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Council for Trade in Services

REPORT OF THE MEETING HELD ON 30 OCTOBER 2019

NOTE BY THE SECRETARIAT¹

The Council for Trade in Services held a meeting on 30 October 2019 chaired by Ambassador Muylle (Belgium). The agenda was contained in document WTO/AIR/CTS/21.

The Chairman indicated that, under Other Business, he would make a statement about the adoption of the Annual Report of the Council for Trade in Services for 2019.

The representative of the United States requested to add its delegation's name to agenda item F. The Chairman said that the US request was noted and would be accordingly reflected in the record of the meeting.

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 Senegal (S/C/N/955-S/C/N/958, and S/C/N/958/Corr.1); Hong Kong, China (S/C/N/874/Add.1); Kazakhstan (S/C/N/960); Lesotho (S/C/N/962-968); Bahrain, Kingdom of (S/C/N/969) and Australia (S/C/N/970).

1.2. The representative of India was pleased that Australia was notifying a measure related to changes in its temporary work visa through which it implemented its GATS and other international trade obligations. Mode 4 was the key mode of export interest to most developing countries and LDCs and her delegation wished to take that opportunity to encourage Members to regularly notify existing and new measures affecting their mode 4 commitments, including entry-related measures. Her Capital was examining the visa measure notified by Australia and would revert to it in case of any clarifications.

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 the European Union and the Republic of Armenia (S/C/N/959); and Chile and China (S/C/N/577/Add.1).

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

1.7. It was so agreed.

1.8. The Chairman then drew delegations' attention the fact that, at its meeting scheduled for 7-8 November, the CRTA would be considering two Regional Trade Agreements that cover services trade.

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.

The agreements in question were the Free Trade Agreement between Turkey and Singapore and the Economic Partnership Agreement between the European Union and Japan.

1.9. Turning to the notifications made under Article VII:4 (Recognition), he drew the Council's attention to the communication received from Australia, Japan, the Republic of Korea, New Zealand and Thailand (S/C/N/961). He suggested that the Council take note of the notification.

1.10. It was so agreed.

2 ITEM B: AN INCLUSIVE APPROACH TO TRANSPARENCY AND NOTIFICATION REQUIREMENTS IN THE WTO

2.1. The Chairman said that that item had been placed on the agenda of the Council at the request of the delegation of South Africa, together with a communication by the same title circulated in document JOB/SERV/292/Rev.2.

2.2. The representative of South Africa introduced the communication on behalf of the proponents, namely the African Group, Cuba, India and Oman. He noted that transparency remained an important issue within the operation and monitoring function of the WTO. The issue of compliance with notification obligations had been contentious. Developing countries often struggled to comply with onerous obligations, while, in many instances, developed countries also did not comply with their notification requirements or did so selectively.

2.3. Notifications required a deep understanding of the entire range of WTO Agreements, mature institutional mechanisms and human resource capacities that were often lacking in developing countries. Any work in that area should be focused on supporting and incentivizing developing countries to address those difficulties, especially as it related to transparency obligations. Existing notification obligations should be rationalized so that they were commensurate with Members' level of development. Developing countries, SVEs and LDCs should not be expected to take on notification obligations which were beyond their capacities.

2.4. In contrast, in some of the recent proposals on transparency, some Members were proposing new or strengthened notification obligations. If developing countries were not able to meet current notification obligations, there would be no possibility of meeting even higher notification requirements in future.

2.5. Given the challenging issue of resource constraints, developing countries could not agree to any transparency obligations which went beyond existing obligations. Further, punitive approaches to enforce notification and transparency obligations were not acceptable. Any work in that area must support developing countries' ability to address their difficulties through inclusive and mutually agreed approaches, such as through simplified notification formats. In some situations, prolonged time-frames could also be considered. Technical assistance and capacity-building had to be central components; however, they would not completely resolve human resource and institutional limitations.

2.6. He emphasised that notifications could only be made by the Member concerned and no counter-notifications would be valid. Neither the Secretariat or any other Member had the right to notify information on behalf of another Member unless this possibility had been provided for in existing Agreements.

