



Council for Trade in Services

REPORT OF THE MEETING HELD ON 27 JUNE 2019

NOTE BY THE SECRETARIAT¹

The Council for Trade in Services held a meeting on 27 June 2019 chaired by Ambassador Muylle (Belgium). The agenda was contained in document WTO/AIR/CTS/19.

The Chairman indicated that, under Other Business, he would make a statement on the schedule of meetings after the summer break and the Secretariat would report briefly on its discussions with the UN Statistical Division concerning the accessibility of the CPC Provisional.

The representative of the European Union said that he wished to add an item of Other Business to update delegations about an EU initiative on Specific Trade Concerns.

The agenda was adopted as modified.

1 ITEM A: NOTIFICATIONS PURSUANT TO ARTICLES III:3, V:7 AND VII:4 OF THE GATS

1.1. With regard to the notifications made pursuant to GATS Article III:3 (Transparency), the Chairman drew the Council's attention to the communications received from Macao, China (in document S/C/N/946), and India (in documents S/C/N/947 to 950).

1.2. The representative of India said that her delegation was notifying four measures in insurance and insurance-related services pursuant to Article III:3 of the GATS, as contained in documents S/C/N/947 to S/C/N/950. She recalled that, at the previous meeting, India had notified six agreements pursuant to Article VII:4 of the GATS, as contained in documents S/C/N/924 to S/C/N/929. In brief, the Government of India was making all sincere efforts to comply with its notification obligations under the various provisions of the GATS.

1.3. The Chairman suggested that the Council take note of the notifications and the statement made.

1.4. It was so agreed.

1.5. Concerning the notifications made pursuant to Article V:7 (Economic Integration), the Chairman drew the Council's attention to the communications received from Canada and Chile (in document S/C/N/65/Addendum.2); and from Bangladesh, China, India, Lao PDR, the Republic of Korea and Sri Lanka (in document S/C/N/954).

1.6. The representative of the United States had a question about the notification of the Asia-Pacific Trade Agreement. From the description, it seemed that the services part of the agreement was simply a framework to cooperate on services sectors, through improving infrastructure facilities, joint production, marketing and purchasing agreement, and research and development. As it seemed like a very limited framework agreement, he asked whether or not there were any actual services trade commitments in that agreement that would meet the requirements of GATS Article V on substantial sectoral coverage and absence or elimination of substantially all discrimination. The

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.

notification also mentioned that working groups had been established in 2018, and therefore he wondered whether it was premature to notify that agreement under either the CTS or the CRTA.

1.7. The representative of Canada explained that the modernized Canada-Chile FTA had entered into force in February 2019, marking another milestone in the two countries' bilateral relationship and building on over 20 years of strong and successful economic partnership.

1.8. This partnership was a great example of two countries that had benefitted from breaking down the barriers between them. Bilateral trade had nearly quadrupled since the free trade agreement between the two countries had entered into force in 1997. Bilateral trade in services had reached \$339 million in 2017 and the modernized agreement would keep increasing those opportunities in both countries.

1.9. The modernized agreement was also an opportunity to make the agreement more inclusive, for example by including a trade and gender chapter, which was a first for Canada. The chapter acknowledged the importance of incorporating a gender perspective into economic and trade issues to ensure that economic growth was inclusive. It also provided a framework for Canada and Chile to undertake cooperation activities on issues related to gender and trade; and it established a bilateral committee under the CCFTA that would oversee these cooperation activities.

1.10. The representative of Chile echoed the statement by Canada, highlighting the excellent trade relations between the two countries, which had marked a new milestone with the entry into force of their modernised bilateral free trade agreement in February 2019. The bilateral free trade agreement, which had been in force for some 20 years, had been very useful in harnessing the potential for trade between Canada and Chile, including in trade in services. In the new modernised version, new chapters had been incorporated and existing ones had been updated. Amongst the new chapters, he also wished to highlight that relating to trade and gender, which moved towards more inclusive trade. Chile hoped to progress towards the implementation of the agenda on inclusive trade with Canada as well as with all its other trading partners.

1.11. The Chairman suggested that the Council take note of the notifications and the statements made and that the agreements notified be referred to the Committee on Regional Trade Agreements for consideration.

1.12. It was so agreed.

1.13. The Chairman drew delegations' attention to the fact that, at its meeting scheduled for 17 and 18 September, the CRTA would be considering two regional trade agreements that covered trade in services. The agreements in question were: the Pacific Alliance and the EAEU-Viet Nam agreement. He hoped that the information he had provided would be useful to delegations in organising their time.

1.14. Turning to the notifications made under Article VII:4 (Recognition), he drew the Council's attention to the communications received from Australia and New Zealand (in document S/C/N/951) and from Montenegro (in documents S/C/N/952 and 953).

1.15. The representative of South Africa wished to inform Members that, pursuant to her delegation's previous statement on the chronically low level of compliance with existing notification requirements in the WTO, notably under GATS Article III:3, her delegation would be submitting a paper with other co-sponsors on "An inclusive approach to Transparency and Notification requirements in the WTO". She reiterated that South Africa was raising that issue with the objective of engaging in an exercise where making systemic improvements to the functioning of the WTO bodies was in the interests of all Members, and not what many Members perceived as selective improvements. She looked forward to discussing the matter more comprehensively after the summer.

1.16. The Chairman suggested that the Council take note of the notifications and the statement made.

1.17. It was so agreed.

2 ITEM B: OPERATIONALIZATION OF THE LDC SERVICES WAIVER

2.1. The Chairman recalled that, at the March meeting, the Council had discussed the organization of the dedicated session it had agreed to hold as part of the process to review the operation of preferences notified under the LDC Services Waiver. At that meeting, the LDC Group had informed the Council that it had started bilateral consultations with notifying Members, and that it would seek the Chairman's assistance following those consultations.

2.2. Further to a request of the LDC Group, he had consequently held two rounds of informal consultations with the LDC Group and notifying Members, on 13 and 23 May, with a view to reaching convergence on the proposed structure of the dedicated session.

2.3. During those consultations, there had been broad agreement among participants to structure the dedicated session in two parts. Part I would be organized as a workshop, to allow Members and relevant stakeholders to exchange information related to the participation of LDCs in trade in services. Part II would be organized as a formal meeting of the Council.

2.4. In terms of Part I of the dedicated session, at the end of the consultations it had been suggested that the Secretariat draw up a programme outline for the workshop, based on the information and comments exchanged by LDCs and notifying Members. That draft programme outline was contained in document JOB/SERV/290.

2.5. With regard to Part II, in order to allow for a meaningful exchange during the formal meeting of the Council, participants in the consultations had requested him to draw up the proposed agenda items for that meeting, together with an annotation that would provide context and guidance to Members in preparing their participation and structuring their interventions at the meeting. Both those elements were reflected in the "Note by the Chairperson" contained in document JOB/SERV/289.

2.6. Finally, in terms of the timing of the dedicated session, the LDC Group had expressed a preference to hold it in late October, and there had been no opposition to that suggestion at the consultations. As such, as indicated in the Note by the Chairperson, the proposed dates were 29 October, for the workshop, and 30 October for the dedicated formal meeting of the Council.

2.7. The representative of Senegal, speaking on behalf of the LDC Group, thanked the Chairman for his note contained in document JOB/SERV/289. The Group had reviewed the note and found that it accurately captured the consultations the Chairman had held and the Group also found the proposed agenda for the dedicated discussion acceptable. The LDCs had also reviewed the Secretariat outline in document JOB/SERV/290 and found that the outline of the programme for the workshop was also acceptable and in line with consultations the Chairman had held. They had noted the specific dates proposed for the two planned events and they were agreeable to the same. The Group hoped that other Members would find those dates acceptable.

