a discussion, let alone agree, on a set of principles the scope of which was itself uncertain and continuously expanding.

4.40. Third, on classification-related issues for cloud computing, she recalled the relevant discussion that Members had had in the CSC that morning and her delegation's intervention at that

meeting. She again cautioned that any discussion on "new services" such as cloud computing could have a bearing on the interpretation of existing commitments. Finally, she noted that India had participated constructively in various discussions on e-commerce in the Council and in that spirt her delegation could agree to exploratory, conceptual, experience-sharing discussions, provided that these had no normative or prescriptive content or intent.

4.41. The representative of Brazil echoed India's comment about the impact on discussions on classification on the interpretation of existing commitments, particularly with regard to cloud computing.

4.42. The representative of Australia reiterated her delegation's strong support for the e-commerce Work Programme. At the November meeting of the Council, concerns had been expressed by some Members about the nature of the Work Programme. Australia fully acknowledged that the Work Programme was not a negotiating forum and, as far as she could tell, no one was suggesting that it was. The Work Programme was in fact a cross-cutting set of issues that Members had recommitted to engage on in a range of relevant WTO bodies, and Australia looked forward to working together across those fora.

4.43. There had been a lull in the e-commerce discussions of late, but Australia welcomed the EU presentation in November and the contribution from the United States to identify possible ways to take forward the Council's work. The US submission drew on a number of ICT principles submitted by Parties, including Australia. As proponent of an ICT principle to address online personal data protection, Australia considered appropriate privacy protections to be fundamental to bolstering consumer and individual confidence in the use of the internet. Accordingly, her delegation would see value in exchanging views on relevant experiences, including in relation to policies on privacy protection in the context of cross-border data flows. Australia believed that it was crucial that data was able to flow freely, given the growing importance of data flows to trade in general, but also recognised that that needed to be balanced against important public policy objectives.

4.44. Rapid technological changes created by the growth of the internet and cloud computing meant that Members' policies on the treatment of information were still evolving in that commercially vital area. Hence, Australia would welcome the opportunity to understand the policy decisions and considerations faced by all Members, and would value the opportunity to exchange views on how to develop good regulation around issues related to data flows, including on localisation. This would assist all Members better understand the trade impacts of their policy decisions in those areas. The suggestion of an open exchange of experiences left all Members with the opportunity to say what they liked on those issues, regardless of the views of the Member suggesting the discussion. Australia looked forward to engaging further with Members as it took forward the Council's work on e-commerce.

4.45. The representative of Mexico stressed the importance of having a constructive dialogue on the issues raised by the United States in its submission and stood ready to contribute. She had found the US explanation of the objectives of its submission useful and would revert to it.

4.46. The representative of Argentina appreciated the clarification offered by the United States in relation to its submission and added that it would be very useful to have those clarifications in writing. Argentina reiterated that the e-commerce Work Programme did not contain a negotiating mandate and that discussions had to take place within an exploratory mandate. He added that areas of interest to developing countries, such as agriculture, should be dealt with first.

4.47. The representative of the United States thanked Members for their interest in working with his delegation on its submission. In response to some of the comments made, he said that his delegation was certainly happy to include a development component in the discussion. Data flows, as well as other issues, did indeed have a development dimension. A study had estimated that the internet had contributed to 11% of the economic growth in Brazil, India and China between the mid to late 2000s. All Members could benefit from discussing how those kinds of policy issues could promote economic growth and development. He indicated his delegation's willingness to work further with interested Members to come up with additional proposals.

4.48. The Chairman said that many delegations were agreeable to the suggestion to discuss the issues in the US submission in a non-prescriptive manner, with an open mind. As proposed, he

would be consulting with Members on next steps with regard to the Work Programme. He then suggested that the Council take note of the statements made and revert to this item at its next meeting.

4.49. It was so agreed.

5 ITEM E – RECENT DEVELOPMENTS IN TRADE IN SERVICES

5.1. The Chairman explained that the item had been added to the agenda of the Council at the request of a group of delegations, who wished to update the Membership on progress with their discussions on a framework for negotiations on a Trade in Services Agreement (TISA).

5.2. The representative of the United States wished to debrief Members about the latest developments with the TISA negotiations. He said that in early February, his delegation had hosted the latest round of TISA negotiations. The TISA group had welcomed its newest participant, Uruguay. The group had advanced disciplines in such areas as telecommunications, financial services, the movement of natural persons, domestic regulation and transparency. Additional topics had also been covered and continued to be of interest to a number of participants. Market access offers had also been the subject of bilateral discussions amongst participants. The talks had shown robust and encouraging engagement on the part of all participants. The next round of talks, scheduled for April and hosted by the delegation of the European Union, aimed at continuing the progress of the first half of the year and maintaining the momentum into the second half.

5.3. The following delegations reiterated their individual positions with regard to the TISA initiative and asked that their respective statements at the June, September and November 2014 meetings of the Council be reflected in the record of the meeting: Ecuador[2], the Bolivarian Republic of Venezuela[3], Argentina[4], India[5], Egypt[6], Brazil[7], Australia[8], Canada[9], Japan[10], the European Union[11] and Chile.