2.7. An important aspect of the proponents' communication was the fact that it explicitly called for transparency beyond the Annex 1A Multilateral Agreements on Trade in Goods. That was the reason why the proponents were also addressing the issue of transparency and notifications in the context of the GATS. In that regard, based on the informal Secretariat Note in document JOB(09)/10/Rev.9, he observed that over the last two decades or so, notification records indicated that developing countries, and especially LDCs, had submitted more notifications under the GATS than most developed countries. That was particularly true under GATS Article III:3. The proponents encouraged developed countries to comply with their notification obligations under GATS Article III:3. Many had not done so.

2.8. In light of the recent significant push to negotiate multilateral rules on e-commerce and digital trade, investment facilitation and MSMEs, which were inextricably linked to services-related sectors and important areas for trade policy making, notifications in those areas, as they pertained to measures "which significantly affect trade in services", were particularly relevant.

2.9. The proponents' communication also emphasized the fact that transparency could not only be seen from the view of notification obligations. It needed to permeate the full spectrum of the operation of the WTO, from its day-to-day meetings to Ministerial Conferences. The scheduling of various Committee meetings, which often conflicted, also gave rise to transparency issues, as that practice limited the ability of developing country Members to effectively participate in important deliberations. In conclusion, emphasis needed to be given to compliance in accordance with existing obligations and in all areas. In the context of services, notifications and transparency remained a concern since many developed Members were not complying with their notification obligations.

2.10. The representative of India said that South Africa had explained the rationale and motivation for the communication, and her delegation wished to highlight some of the key elements of that document.

2.11. India understood that transparency was an important pillar for the functioning of the WTO. However, as indicated in the paper, LDCs and developing countries had genuine capacity constraints in terms of institutional requirements and human resources to fulfil the various notification obligations. Delay in notifications should not be attributed to wilful non-compliance, attracting punitive measures, as suggested by some Members in proposals on that issue tabled in other WTO bodies. Rather, Members needed to adopt an inclusive and cooperative approach to incentivize the participation of LDCs and developing countries in complying with notification obligations.

2.12. The other significant aspect that needed to be emphasized in the CTS was that notification obligations could not be seen in isolation only for certain areas related to goods. They had to be applied holistically to all WTO Agreements. As was evident from the informal Note by the Secretariat in document JOB(09)/10/Rev.9, some of the proponents of enhanced transparency and strengthened notification requirements in the WTO were themselves chronically low in their level of compliance with existing notification requirements, notably under GATS Article III:3.

2.13. On one hand, transparency was referred to as a public good and a lifeblood, but on the other hand, Article III:3 services notifications were held back, hiding behind the language and the interpretation of the words and phrases of the notification obligations. Rather, Members needed to promote transparency elements in their true spirit, by appropriately applying the intent in each of the WTO Agreements.

2.14. Members would recall that during the CTS meeting held in March, India had notified 6 agreements pursuant to Article VII:4 of the GATS, in documents S/C/N/924 to S/C/N/929. One of the measures notified, regarding the Memorandum of Understanding between the Institute of Chartered Accountants of India and the Institutes of Chartered Accountants in Australia and New Zealand, contained in document S/C/N/928, was yet to enter into force. At the June CTS, India had notified 4 measures related to insurance and insurance-related services pursuant to Article III:3 of the GATS, in documents S/C/N/947 to S/C/N/950. In brief, India was making all sincere efforts to comply with its notification obligations under the various provisions of the GATS.

2.15. In that regard, India encouraged developed country Members to regularly notify existing and new measures affecting trade in services, especially those which affected their mode 4 commitments, including entry-related measures, as mode 4 was the key mode of export interest to most developing countries and LDCs. As mentioned earlier, her delegation was pleased with Australia's notification of a measure related to changes in its temporary work visa.

2.16. At the same time, Members needed to recognize genuine capacity constraints which LDCs and developing countries faced and adopt a cooperative and inclusive approach to address those constraints.