2.8. The Chairman noted that the two Notes had met with the Council's agreement and suggested that the Council take note of the statement made. He said that the Council would revert to that item at its next meeting.

2.9. It was so agreed.

3 ITEM C: WORK PROGRAMME ON ELECTRONIC COMMERCE

3.1. The Chairman recalled that, under that agenda item, there was a standard sub-item, called "exchange of information and experiences based on submissions by Members". He understood that the delegation of China planned to make a brief statement under that sub-item, to introduce some of China's e-commerce programmes that contributed to inclusive and sustainable growth. For that meeting, a communication had also been received from the United States, contained in document S/C/W/382 and titled "The Economic Benefits of Cross-Border Data Flows".

3.2. The representative of China said that his delegation wished to take the opportunity to share some case examples on e-commerce, which demonstrated how e-commerce helped promote

industrial development and international trade, contributing to inclusive and sustainable growth, rural development as well as poverty reduction.

3.3. He started with the first case study, about China's Haier, on building a win-win "internet+industry" ecological circle. He explained that the Haier Group corporation was a leading multinational consumer electronics and home appliances producer based in Qingdao, China, with a sales revenue of around US\$38 billion in 2018. Haier designed, developed, manufactured and sold products including air conditioners, washing machines, refrigerators, televisions as well as mobile phones, computers and microwave ovens. Since 2008, Haier had modularized the product design and manufacturing system of the whole enterprise. From modularization to automation, then to unmanned factory, and now to interconnected factory, Haier had initially established the ecosphere system and business model system of the interconnected factory, which enhanced the demonstration effect for the transformation from mass manufacturing to mass customization.

3.4. The overall economic benefits of Haier's interconnected factories were obvious. The overall efficiency of the interconnected factories had been greatly improved, the product development period shortened by more than 20%, the delivery period shortened from 21 days to 7-15 days, and the energy utilization rate increased by 5%.

3.5. Haier had built a win-win ecosphere covering both hardware and netware. By turning products into netware to increase man-to-machine interconnection and user-participation in the whole process, Haier had formed a "users' circle", which provided users with more intelligent product solutions, and also attracted all parties to create user value and achieve a win-win situation.

3.6. From mass manufacturing to mass customization, Haier had initially realised seamlessness, transparency and visualization of user experience. Now, Haier had three customization modes: module customization, mass customization and exclusive customization, which enabled users to achieve the best experience in a full range and cycle.

3.7. He then moved to the second case study, on cross-border e-commerce platforms helping optimize industrial chains, which concerned NetEase Kaola, China's biggest cross-border import retail e-commerce platform. NetEase Kaola, together with other cross-border e-commerce platforms, had gathered thousands of brands in different countries. For example, the number of foreign brands had reached 279 in 2018. The cross-border e-commerce platform had empowered high-quality brands from developing countries to actively participate in global competition, in particular.

3.8. Using Thai latex products as an example, he indicated that, at the end of 2015, NetEase Kaola had produced a TV documentary programme describing how Thai latex pillows were produced and sold to Chinese consumers through cross-border e-commerce platforms. After the broadcast of the programme, the sales of Thai latex products had increased by 466% in 5 months and the export of Thailand's latex industry to China had increased by more than 100% in 2016. Besides, the local industry had upgraded from exporting raw materials to products like pillows and mattresses, making the gross profit margin increase by 6 times. It had created a win-win scenario, by helping the upgrade of the local industry and improving the utility of consumers worldwide.

3.9. One of the biggest advantages of cross-border e-commerce was breaking the information asymmetry in international trade. It quickly matched the supply and demand in the international market and provided a one-stop service for the pairing, including customs clearance and sales solutions. That way, efficiency was greatly improved, and new opportunities were created for small and medium-sized brands from all over the world to enter global markets, helping them gradually upgrade in the global value chain and become key players in the industry.

3.10. The representative of the United States thanked China for its presentation, which nicely complemented the paper that his delegation had submitted by demonstrating the importance of cross-border e-commerce as well as data flows, as presumably the companies in the case studies presented by China needed to have data flowing.

3.11. His delegation understood that Members had had a very short time to review the US submission, and at that stage he wished to highlight just three points: first, the purpose of the submission; second, some of the main features of the submission; and, third, possible follow-up ideas.

3.12. First, the purpose of the submission. At the last Ministerial Conference, Ministers had instructed Members to reinvigorate work under the Work Programme on Electronic Commerce. At the same time, various Members had embarked on negotiations for an ambitious agreement on e-commerce and digital trade. Therefore, the submission was designed to further Members' understanding on the importance of cross-border data flows in expanding e-commerce and trade through the exchange of information under the Work Programme, while at the same time serve as a complement to the ongoing efforts to reach an ambitious outcome in the e-commerce negotiations that had met the previous week. From what he had heard, it had been a rich discussion with constructive engagement by participants.

3.13. Second, some of the main features of the paper. He specifically wished to highlight three. First, the paper noted the challenge to find a balance that enabled key public policy objectives to be met while preserving the significant economic and trade benefits from data-enabled trade. Second, the importance of data to all industries: services, manufacturing, and agriculture; this was not limited simply to the ICT sector. Similarly, the benefits of data flows were particularly relevant for SMEs and developing countries. It was not just big businesses and developed countries that benefitted from data flows. The paper cited some examples of that point, including concrete examples of services provided by developing countries service providers, including LDCs, that relied on cross-border data flows. Third, the paper examined challenges ahead, including the treatment of personal data – privacy and security – and the potential fragmentation of responses to those issues, which increased compliance costs and could impose burdens to trade.

3.14. Third, possible next steps. He suggested that Members might want to examine ways to avoid that fragmentation of responses by exchanging experiences, and possibly inviting groups that were working on setting standards in that area, such as the OECD or APEC. An exchange of information and a sharing of experiences might be useful ways to use the Work Programme. The United States was willing to work with other Members to determine the best way to reinvigorate those discussions.

3.15. The representative of Canada took the opportunity to highlight some elements of the Trade Facilitation Office (TFO) Canada. TFO Canada was an important partner to support developing countries to grow their private sector, maximize the benefits of free trade agreements with Canada and grow their economies. TFO Canada was a non-profit organization, where a majority of TFO Canada projects were funded by the Canadian government through Global Affairs Canada on a cost-share basis with project partners and participating enterprises.

3.16. TFO Canada Trade Information Services website provided up-to-date information, e-learning and an online registry using technology strategically to maximize the opportunities to connect developing country exporters with buyers. More specifically, under the Canadian Market Access Services (CMAS), TFO Canada also provided web-based services to developing countries exporters and Canadian importers. These included general and sector-specific information, advice and links for the benefit of exporters researching or implementing a market-entry strategy to export their goods or services to Canada. It also included the opportunity for the exporter to publish their export offers in a database which reached over 1,200 Canadian importers. To complement and sustain the services for developing country exporters, TFO Canada provided an information service for Canadian importers interested in sourcing products from developing and emerging economies. This included a searchable database for identifying new products or suppliers, and a customised news bulletin. Key results since the inception of the CMAS project included: 10,000 exporters and importers had registered on TFO Canada Foreign Supplier Database, enabling hundreds of new collaborations; 3,200 SMEs from developing countries had been trained (as of January 2018); 93 companies had generated more than \$18,000,000 in export sales, bringing significant added revenue to their communities; 27% of exports sales had been generated by women-led SMEs; \$1 million had been leveraged funds from private sector and other partners.

3.17. Turning to the US submission, the representative thanked the United States for submitting and presenting its paper on the economic benefits of cross-border data flows. Canada could support a discussion on that area and found the paper informative and timely given the ongoing discussions at the WTO on that topic.