5.4. The Chairman suggested that the Council take note of the statements made.

5.5. It was so agreed.

[2] Contained in: paragraphs 6.6 and 6.19 of document S/C/M/118, "Report of the meeting held on 20 June 2014"; paragraph 4.11 of document S/C/M/119, "Report of the meeting held on 17 September 2014"; and paragraph 6.5 of document S/C/M/120, "Report of the meeting held on 28 November 2014".

[3] Contained in: paragraphs 6.7 and 6.21 of document S/C/M/118, "Report of the meeting held on 20 June 2014"; paragraphs 4.9 and 4.17 of document S/C/M/119, "Report of the meeting held on 17 September 2014"; and paragraph 6.5 of document S/C/M/120, "Report of the meeting held on 28 November 2014".

[4] Contained in: paragraph 6.14 of document S/C/M/118, "Report of the meeting held on 20 June 2014"; and paragraph 6.5 of document S/C/M/120, "Report of the meeting held on 28 November 2014".

[5] Contained in: paragraph 6.11 of document S/C/M/118, "Report of the meeting held on 20 June 2014"; paragraph 4.8 of document S/C/M/119, "Report of the meeting held on 17 September 2014"; and paragraph 6.5 of document S/C/M/120, "Report of the meeting held on 28 November 2014".

[6] Contained in: paragraph 6.8 of document S/C/M/118, "Report of the meeting held on 20 June 2014"; paragraph 4.14 of document S/C/M/119, "Report of the meeting held on 17 September 2014"; and paragraph 6.5 of document S/C/M/120, "Report of the meeting held on 28 November 2014".

[7] Contained in: paragraph 6.3 of document S/C/M/118, "Report of the meeting held on 20 June 2014"; paragraph 4.12 of document S/C/M/119, "Report of the meeting held on 17 September 2014"; and paragraph 6.5 of document S/C/M/120, "Report of the meeting held on 28 November 2014".

[8] Contained in: paragraph 6.17 of document S/C/M/118, "Report of the meeting held on 20 June 2014"; paragraph 4.16 of document S/C/M/119, "Report of the meeting held on 17 September 2014"; and paragraph 6.5 of document S/C/M/120, "Report of the meeting held on 28 November 2014".

[9] Contained in: paragraph 6.9 of document S/C/M/118, "Report of the meeting held on 20 June 2014".

[10] Contained in: paragraph 6.18 of document S/C/M/118, "Report of the meeting held on 20 June 2014".

[11] Contained in: paragraph 6.16 of document S/C/M/118, "Report of the meeting held on 20 June 2014"; and paragraph 4.5 of document S/C/M/119, "Report of the meeting held on 17 September 2014".

6 ITEM F – CERTAIN MEASURES RELATED TO THE REFORM OF THE UNIFIED GAS TRANSPORTATION SYSTEM OF UKRAINE - STATEMENT BY THE RUSSIAN FEDERATION

6.1. The Chairman indicated that the item had been added to the agenda of the Council at the request of the delegation of the Russian Federation.

6.2. The representative of the Russian Federation recalled his delegation's previous statement about Law 1645-VII of September 2014 on the reform of the Unified Gas Transportation System of Ukraine. It was unfortunate that his delegation had to revisit this issue and reiterate its concerns with regard to both the substance and practical implementation of the Law. The Law was in clear violation of the fundamental principles of the GATS as well as the specific commitments undertaken by Ukraine under the GATS. It clearly excluded suppliers from Members other than the European Union, the United States, the Energy Community members or Ukraine from participation in the capital of companies performing dispatch and operation functions of the Ukrainian Unified Gas Transportation System, as well as of the gas storage facility. His delegation had asked for bilateral consultations with Ukraine on the issue. There were no legal or economic justifications for such violation of, in particular, Articles II, XVI and XVII of the GATS. The Russian Federation again urged Ukraine to bring its Law in full conformity with its obligations under the WTO Agreements.

6.3. The representative of Ukraine had taken note of the interests of the Russian Federation concerning the reform of its Unified Gas Transportation System. He recalled that the reform of the Gas Transportation System was aimed at the enhancement and strengthening of the long-term stability and security of Ukraine in that sector, in accordance with international rules, and in particular the Energy Charter Treaty and the WTO Agreements. In compliance with the WTO commitments, Ukraine had provided full transparency in the formulation, adoption and application of regulations related to pipeline transportation operations. The Law of Ukraine 1645-VII of 14 August 2014 had been adopted after extensive public hearings and duly published on official newspapers, as required by Article III of the GATS. Ukraine complied with the principles of non-discriminatory treatment in access to and use of pipeline networks under its jurisdiction, within the technical capacities of those networks, with regard to the origin, destination, or ownership of the product transported. The Law in question did not set limitations on suppliers providing gas through their own gas pipelines and storage networks in the territory of Ukraine. The representative underlined that the Unified Gas Transportation System had been reformed while his country confronted severe challenges provoked by a major threat to its fundamental interests. Ukraine had no doubt that those circumstances had to be taken into serious consideration when discussing the matter of the reform of its Unified Gas Transportation System.

6.4. The representative of Argentina expressed his delegation's systemic concern with the kind of measure described and welcomed any notification in that regard.

6.5. The Chairman suggested that the Council take note of the statements made.

6.6. It was so agreed.

7 ITEM G – OTHER BUSINESS

7.1. No items were raised under Other Business.

7.2. The meeting was adjourned.

_____