2.17. To conclude, she reiterated that the key motivation for the proponents' submission was to highlight the need for an inclusive, cooperative and developmental approach to transparency and the need to promote transparency elements in letter and spirit by appropriately applying the intent

in each of the WTO Agreements, including the GATS. India welcomed Members' suggestions and looked forward for further interactions bilaterally and in other formats.

2.18. The representative of Turkey thanked the proponents for their communication. Transparency was at the core of the functioning of the WTO. Non-compliance with transparency obligations was a fact, but Members also needed to be aware of the genuine capacity constraints many developing and least-developed countries faced. Notification requirements might represent real challenges for countries that lacked the necessary infrastructure, technical capacity and human resources. What was needed was simplification, longer time-frames, technical assistance and, above all, encouragement. There was a need to work constructively to assist Members to comply. As pointed out in the proponents' communication, Members needed coordinated, development-oriented and holistic actions that would help the inclusion of developing and least-developed countries within the system.

2.19. The representative of the United States thanked the proponents for their communication. The United States shared the objectives of the proponents to improve transparency and notifications in the WTO and was a strong supporter of transparency in services in domestic rule-making as well as in the international trading system itself.

2.20. His delegation welcomed the opportunity to hear about any specific concerns Members might have in the CTS regarding transparency and notifications and was certainly open to hearing ways in which Members might improve transparent, open and participatory rule-making in services in general. Indeed, in the area of services, the United States had a long history of developing domestic regulations in a transparent, fair and open manner. All US domestic regulations were available to the public, but his delegation had a practical issue of submitting thousands and thousands of regulations to the Council. It was essential to be practical and pragmatic. For the United States, it was not simply a matter of submitting regulations to the Council in order to check of a box, which some Members appeared to do. His delegation preferred to explore practical and pragmatic ways by which Members developed regulations in a transparent manner that did not restrict trade but rather facilitated trade.

2.21. The representative of Australia said that her delegation supported transparency of domestic measures and improving WTO notifications. Australia was not opposed to engaging in discussions on that issue in a more detailed way in the CTS.

2.22. Australia notified measures where relevant under GATS. Preparing notifications in itself was a useful exercise as it assisted with inter-agency communication on policy measures, and her delegation was happy to discuss domestic measures of specific interest to Members. At the March meeting of the CTS, Australia had raised questions which could assist the Council to consider how to improve transparency and notifications, and she would welcome the opportunity to engage further on those ideas.

2.23. The representative of China appreciated the proponents' efforts in preparing the communication and bringing attention to that important issue. Since the same proposal had been discussed at the July meeting of the Council for Trade in Goods, for the sake of efficiency, he requested that his delegation's statement at the July CTG meeting be referred in the minutes of the meeting.²

2.24. The representative of Bangladesh thanked the proponents and welcomed their communication. Bangladesh believed that transparency was an essential pillar of good governance. His delegation also agreed that there were many ways to ensure transparency: only a few notification templates could not fully serve the transparency purpose.

2.25. Notification provisions under different Agreements were diverse and the ability of many developing countries and the LDCs to notify was severely constrained by lack of technical capacity. A few customized training programmes might not address the unique internal coordination challenges and capability vacuum in developing countries and LDCs. Although the ongoing efforts of the WTO Secretariat to provide technical support were deeply appreciated, the capacity constraints

² See document G/C/M/135, paragraphs 12.126 to 12.128.

had not been improved to the expected level. The reasons why the existing technical assistance programmes on notification enhancement could not meet expectations needed to be investigated.

2.26. Bangladesh believed in shared prosperity and peaceful coexistence of all Members. No one could thrive alone. His delegation encouraged Members to review the existing variation in understanding and explaining of transparency issues. Members also needed to review and, where required, simplify the notification templates and procedures. Bangladesh looked forward to working actively with the proponents and other Members.

2.27. The representative of the European Union appreciated the proponents' contribution to that important conversation about improving transparency in general and compliance with notification obligations in particular. She welcomed the fact that the issue was being discussed in the respective bodies with relevant expertise.