3.18. The digital economy and the digitalization of international trade had created new opportunities to promote inclusive economic growth, including by eliminating distances, increasing connectivity, reducing transaction costs, and facilitating the economic participation of disadvantaged and under-represented groups (e.g. SMEs, women, Indigenous peoples, persons with disabilities, youth, etc.),

all of which would have been impossible without the ability to send data and information across borders.

3.19. Data flows, the key enabler of the digital economy, indirectly contributed to the narrowing of the global digital gender divide, insofar as data could be transmitted seamlessly across and throughout markets. The use of digital platforms, enabled by data flows, might offer women many additional opportunities, including the possibility to overcome challenges related to physical mobility, access to new markets, to knowledge as well as flexibility in working time and supplementing household income. Online platforms might allow women to more easily access new product markets, which, in turn, could trigger innovation in the digital space. The use of digital platforms might therefore result in relatively higher female employment rates on platforms than in traditional industries or businesses, as with the example of Uber versus traditional taxis, where the proportion of female Uber drivers was nearly twice that of traditional taxis (14% versus 8% respectively).

3.20. As indicated by the United States, digital trade had the potential to benefit and create new opportunities for all sectors of the economy that engaged in commercial transactions over the Internet. Canada believed that it had the potential to improve the economic participation of under-represented or disadvantaged groups such as women, SMEs, youth, persons with disabilities, and Indigenous peoples, and by extension, increase the number of active participants in the digital economy in developing countries, thereby contributing to overall economic development.

3.21. She then sought a clarification from the United States. Paragraph 33 of the US submission suggested that one way to overcome the challenges posed by differences in regulatory approaches to issues such as privacy or cybersecurity was to identify interoperability regimes, such as ISO standards, that would be recognized in trade rules. She asked if the United States could provide further information on the types of internationally agreed norms or instruments it was considering.

3.22. The representative of Australia recalled that her delegation had provided information on Australia's Digital Economy Strategy and cooperation activities at the previous meeting; she welcomed China's presentation, the US paper and Canada's statement at that meeting. Those inputs helpfully contributed to Members' understanding of the challenges and opportunities related to e-commerce and digital trade. It was particularly useful to have real commercial examples across different services sectors, geographic regions, levels of development and sizes of firms, including SMEs. Her delegation continued to welcome information-sharing on those issues in the CTS and supported the US proposal for presentations from other bodies such as the OECD and APEC to share their latest work in that area.

3.23. The representative of Senegal, speaking on behalf of the LDC Group, thanked the United States for its submission. The submission was useful in providing more information on the United States' views and expectations on the topic of cross-border data flows. The LDC Group particularly thanked the United States for submitting its views within the framework of the e-commerce Work Programme, which, together with the Moratorium, was up for renewal by the end of the year. However, the issue of cross-border data flows also impacted modes 1 and 2 in the context of services. It was important for Members to examine those issues, especially their impact on LDCs. While some examples related to LDCs appeared referenced in the US paper, the LDC Group would ask the United States if more information could be elaborated across all LDCs and any benefits and impacts on LDC services commitments.

3.24. With respect to e-commerce, the LDC Group wished to register in the CTS the views it had expressed at the Council for Trade in Goods. As the expiration of the e-commerce Work Programme Decision approached, at the end of 2019, the LDC Group called on the four bodies designated for work under the Work Programme to delve deeper into the benefits and costs of e-commerce for LDCs. LDCs were very interested in both aspects of that platform and the relevance of e-commerce in improving trade for LDC traders and consumers.

3.25. The LDC Group had identified a number of challenges for LDCs in the utilization of e-commerce for consideration in the e-commerce Work Programme. These were: limited knowledge among enterprises, government players and regulators of e-commerce; lack of mechanisms to start up enterprises in e-commerce business; concerns about possible adverse effects of e-commerce and how to mitigate them; limited existence of affordable ICT infrastructure (e.g. internet, broadband coverage, electricity, telecommunications infrastructure and services); limited access to credit cards,

the main vehicle for on-line payments, and high incidence of unbanked consumers or limited experience with on-line payments; inadequate facilities for physical delivery of online purchases; user mistrust of quality and effectiveness; inadequate online payment facilities; limited trade finance for LDC enterprise e-commerce; limited skills among enterprises desiring to use e-commerce to use ICTs strategically for B2B, B2C, or B2G, buying and selling goods and services; lack of statistical data on electronic commerce in LDCs; and weak legal and regulatory frameworks where needed, for example consumer protection laws.

3.26. Speaking then in its own national capacity, the representative of Senegal thanked the United States for its submission under the e-commerce Work Programme. It was indeed an important contribution to Members' discussions and deliberations on cross-border data flows, the associated benefits and related interests and concerns. His delegation looked forward to a more in-depth discussion in the WTO regarding policy measures that supported digital growth, in particular in developing countries and LDCs, while ensuring regulatory balance between different interests.

3.27. He concurred with the United States that digitalization and digital transformation had the potential to benefit consumers, business and economies around the world. According to the submission, the flow of data had translated into an estimated contribution of USD 7.8 trillion to global economic activity, or 10% of global GDP. He was interested to learn more about how such flow of data had contributed to LDCs and low-income countries' GDP. In other words, what was the share of those countries in the USD 7.8 trillion global economic activity?

3.28. Without prejudging the answer to those questions, he expected the number to be either unknown or low for the very reasons indicated in the LDC statement, mainly the digital divide, the lack of infrastructure and skills, and low level of ICT-enabled services. He was also interested to learn more about how the implantation of banks like Ecobank in many African countries was linked to free flow of data. In his delegation's view, that might be the result of the free movement of persons and establishment policies adopted in the economic regional communities.

3.29. In Senegal's view, in order to fully benefit from the data economy, Governments had to put in place the right policies and strategies that enabled an ecosystem conducive for business to start, grow and be competitive in the regional and international markets. Many developing countries and LDCs were lagging behind in terms of digital policy and strategy, data policy, data storing and processing, cloud computing and artificial intelligence. Senegal had embarked in the process of elaborating its e-commerce strategy, with the assistance of the Enhanced Integrated Framework and building upon the rapid e-trade readiness assessment by UNCTAD and the Digital Senegal 2025 programme. His delegation welcomed Members' and development partners' support in finalizing the elaboration process as well the implementation phase. As indicated by the African Group in past interventions, Senegal also called on Members to continue sharing their experiences and best practices on how they succeeded in their digital transformation.

3.30. Data had been assimilated to the new oil, and even to avocado by some, but what was constant in Senegal's view was that it was the raw material of the digital economy and its collection, storage and processing raised legitimate concerns that went beyond privacy. Indeed, Members were concerned about the treatment of personal data of their citizens and had the right to regulate in that respect. But Members also had the right to preserve their legitimate public policy interests related to data flows and data localization. Those interests might be linked to national security, law enforcement and market regulation that required data to be accessed easily by competent authorities. This brought him to ask the question whether requiring copy of data to be stored locally constituted a restriction to the free flow of data. Some Members had indicated that that requirement might be burdensome to businesses, especially MSMEs. While his delegation acknowledged that fact, Senegal also called on Members to evaluate the cost for local authorities to access data when it was stored abroad.

3.31. Senegal recognized that there was a right balance to be established between the need for cross-border data flows and the preservation of legitimate public policy objectives, a notion which needed to be circumscribed and understood, and the protection of privacy. Furthermore, the question about the treatment of personal data and other-than-personal data also needed to be discussed in the CTS, as making the difference between those two types of data might be often very difficult. His delegation welcomed further deliberation on that issue.

3.32. The representative of Switzerland thanked China for its presentation of case studies and the United States for its communication regarding the economic benefits of cross-border data flows. Technological progress and digitalization had led to a vast increase in cross-border data flows. Data enabled new services and had become an integral part of the production process of many goods. The benefits, but also the risks, attached to the increasing role of data in economic activities and international trade were sources of debate.

3.33. Switzerland considered that papers like the US one contributed to enhancing Members' understanding of cross-border data flows and supported the idea of inviting international bodies such as the OECD and APEC to present their latest work in that area to a future CTS meeting. Switzerland would continue to support international dialogue on that topic, both in the ongoing negotiations for an agreement on e-commerce and more broadly within the e-commerce Work Programme.

3.34. The representative of New Zealand thanked the United States and China for their respective paper and presentation; it was interesting to see how the two dovetailed together nicely in some respects. He wished to present a couple of initial responses to the US paper and add to the mix of the discussion a small example of the digital industry from the New Zealand economy.

3.35. He highlighted a couple of points in the US submission. First, the core issue that the paper set out was the need to balance issues around the free flow of data and the importance of data to all economies with the legitimate public policy interests that were also attached to that data, such as, as mentioned by Senegal, issues related to privacy, cybersecurity, the need to regulate the on-line economy and enforce that regulation. That balance had come through as a key issue in the US paper, which was something that had particularly resonated with New Zealand.

3.36. Second, in light of New Zealand's slightly different trade profile compared, in particular, to that of the United States but also to some other developed economies, he highlighted that data flows were not simply important for traditional IT or tech firms. Data and digitalization for New Zealand were central to its wider economic development strategy, particularly in areas such as agritech, which the United States had also included in its paper. Agritech could support efficient low-input production, improve yields, support risk management and help to verify and build trust in product and food safety. Those were challenges that all Members faced; digital services trade, coupled with technology, could support agriculture growth and could help to address many of those challenges. Agritech exports for New Zealand had been stable at around \$1.5 to 1.6 billion per annum in recent years but the level of global investment in agritech had grown by over 50% in the previous five years.

3.37. Finally, he highlighted a small example from New Zealand, namely mobile apps and games. Some new research, which had not been published yet, had valued the New Zealand interactive gaming sector in 2018 at approximately \$143 million, which by New Zealand standards was relatively significant. Meaningfully, 93% of that figure was from purely digital exports. Digital technology and data flows, which were inherent in those services, made it easy for developers to directly gain more of the revenue from the services that they produced by supporting self-publishing. The research he had mentioned had also indicated that, on average, 70% of revenue ended up with the producers of those mobile apps and games, with the remaining 30% going to the distribution platforms, which compared to essentially an inverse of that relationship, with only 30% going to the producers, when a traditional publishing model was used and even less for console retails, where that share was around 15%. There were some very interesting elements to be extrapolated from that example, in terms of benefits for relatively small producers of on-line apps and games and the benefits for MSMEs and the people involved in those. Finally, he noted that interactive gaming, the term which he had used as a shorthand, did not just mean leisure-based gaming but also included applications for education and training and health applications, for instance, which implied that there were wider benefits from that sector, which were enabled by data flows and digital trade.

3.38. The representative of China appreciated the efforts of the United States in preparing and presenting its comprehensive and in-depth study. He also thanked Canada for the experience shared. He wished to draw Members' attention to Senegal's intervention, which reflected the need for developing Members and LDCs to develop e-commerce infrastructure, build regulatory capacity and bridge the digital gap. The increasing demands to find a balance between facilitating cross-border data flows and achieving legitimate public policy objectives, including industrial development, had to be given due consideration.

3.39. China agreed that data flows were of great importance to the development of e-commerce. In particular, with the advancement of information technology, the needs for data analysis continued to increase. Ensuring cross-border data flows played an essential role in promoting international trade and was conducive to lowering the average cost of global trade, promoting trade facilitation, accelerating the trend of digitization, and assisting Members to enhance their innovation capabilities and achieve leapfrog development.

3.40. Meanwhile, cross-border data flows had to be subject to the precondition of security. Individuals needed to protect their own information security, and countries needed to safeguard their national security and public interests as well. Data was susceptible to many challenges and risks in every link of production, storage and circulation. In fact, risks faced by cross-border data flows were extremely complex and diverse. Therefore, effectively protecting against the risks brought by data flows was the key consideration for every Member when developing policies, and appropriate data protection could achieve a balance between development and security.

3.41. The WTO advocated free trade, but it also gave Members the right to regulate, as long as the relevant measures were implemented in a reasonable, objective and fair manner. Data flows without effective regulation and protection would seriously affect consumer confidence, as well as enterprises and national interests. The internet was not an outlaw territory, thus developing regulatory measures consistent with each country's social conditions appeared particularly vital. All Members had the legal right to achieve the goal of safe development, and to promote the lawful, orderly and free flow of data.

3.42. Furthermore, developed Members had an overwhelming competitive edge and played dominant roles in the area of digital technology. For instance, by the end of 2018, there were 430 hyperscale data centres globally (the market intelligence firm International Data Corporation generally defined a data centre as "hyperscale" when it exceeded 5,000 servers and 10,000 square feet, but in reality many were much larger in size), among which about 80% were located in developed Members, and 40% were located in the United States. Apparently, there was a long way for everyone else, especially developing Members, to catch up and build their own capacity in that regard. Necessary policy space, including space to regulate data flows and storage, might be needed by many developing Members who wished to establish their own data centres and digital industry.

3.43. Currently, many Members were actively formulating cross-border data flow policies, which aimed at ensuring national security, protecting privacy, as well as the achievement of other legitimate public policy objectives. That was an emerging, complex and challenging issue, and Members were still in an exploratory phase. In that light, in order to identify differences between Members' policies, facilitate understanding and build confidence among the Membership, further discussions in a progressive manner were needed, without undue haste.

3.44. The representative of South Africa thanked China for the interesting presentation and other Members for sharing their experiences. Her delegation associated itself with the statements delivered by Senegal.

3.45. She also thanked the United States for introducing its submission. It was a welcome contribution, in view of the critical subject as well as the US substantive engagement under the exploratory, non-negotiating e-commerce Work Programme. Her delegation was particularly enthused that the paper was about the economic benefits of data and not privacy protection, which was often cited as the only important aspect of cross-border data flows.

3.46. She shared some preliminary thoughts on the submission as well as some general views. At the outset, she noted that the paper drew heavily on OECD research. From a developing country perspective, South Africa did not consider that an objective or inclusive source of reference. Her delegation welcomed future discussions that would also be able to draw on multilateral work on data flows, in particular UNCTAD's work and the 2017 and 2018 Trade and Development Reports.

3.47. She noted that paragraph 4 of the US submission made reference to "preserving the significant economic and trade benefits from data-enabled trade". It was important to point out, as in the 2018 Trade and Development Report but also as extensively covered in several other studies, that the economic benefits of data-enabled trade had accrued to a small number of companies, the majority of which were based in just two countries. The economic consequences of data-enabled

trade, therefore had to be examined because the digital environment had created giant and extremely profitable companies that paid very little tax.

3.48. The size of some companies and their enormous share in data ownership were creating a number of challenges in terms of labour-capital balance and market power concentration. They were also exacerbating traditional information asymmetries in market economies. The concentration of digital tech companies had created problems for the national security and local control in other Members' jurisdictions.

3.49. She noted that paragraph 6 made reference to digitalisation and consumer empowerment, such as better preference matching, lower prices, and greater convenience. In South Africa's view, the paper did not present a balanced view of the benefits and challenges emanating from cross-border data flows. It erroneously glamorized the economic benefits of data while downplaying the socio-economic imperatives of the appropriation of data by technology firms. Why else were Members seeing a universal increase in punitive measures against Google, Amazon and Facebook for abuse of dominant market power and allegations of disenfranchising consumers through unacceptable business practices?

3.50. In South Africa's view, a realistic conversation about the benefits of data and consumer empowerment should be weighed against the practices by technology firms, such as their methods of data collection, the processing and use of data, as well as algorithmic bias, price-fixing, anti-competitive practices and predatory pricing.