2.28. The European Union agreed with the proponents that notifications were not the only aspect of transparency and also fully recognised that notification work was resource-intensive and could be challenging, particularly for small developing countries. However, her delegation also believed that notifications were the enabler of the WTO's monitoring function. Moreover, from her delegation's own experience, notification work was also capacity-building in and of itself, as it strengthened inter-agency cooperation. The European Union therefore supported the deepening of discussions on notifications in the relevant bodies and in the CTS, and was ready to work with all delegations in order to make tangible improvements to Members' collective notification compliance and enhancing transparency for the benefit of all.

2.29. The representative of Japan also welcomed the proponents' communication. Following the active discussion at the General Council meeting in July, her delegation again emphasised that notification was a fundamental obligation of all WTO Members. It was a common view that meeting notification obligations was of significant importance for a sound WTO system. With that background, she noted that the WTO Secretariat had already extended a significant amount of assistance to ensure that notifications were implemented by Members. Japan also noted that the notification exercise itself constituted good capacity-building for developing Members and LDCs.

2.30. The representative of Switzerland thanked the proponents for their contribution on the discussion on transparency and notifications. Their communication highlighted the challenges faced by developing countries and LDCs in complying with notification obligations due to resource constraints. There was room to improve transparency and compliance with notification obligations also under the GATS, taking into account resource constraints of Members and the complexity of some notification obligations.

2.31. She wished to share the experience with services notification processes in Switzerland, where many measures that were taken at the sub-federal level. In order to have a complete picture of all the measures affecting trade in services, Switzerland regularly conducted surveys at the sub-federal level and asked the Cantons to indicate all measures which potentially affected services trade. This approach allowed her delegation on the one hand to have a full picture of the measures affecting trade in services and at the same time provided important inputs for the notification requirements under the GATS.

2.32. Switzerland believed that, even though that process took time and resources, it was worth pursuing as it allowed to improve transparency and knowledge both at the domestic and the international levels. Transparency was key to the effective implementation and monitoring functions of the WTO, and hence Switzerland was interested in sharing experiences on how compliance with notification obligations could be improved.

2.33. The representative of the Russian Federation thanked the proponents for their communication, which dealt with a very important and relevant topic. Russia regarded the issue of transparency as a crucial pillar of WTO activity, and was ready to take active part in constructive discussions of that matter.

2.34. Russia took into account the fact that developing countries in practice faced more difficulties in delivering notifications than developed ones. That situation was implicitly confirmed by the greater activity of developing Members on notifying measures in services trade, as the template and

timeframe were relatively more comfortable compared to the goods area. In that regard, her delegation strived to develop a comprehensive and balanced approach to all types of notifications in the WTO. Russia would not want to give priority to one body of the Organization over the others.

2.35. In services trade, Members were faced with a situation where delegations abused the flexibility of the wording of GATS Article III:3 and ignored that important obligation on a systemic basis. In services trade, behind-the-border measures were of great importance, and therefore transparency of domestic regulation was the main tool to provide public availability of domestic laws, regulations and practices. That information was crucial for all stakeholders, and in particular services suppliers.

2.36. The notification requirements under the GATS, especially in Article III:3, were relatively narrower than those under other WTO Agreements. Russia believed that, at that juncture, more than ever, it was important to return to its reconsideration and to the search for a balance between enhanced transparency and sound administrative burden. At the same time, discussions on Article III:3 could be supplemented by deliberation on the use of the reverse notification mechanism provided for in GATS Article III:5.

2.37. Her delegation also wished to clarify with the proponents their understanding of the title of their communication. Transparency, as is indicated in the communication's title, implied not only notification requirements, which were referred to in the text of the document. Other elements were also important: prompt publication under Article III:1 and the work of enquiry and contact points as provided for by GATS Article III:4 and Article IV:2. Was the discussion on those aspects planned by the cosponsors or were those aspects deemed not relevant for some reason?

2.38. The representative of Canada said that, as indicated at the July General Council meeting, her delegation appreciated the cosponsors of the communication for their contribution to the broader discussions on how to improve Members' compliance with existing notification obligations.