3.51. Hypothetically, if one took away data from those tech firms or took away their ability to freely access it as was currently the case, what would become of those companies? If their entire business model was predicated on collecting and monopolising data, then a fundamental question Members should be asking was how to distribute the value-added of the benefits of data integration.

3.52. Now that it had been established that the currency of the digital economy was data, Members had to begin to converse on how data for development could be leveraged in the digital economy. In South Africa, dislocations were happening in almost every sector where rapid digitalisation had caused new firms to decimate established industries. Her delegation saw merit in deepening Members' discussions to understand the arguments that some Members made that the cross-border free flow of data in trade agreements did not stop countries from ownership of data. South Africa was interested in learning exactly how one could 'own' something if anyone could take it away without the permission of the 'owner'. It seemed premature to suggest that cross-border data sharing had to be allowed without a common understanding and agreement on how to share the value-added.

3.53. More generally speaking, South Africa agreed that there was enormous value now embedded in the control and management of data flows, the raw material of the digital economy. More needed to be done at the national, regional and international levels that began to assess just how important and valuable data was.

3.54. Members could interrogate data governance and distinguish data internal to a business and those which a company collected from the collective social, artefactual or natural environments. Each might need to be treated differently. For a business to fully own the latter simply because it possessed the technology to collect that data should be of alarming concern to most Members.

3.55. The ownership of data did not mean that there was no sharing of data. The economic benefits accrued to countries that had data and digital infrastructure and capabilities to translate data into products. Ownership of data could increase the bargaining power of countries as they could ask foreign firms to share their digital technology and encourage digital technology transfers and technology diffusion in exchange for sharing their data with them.

3.56. The localisation of data was very crucial for developing countries, otherwise if data was located outside the national boundaries, even if a country had access to it and controlled it, it could not stop others from having access to that data, e.g., to countries that owned the cloud. With no level-playing field in the digital arena and in the context of a growing digital and technological divide, foreign firms would have a much higher capacity to use the data and form digitally intelligent products to be sold back to domestic consumers. That was currently what was happening.

3.57. On the way forward, her delegation believed that any presentations of latest work should not be limited to the organisations listed in the US paper but should also include UNCTAD and others who had produced useful contributions to the growing discourse on digital trade, notably the GDS Division in UNCTAD. She suggested that more consultations be held on the way forward.

3.58. The representative of Chinese Taipei thanked the United States and other Members for their respective submission and interventions. He echoed the statements made by Australia, Canada and New Zealand in terms of cross-border transfer of information by electronic means. His delegation had made a statement at the meeting of the joint statement on e-commerce initiative in June and had also submitted a proposal for facilitating the discussion in that meeting. Chinese Taipei had pointed out the paramount importance of the free flow of data for consumers to access, distribute and use services and applications. His delegation's proposal intended to cover a potential scenario where a government tried to interfere in the transfer of information on the customer's side, for example by requiring certain software and apps being installed in devices. His delegation looked forward to discussing that issue with Members and to establishing a freer and fairer e-commerce market to the benefit of MSMEs, women and young entrepreneurs.

3.59. The representative of India wished to congratulate the United States for tabling a paper under the Work Programme on Electronic Commerce on the important issue of 'data'. India had been a supporter of comprehensive and fulsome discussions on all aspects of e-commerce under the Work Programme, which had a non-negotiating and exploratory mandate.

3.60. To further re-energise and refocus the discussions on issues that were relevant today, India and South Africa had recently made two submissions under the Work Programme. India viewed the US submission as flagging another critical issue related to 'data' and therefore her delegation welcomed the submission and looked forward to meaningful discussions on the same. She also took the opportunity to thank China, Canada, Senegal, New Zealand and others for sharing relevant information under the Work Programme.

3.61. Coming to the US paper, India agreed that data was increasingly becoming the lifeblood of economic activity and trade. It was often said that data was the oil of the digital economy. The burgeoning on-line retail trade through platforms had data flows at its foundation. Communications using mobile applications and other real-time exchanges not only generated a vast array of data, including physical location, financial details and consumer preferences, but also created a dynamic profile of the individual user, which could be used for a variety of commercial purposes, such as precision marketing, targeted advertisements and credit worthiness assessment, enabling large digital companies to target consumers with tailor-made marketing content. In that manner, data generated by the activity in one area could provide a competitive edge for a new business in another area.

3.62. This had enabled a handful of companies to dominate the digital economy. Because of the significant first-mover advantage and coupled with the network effects, once a certain scale had been reached, it became virtually impossible for a 'second mover', on its own, to make an entry in the market.

3.63. Globally, small beginnings had been made for communities to take some control over their own data. She illustrated three such instances. First, the Maori community in New Zealand had developed a framework for data sovereignty for indigenous groups. Second, the Decentralized Citizen-owned Data Ecosystems, or DECODE, project in Amsterdam and Barcelona was a European Commission-funded project to explore how to build a data-centric digital economy where data generated and gathered by citizens, the Internet of Things (IoT) and sensor networks was available for broader communal use, with appropriate privacy protections. Third, data sovereignty for indigenous people in Canada had been trademarked as OCAP, where OCAP stood for 'ownership, control, access and possession of data'. These were indeed positive beginnings.

3.64. In short, data about an individual belonged to that individual; data about a community belonged to that community; and data about a nation belonged to that nation. It definitely did not belong solely to the large multi-national corporations that were currently appropriating all economic benefits through monetisation of data.

3.65. Her delegation was happy to note that the idea of data being a critical asset, with significant economic value, was commonly shared amongst all Members. India agreed that it was essential to ensure that the economic benefits from e-commerce in general, and data flows in particular, were more equitably shared amongst all stakeholders. In fact, India's draft e-commerce policy, which was out in the public domain for comments, was rooted in that very belief. The Draft National E-Commerce Policy viewed data as a national asset and laid down possible strategies to create a legal and technological framework that could ensure that India's data was used for India's development in times to come.

3.66. The digital revolution was considered as the mother of all industrial revolutions and, therefore, Members' collective efforts at the international level had to be such that they were beneficial for countries' economy, business, people and economic growth. Data, which was a critical element of the digital economy and e-commerce trade, needed to be leveraged by developing countries for their own economic development.

3.67. As regarded the next steps, she seconded South Africa's suggestion to invite the relevant Division of UNCTAD to present the findings of their research work in case the OECD and APEC were invited to a future CTS meeting.

3.68. The representative of Egypt thanked all delegations who had spoken and expressed their views, and discussed their concerns, about that very important topic. The US communication was still being studied in Capital and he would revert to it. By way of initial comment, he said that the views expressed at that meeting, along with those expressed the previous week, including at the General Council meeting to discuss the communication by India and South Africa and the related discussions under the JSI, reflected the importance of engaging constructively in the WTO to understand and identify the key areas of priority that Members needed to address further in their discussions.

3.69. One of the key priority areas that Egypt had identified in its e-commerce strategy, launched with the help of UNCTAD two years earlier, was data collection and statistics, which was a major challenge to Egypt. Some of the gaps that Egypt faced in that regard included data on e-commerce services, SME data, e-payment data, data on household and individuals and e-commerce data. Other gaps concerned the need to conduct an in-depth analysis of the survey findings of IT clubs in order to determine the success factors that had enabled the IT clubs to operate an effective revenue model and to build a business model on training and usage of ICT tools. Additionally, Egypt was working to operationalize the key performance indicators that it had identified to help measure the progress in that very important area.

3.70. He also wished to share information on a recent development in e-commerce-related provisions in the area of consumer protection, which had been repeatedly mentioned in some of that day's interventions. On 18 September 2018, Egypt had ratified its new Consumer Protection Law, with the Executive Regulations issued by Prime Minister Decree No. 822 on April 2019. Its key attributes were protecting consumers from unsafe products and implementing the rights of citizens to allow them to know the details of the services they used or the goods they consumed.

3.71. The new Law cancelled the previous one, No. 67/2006, and replaced its provisions with those more protective of consumers. Indeed, the old Law could be criticized for not providing consumers with enough protection. The Law and Executive Regulations set out some relevant definitions, including distant contracting and supplier. The Law excluded financial and monetary services as per Law No. 2003/88 Promulgating the Law of the Central Bank, the Banking Sector and Money, as well as Law No. 10/2009 for the Regulation of Non-Banking Financial Markets and Instruments. The new Law contained a number of provisions concerning e-commerce. Article 37 stipulated that the business must, before carrying out the contract, provide the consumer with information regarding the business itself, the product, the warranty, the post-sale services, the delivery date and location. The definitions related to distance contracting and supplier had also been covered under the Law.

3.72. The representative of the European Union thanked China for its very specific and concrete presentation, which was very welcome. He also thanked the United States for its communication, which was an interesting paper that illustrated the importance of data flows for digital trade and for what was a matter of commercial activities in almost all economic sectors. He shared the US

assessment that there was indeed an increasing trend to impose new obligations for companies in response to increasing data flows.

3.73. The EU was also equally satisfied with the on-going negotiations on digital trade, which had dealt with those exact topics the previous week, and believed that that was the place where it was looking forward to continuing the conversation on those topics. He also wished to seize the occasion to recall a well-known EU position in that space, which was that privacy was a fundamental right in the EU perspective and not a trade issue. Hence, the EU would have some concerns about a discussion or an evaluation of privacy regimes at the WTO. That was a perspective that would need to be taken into account as discussions moved forward.

3.74. The representative of the United States thanked all delegations that had intervened on the US paper. He knew that Members had not had the submission for very long, and the United States would welcome further discussions and questions. In reply to the particular point raised by Canada, he indicated that the United States did not have a specific approach to suggest. For the United States, for example, the National Institute of Standards and Technology (NIST) had developed standards related to cyber-security, and his delegation would be willing to share at a future CTS meeting the relevant main elements.

3.75. In terms of other institutions providing information to the CTS, his delegation was fairly open-minded about institutions coming to relay information on their work, as long as the work that they were presenting was relevant to the discussion. He did know that APEC, for example, would be holding a workshop in August titled "Facilitating trade through adherence to globally recognised cybersecurity standards and best practices". That might be something worth hearing about in terms of what other organizations were doing in that particular area, to help inform Members' discussions in the WTO.

3.76. His delegation was also happy to work with the LDCs to address the questions that they had raised in terms of LDC participation in that particular area. The submission gave a few examples, but he was certain that there were many others, as well as many challenges that companies might be facing, and his delegation was happy to examine those. Many issues had been raised in the discussion, such as the digital divide, taxation, consumer protection or privacy; Members needed to be aware of those issues but also needed to be pragmatic on what the WTO should focus on, which was trade.

3.77. The Chairman thanked China for its presentation, the United States for its submission and all delegations for a very interesting exchange of views. He would reflect on how to take forward the suggestion to invite other international organisations, such as OECD, APEC or UNCTAD.

3.78. Before moving to the next agenda item, he recalled that the Buenos Aires Ministerial Decision on the Work Programme on Electronic Commerce instructed the General Council to hold periodic reviews on work under the Work Programme, based on the reports submitted by the relevant WTO bodies. The next such review was scheduled for 23 and 24 July. Therefore, in line with past practice, he would be producing, under his own responsibility, a Chairman's Report to the General Council of the discussions the CTS had had under the Work Programme, back in March and at that meeting. The report would be purely factual, reflecting the essence of Members' deliberations.

3.79. He then suggested that the Council take note of the statements made and said that the Council would revert to this item at its next meeting.

3.80. It was so agreed.

4 ITEM D: UPDATE OF THE SECRETARIAT BACKGROUND NOTE ON MODE 4 – REQUESTED BY INDIA

4.1. The Chairman said that that item had been added to the agenda of the Council at the request of the delegation of India.

4.2. The representative of India said that, as she had emphasized on several previous occasions, her delegation welcomed the update of all the Secretariat Background Notes on the modes of supply,

i.e. on modes 1 and 2, mode 3 and mode 4. Besides, as requested by one delegation, the Secretariat should also prepare an additional Note on inter-modal linkages.

4.3. She understood that while most delegations supported the updating of all modal Notes by the Secretariat as well as one new Note on inter-modal linkages, one delegation continued to have concerns on the updating of those Notes, and especially the Note on mode 4. Meanwhile, her delegation had met with the Chairman and the Secretariat and it had been made to understand that that delegation was agreeable to having 'new' Notes in all modes, including mode 4, plus a new Note on inter-modal linkages.

4.4. While her delegation was willing to explore that route of having 'new' Notes rather than having the older modal Notes updated, she would want to understand from that delegation the precise concerns with the 2009 mode 4 Secretariat Background Note and how that delegation foresaw addressing the same in the proposed 'new' Note on Mode 4. In brief, her delegation requested for clarity on possible differences in the content of an updated mode 4 Note, to which that delegation was opposed, and a new mode 4 Note which was acceptable to that delegation. She also took the opportunity to express her delegation's sincere thanks to both the Chairman and the Secretariat for their best efforts in trying to resolve that issue.

4.5. The representative of the United States wished to clarify his delegation's position, which had not really changed. The United States did not see much utility in simply redoing an old Note on mode 4 when it was not clear that much had changed since that time. His delegation had been open to a possible review of new literature, to determine if there was actually new information relevant to mode 4 that might be useful. It had never agreed or suggested that a new modal Note would be appropriate. The same concern would apply in regard to Notes on the other modes of supply, where it was also not clear what there would be that was new to review. The intermodal linkages angle, instead, was something novel and his delegation was open to see if a Note could be developed in that area.

4.6. He had been a delegate in Geneva back in 2009 when the updates to the Secretariat Background Notes on sectors and modes of supply had been agreed to, in response to the DDA and in the context of spurring negotiations that had hit a low point. His delegation was not sure what was the purpose of updating those Notes at that point in time, as there was no real new information available, or, as his delegation had said at the last meeting, what would be the purpose of just putting a new date on an old Note.

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

4.8. It was so agreed.

5 ITEM E: CYBERSECURITY MEASURES OF CHINA AND VIET NAM – REQUESTED BY JAPAN AND THE UNITED STATES

5.1. The Chairman said that that item had been added to the agenda of the Council at the request of the delegations of Japan and the United States.

5.2. The representative of Japan expressed its gratitude to the United States for co-requesting the inclusion of that agenda item. Japan also thanked China for responding to bilateral consultations with his delegation in Geneva and in Beijing on that issue. Japan hoped to find common acceptable solutions through cross communication, including exchanging of views at CTS meetings.

5.3. Japan had recently submitted its comments on two draft implementing measures: the Draft Cybersecurity Assessment Measures and the Draft Data Security Management Measures, which the Chinese government had sought public comments on. His delegation would submit Japan's comments on the Draft Security Assessment of Cross-border Transfer of Personal Information Measures.

5.4. Japan appreciated China's efforts of seeking public comments from various stakeholders from the perspective of transparency. His delegation expected that China would continue to ensure transparency and take into consideration the inputs of all stakeholders before finalizing its rules and regulations. In that regard, Japan requested China to ensure that those implementing measures

would be the least trade-restrictive possible and fully consistent with various rules in the GATS and other WTO rules.

5.5. Japan continued to bring that matter before the CTS because China's proposed restrictions on cross-border transfers of information, especially on the requirement of a burdensome security assessment and data localisation request, could have a significant adverse effect on trade in services, including supply through commercial presence and on a cross-border basis. Japan had continuously reiterated in the Council its request that China develop the draft rules and regulations in such a manner that they would not unfairly hinder the level playing field of the business environment in China, both in a formal and actual treatment and be fully consistent with the GATS.