2.39. Canada strongly supported transparency, which was one of the key pillars of the functioning of the WTO. Canada also supported initiatives and discussions aimed at exchanging best practices and exploring ways to improve transparency and notification practices. In the context of trade in services, there was always room to maintain and improve effective transparency procedures and mechanisms that could provide greater benefits to policy-makers and stakeholders. Canada was open in having such discussions under the CTS and would see value in having Committee-specific discussions to help consider the particular circumstances of the respective body.

2.40. As her delegation recognized the particular challenges faced by developing countries, Canada also acknowledged that each Member had its own unique circumstances and challenges in collecting the required information. Like Australia, her delegation had raised questions back at the March meeting of the CTS which could assist the Council in considering how to improve and facilitate transparency and notifications. Her delegation was happy to engage further on those ideas.

2.41. The representative of the Kingdom of Saudi Arabia said that improving the operation of notification procedures under the WTO Agreements would contribute to the transparency of Members' trade policies and the effectiveness of surveillance arrangements established to the end. Saudi Arabia was considered to be a Member committed to WTO notifications and therefore welcomed any contribution aimed at improving transparency and enhancing compliance with notification obligations. Enhancing transparency and enabling better information provision, including through timely notifications by Members, required adequate technical assistance and capacity-building to improve the ability of developing countries and LDCs to fulfil relevant obligations. She thanked the proponents for their communication and welcomed a discussion in the Council on how to improve transparency and facilitate notifications.

2.42. The representative of South Africa thanked all Members who had taken the floor and participated in that useful debate. He reiterated that the proponents' communication tried to outline common approaches to transparency and notifications, and that those cut across the work of various Councils and Committees. When it came to the Council for Trade in Services, Members might wish to think on how to specifically address issues more relevant to the Council. During the deliberations, the proponents had taken note of context-specific issues raised in the various fora where the paper

had been discussed. The proponents were in the process of updating their paper, taking account of the useful contributions that various delegations had made in the debate.

2.43. Turning to the questions by the Russian Federation on issues such as "prompt publication" under Article III:3 and matters raised under Article III:4, he explained that since the communication was of general purport, those matters had not been specifically addressed as they were specific to the GATS. Given the interest to explore transparency further, the proponents would consider how Agreement-specific issues could be considered in further discussions. In their view there was convergence on the issues encountered across the different bodies. The proponents would develop a draft decision for transmission to the General Council at its following session and encouraged Members who had not yet signed onto their paper to do so.

2.44. The Chairman noted that the issue would undoubtedly come back to the Council and suggested that in the meantime the Council take note of the statement made.

2.45. It was so agreed.

3 ITEM C: OPERATIONALIZATION OF THE LDC SERVICES WAIVER

3.1. The Chairman recalled that the "Operationalisation of the LDC Services Waiver" was a standing item on the Council's agenda. In light of the extensive discussions the Council had just held in the dedicated session to review the operation of preferences under the Waiver³, his intention was not to open up that item for discussion. He suggested that the Council just take note of his statement. He added that the Council would revert to that item at its next meeting.

3.2. It was so agreed.

4 ITEM D: WORK PROGRAMME ON ELECTRONIC COMMERCE

4.1. The Chairman recalled that, at its previous meeting, the Council had had a rich discussion. The United States had introduced its submission on "The Economic Benefits of Cross-Border Data Flows" (S/C/W/382) and various delegations had shared experiences and information on matters relevant to the Work Programme.

4.2. The representative of the United States wished to reply to questions posed by delegations on its submission at the previous meeting. In reply to Canada's request of examples of "interoperable regimes" (paragraph 33 of the submission), he cited the APEC's Cross-Border Privacy Rules (CBPR) system. It was an example of an interoperable system dealing with privacy, which had been adopted in 2011 and endorsed by APEC leaders. It enabled business to demonstrate compliance with the commonly understood set of privacy standards that applied across the APEC economies, thereby establishing a level of certainty and predictability for companies that moved data across borders, as well as assurance and security for individuals providing that data.