5.6. With respect to Viet Nam's measures, Japan also thanked Viet Nam for responding to bilateral consultations with his delegation in Geneva and in headquarters on that issue. His delegation hoped to find common acceptable solutions through cross communication, including exchanges of views at CTS meetings. With respect to the draft Decree implementing its Law on Cybersecurity, Japan recognized that the Government of Viet Nam was still working on the drafting of the Decree. Japan expected that Viet Nam would continue to ensure transparency and take into consideration the inputs of all stakeholders before finalizing the Decree and other related laws and regulations so that the final Decree would be the least trade-restrictive possible.

5.7. The representative of the United States said that, as Members might recall, at the previous Council meeting in March his delegation had continued its longstanding effort to clarify, understand the rationale, and underscore concerns on various aspects of China's Cybersecurity Law and various draft and final implementing measures connected with that and other Laws, including in regard to China's proposed restrictions on cross-border transfers of "important data" and "personal information" and data localization requirements.

5.8. Although many questions remained on those measures, at that meeting his delegation wished to draw Members' attention, and seek any relevant explanation China might be able to provide, on two new draft measures the National Internet Information Office of the Cyberspace Administration of China had recently released for public comment, namely the Draft Measures for Security Assessment of Cross-border Transfer of Personal Information, dated June 13, and the Draft Data Security Management Measures, dated May 28.

5.9. The June 13 draft Measures for Security Assessment of Cross-border Transfer of Personal Information appeared to cover some of the same subject matter as the draft measure that China had released in 2017, "Measures on the Security Assessment of Cross-border Transfer of Personal Information and Important Data". The United States would appreciate understanding the relationship between those two measures. One key concern with the June 13 Measures was that they continued to require "security assessments", and in some cases an individual's consent, solely of the basis that the transfer was cross-border.

5.10. He also noted that both those draft Measures referred to concepts his delegation had previously sought clarifications on, but which still remained not clearly defined, and thus thwarted efforts to understand the scope and effect of either those or former measures. Terms of particular concern included "network operator" and "sensitive personal information". The 2017 draft Measures also referred to "important data," which raised great concern. No other country in the world proposed to require evaluation of that category of data.

5.11. The May 28 draft Data Security Management Measures also contained one Article that would require network operators to assess security risks before providing "important data" abroad and would require the transfer of "personal information" abroad to be carried out in accordance with "relevant regulations."

5.12. His delegation welcomed China's responses to the US concerns and any other context it could provide on those two draft Measures, including how they related to China's overall implementation plans for its Cybersecurity Law.

5.13. Turning to Viet Nam's cybersecurity measures, the representative recalled that, at the previous CTS meeting, his delegation had noted its appreciation for Viet Nam's decision to post for public comment a revised Draft Decree implementing its Law on Cybersecurity.

5.14. He understood that Viet Nam had been working diligently to revise this Draft Decree. Given the numerous questions and concerns his delegation had identified in the detailed comments it, and others, had filed the previous year, he would request that Viet Nam not finalize that Decree until WTO Members and other stakeholders had had sufficient time to review proposed changes and further consult with the government of Viet Nam, as appropriate.

5.15. His delegation would also appreciate any information Viet Nam could provide on the status of the review process, and any indication of whether suggested changes would be reflected in the new draft. Once again, he thanked Viet Nam for publishing the draft measures and for taking into account the serious concerns raised by WTO Members.

5.16. The representative of New Zealand said that, in relation to China's measures first, his delegation welcomed China's remarks at the previous meeting and its efforts to welcome suggestions from interested parties with a view to ensuring that regulations were drafted in a way that was clear and non-discriminatory. His delegation had appreciated the opportunity to comment on the draft measures for cybersecurity reviews and would continue to do so on other draft measures.

5.17. New Zealand acknowledged that security and data protection challenges existed, and that Members had the right to regulate on those important public interest issues. Nonetheless, such measures had to be introduced in a manner that was consistent with existing international obligations and minimized negative impacts on trade. This encompassed consistency with WTO obligations, including national treatment obligations, and ensuring measures were not more trade restrictive than necessary to fulfil a legitimate public policy objective. His delegation encouraged China to implement its cybersecurity regulations in a manner that was transparent to all business and consistent with the letter and spirit of the obligations contained in the GATS. New Zealand welcomed further information and exchanges with China on those important issues.

5.18. In relation to Viet Nam's measures, in line with his delegation's interventions in previous meetings of the Council, New Zealand continued to have a strong interest in the revision of the draft Decree and urged Viet Nam to continue to engage with stakeholders so they might effectively input into the consultation process before final regulations were implemented. His delegation reiterated the importance of those regulations remaining consistent with Viet Nam's GATS commitments and to ensure that the requirements, including regarding the local storage of data and limitations on cross-border transfer of data, did not unduly act as a barrier to foreign service suppliers, putting businesses at a potential commercial disadvantage.

5.19. The representative of the European Union expressed his delegation's support to the interventions made by Japan and the United States. The EU had explained its concerns regarding the cybersecurity measures of China in previous CTS meetings, in particular in relation to the data localisation requirements and data flow restrictions imposed by the Cybersecurity Law and its implementing measures.

5.20. He thanked China for the explanations it had provided until then at the CTS and in other fora on those measures. His delegation had appreciated the opportunity to comment on the most recent Chinese draft measures in a public consultation. The European Union, however, considered that the draft measures on the security assessment for personal information outbound transfer did not alleviate the concerns it had expressed earlier as regarded their negative impact on foreign business. In particular, the scope of the security assessment obligation was very broad, and the definitions and the requirements contained in the draft measures continued to create a lot of legal uncertainty for foreign business.

5.21. The European Union considered that, because of the requirements in the draft measures and the legal uncertainty surrounding their implementation, foreign companies operating in China could find themselves in a *de facto* less competitive situation compared to domestic operators, including in sectors where China had taken international commitments. Therefore, the EU wished to invite China to provide further information on the concerns raised by Japan, the United States and other Members, as well as to take on board the opinions of foreign business operating in the country before issuing the relevant measures.

5.22. With regard to Viet Nam's measures, the European Union supported the views expressed by Japan and the United States regarding the implementing decree of the Cybersecurity Law of

Viet Nam. The European Union would also appreciate an update by Viet Nam on the state of play of the review, and on whether the concerns his delegation had expressed previously had been taken into account. The European Union would welcome Viet Nam to provide an opportunity for comments on the reworked draft decree before it was adopted formally.

5.23. The representative of Chinese Taipei thanked Japan for having raised that issue again in the CTS, and also echoed other Members' statements in that regard. Members' measures on the international transfer of information would affect cross-border business operations and MSMEs' equal opportunity for market access. His delegation was very happy to continue to discuss related issues in the future meetings.

5.24. Like Japan and other Members, the representative of Australia said that her delegation appreciated China's efforts in consulting with interested parties on its draft measures related to cybersecurity, and most recently on measures related to the cross-border transfer of personal information. Australia was reviewing these measures closely and continued to urge China to take into account business's and WTO Members' concerns.

5.25. Australia also appreciated Viet Nam's engagement on its cybersecurity measures. As raised in previous meetings, like other Members, her delegation continued to have a number of concerns with concepts in Viet Nam's Cybersecurity Law. Australia had provided feedback on Viet Nam's draft decree implementing the new Law, noting its interest in seeing a law that maintained Viet Nam's embrace of digital platforms, supported increased participation in global e-commerce, and enhanced the business environment in Viet Nam, including by being compliant with international trade commitments and regional trade agreements. Her delegation looked forward to continuing to work with Viet Nam on its Cybersecurity Law.

5.26. The representative of Canada wished to add her delegation's voice to the those of those of other Members that had raised concerns with regard to the measures announced by China and Viet Nam. In the past, Canada had highlighted specific concerns linked to those measures. Her delegation welcomed the opportunity to provide comments in the different fora and wished to highlight, as other Members had done, the importance of China and Viet Nam taking into account comments obtained from the private sector and from other WTO Members. Canada continued to encourage China and Viet Nam to provide updates on the relevant developments linked to the measures at issue.

5.27. The representative of China wished to take that opportunity to provide some preliminary feedbacks to the questions raised by the United States, Japan and some other Members. First, regarding the draft Measures for Security Assessment for Cross-border Transfer of Personal Information and the Measures for Data Security Management, he noted that it was the common practice of many Members to establish certain standards or requirements to be met before the cross-border flow of personal data and other important data took place, in order to ensure that those data would be properly protected.

5.28. Recently, the Chinese authorities had drafted the Measures for Security Assessment for Cross-border Transfer of Personal Information and the Measures for Data Security Management for public comments. The draft Measures specified the requirements for security assessment as stipulated by the Cybersecurity Law. The draft Measures took into account the need for cross-border data transfer and tried to keep a balance between data transfer and data security. The draft Measures required a "security assessment" for certain internet operators before transferring personal data and other important data abroad. If the assessment found that such transfers would not undermine national security or public interests, and the safety of those data could be guaranteed, such cross-border transfers would be allowed.

5.29. Cross-border transfer of data was an important issue in the digital age. China was willing to further discuss that issue with Members and enhance relevant international cooperation, with a view to guaranteeing the free flow of e-commerce data on the condition of security and promoting economic globalization and innovation.

5.30. Second, regarding the Measures for Cybersecurity Review, he noted that the cybersecurity review was an important regime in order to implement the National Security Law and Cybersecurity

Law of China. Its purposes included enhancing supply chain security, enhancing the security of critical information infrastructure, and safeguarding national security.

5.31. Critical information infrastructure operators defined by the relevant authority were obliged to undergo the cybersecurity review. Other internet products and services providers were not subject to such reviews. The review would follow the principle of non-discrimination. It would not target any specific Member, and domestic and foreign products and services would be treated equally. It was neither an administrative approval nor a market access measure. Only those purchasing activities that affected or might affect national security would be subject to the security review.

5.32. The drafts mentioned above took into account China's experience of recent years, the practices of other Members, including developed Members, and opinions from various stakeholders. In order to show maximum transparency, China had published those drafts for public comment before implementation. China was willing to consider the suggestions from Members or other stakeholders in due course.

5.33. After responding to relevant comments and questions, China wished to take that opportunity to make some comments on recent US measures concerning cybersecurity. In May 2019, the US Government had issued an Executive Order on Securing the Information and Communications Technology and Services Supply Chain. This Order prohibited a series of commercial transactions, including any transaction that "otherwise poses an unacceptable risk to the national security of the United States or the security and safety of United States persons". Several concepts used, such as "unacceptable risk to the national security", seemed vague and arbitrary, and might lead to discrimination against foreign products and services, thus violating relevant WTO rules. Given its negative impact on international trade, he wished to know whether and when the United States was going to notify that measure, and other measures of a similar nature, to the WTO. As a matter of fact, the United States had failed to make even a single notification under Article III:3 of the GATS after the year 2010. While failing to notify its own measures that had come into force, the United States had requested China to explain its draft measures, which was neither fair nor reasonable.

5.34. In addition, the Council was not the proper place to discuss Members' laws and regulations that were still in the process of being drafted and on which public comments were being sought. The information China was asked to share on a draft measure had far exceeded any information that was usually given in a typical notification of a measure in force, which was rather strange and overly burdensome. At the same time, his delegation was fully aware that there were certain laws and regulations adopted by some of the most advanced economies in the world, having much greater implications on global trade, that had not even been notified. China did not understand that double standard. He urged the relevant Members to notify those measures as soon as possible and reserved his delegation's right to seek clarifications on many of those measures.

5.35. The representative of Viet Nam was grateful for the opportunity to respond to Members' remarks. His delegation had repeatedly explained that the draft decree implementing certain articles of the Vietnamese Cybersecurity Law had narrowed down the scope of some specific obligations to only national security concerns. He thanked relevant Members for their continued interest and wished to reiterate that Viet Nam's legislative drafting process for the Decree was transparent and democratic. Interested stakeholders and members of the public had been given ample opportunities to provide comments within the statutory timeframe. However, his delegation remained ready to engage with interested Members to provide further explanations if requested.

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

5.37. It was so agreed.

6 ITEM H: OTHER BUSINESS

6.1. As indicated at the start of the meeting, the Chairman wished to make an announcement about the schedule of meetings for the autumn. In light of the agreement reached under item B, on the "Operationalisation of the LDC Services Waiver", the Council would be holding a dedicated session to review the operation of preferences notified under the LDC Waiver on 29 and 30 October. That session would consist of a workshop and a dedicated Council meeting. His intention was also to hold, during that same last week of October, a regular meeting of the Council, possibly back-to-back with

the dedicated meeting on the LDC Waiver. In light of the workload facing Members towards the end of the year, after that October meeting he did not plan, at that juncture, to convene any further meetings of the CTS, unless a need arose to consider urgent or unforeseen business.

6.2. The representative of the European Union wished to inform the CTS about the EU's initiative to strengthen the ability of regular WTO bodies to effectively address and resolve concerns that Members had with trade-related measures of other Members. While more and more Members used the possibility to discuss such trade concerns in WTO bodies, they often remained on the agendas for a long time without sufficient progress.

6.3. The EU was currently working, together with several other Members, on developing a proposal for a set of horizontal procedural guidelines that would apply to WTO Councils and Committees dealing with trade concerns. The ideas in its draft proposal concerned, for example: better preparation of meetings, more consultation between the Members raising and responding to a trade concern outside of the meetings, more coordination between different WTO bodies sometimes debating the same concern, and, if a concern was repeatedly raised without resolution, the possibility for the Chairperson to hold an informal meeting with the Members involved in order to find a way forward.

6.4. The EU was consulting on those ideas in an open and inclusive manner, with a view to presenting a proposal to the General Council in July. He invited all interested Members to approach his delegation for more details.

6.5. The representative of Switzerland thanked the European Union for presenting to the CTS its proposal on procedural guidelines to address trade concerns, a proposal that his delegation considered valuable and was co-sponsoring. He also took the opportunity to inform Members that Switzerland was preparing a proposal for a mediation framework that would be complementary to the procedural guidelines and give a new venue for Members to solve their concerns in a non-litigation mode.

6.6. The representative of South Africa sought a clarification from the European Union. She asked what exactly was a trade concern in a services context, and wondered if, for example, the issues discussed under the previous agenda item, on cybersecurity measures, would be considered a trade concern.

6.7. The representative of the European Union replied in the affirmative, indicating that the discussion the Council had just had on cybersecurity measures was an example of what a trade concern would be. He added that the notion was relatively large and covered all instances in which Members were discussing the measure of another Member.

6.8. A representative of the Secretariat recalled that the website of the United Nations Statistics Division had no longer provided access to the Provisional Version of the Central Product Classification. Upon New Zealand's request, the Secretariat had been in regular and repeated contact with UNSD on that matter, and she was pleased to report that there had been some progress. The UN Statistics Division had informed the Secretariat that the CPC classification instruments and relevant correspondence tables were henceforth available on the UNSD website, under the page on "Classifications on economic statistics". UNSD would continue working to upgrade its webpage, with the objective of adding more user-friendly functionalities. The Secretariat would continue to engage with UNSD and would report back to the Council as appropriate.

6.9. The Chairman said that the Council would take note of the statements made.

6.10. It was so agreed.

6.11. The meeting was adjourned.