4.3. He then turned to Senegal's interesting questions, one of which asked if there was a breakdown of how much of the US\$7.8 trillion of global economic activity resulting from the flow of data was attributed to LDCs or low-income countries. He noted that the study cited in the submission did not break down the number by country. However, it did note that less-connected countries were closing the gap with the leaders at a very slow pace, and their limited participation in the global data economy had a real cost to the world economy. If the rest of the world had increased its participation in global flows at the same rate as the top quartile over the previous decade, world GDP would have been US\$10 trillion or 13% higher today. For countries that had been slow to participate, the opportunities for catch-up growth were too substantial to ignore, and the paper suggested a number of ways for closing that gap. But none of those strategies could work if governments cut off their countries from the global digital economy by imposing data localisation requirements or other restrictions on cross-border data flows. That was one of the core messages of the paper. For those who claimed that that was just a developed country issue, or an issue for big multinational corporations, he recalled that one of the speakers at the Workshop on the LDC Services Waiver had

³ As reported in document S/C/M/140.

conveyed that data localisation requirements hindered services development in LDCs by limiting the channels for regional growth.

4.4. In reply to the question on whether requiring a copy of data to be stored locally constituted a restriction to the free flow of data, and whether it was costly to access that data by local authorities when it was stored abroad, he said that the requirement to store a local copy of certain data was not exactly a restriction on the cross-border flow of data. However, such a rule was an example of a data localisation requirement. Those requirements unnecessarily raised the cost for local businesses and local consumers, since businesses were forced to pay for data storage twice, globally and domestically, and they passed those costs on to consumers.

4.5. Those requirements were not necessary for local or regulatory authorities to conduct their oversight supervision. Data could be stored anywhere in the world and still be accessed by local authorities consistently with legal mandates and procedures. For example, most large financial institutions operated global data systems, offering services in many jurisdictions, and often stored their data in a unified system in a small number of data centres. This helped enable global fraud detection, minimized cost, ensured compliance with regulatory reporting requirements, including anti-money laundering and other rules to combat illicit financing, and facilitated cybersecurity of sensitive financial information, including protecting confidentiality and privacy of customer data. It also made it easier for those financial institutions to provide access to data to financial regulatory authorities, consistent with regulatory and supervisory mandates. All financial regulators needed full and complete access to information to fulfil their regulatory and supervisory mandates, but they were generally able to obtain that access without requiring local storage of data. His delegation was unaware of such access being a costly undertaking.

4.6. Regarding distinctions made between personal data and other than personal data, most governments had specific rules for personal data in the interest of protecting privacy and sensitive personal information. Often those rules required that companies that collected or stored personal data had to ensure the privacy of such data, including when it was transferred across borders. It was critical that governments find ways both to protect privacy and to implement such protection in a manner that did not undermine digital trade, as those goals needed not to conflict. One example of bridging the complementary goals of protecting privacy and promoting data transfers was the APEC's CBPR mentioned previously, which was an enforceable privacy framework based on internationally recognized privacy standards that also facilitated trade and enabled cross-border movement of personal information, recognizing that countries took different approaches to data protection. That APEC model enabled data to flow among markets that provided baselines of strong data protection standards, consumer protection, as well enforcement cooperation.

4.7. To conclude, the US submission was designed to complement the on-going digital trade initiative and encourage Members to support a high-ambition outcome that yielded gains to domestic economies and to the global economy as well.

4.8. The representative of China said that his delegation wished to share a case study on e-commerce and poverty alleviation, which addressed how big data could help small farmers to raise and sell chicken. He said that, traditionally, small farmers faced various barriers and risks when raising chicken. First, in terms of costs, they were less competitive than large farms with scale advantages. Second, they were more vulnerable to infectious diseases and market fluctuations. Third, intermediate links, such as marketing, distribution, and cold-chain transport, also constituted challenges for small farmers.

4.9. The issue was how e-commerce and big data could help small farmers to address those challenges. In 2016, JD.com Inc., which was one of China's largest e-commerce platforms, had launched a pilot poverty alleviation programme to help poor and small farmers raise organic chicken in Wuyi, a poverty-stricken county in the Hebei Province of China.

4.10. A series of modern technologies and business modalities were introduced in that process. First, since small farmers could hardly compete with big farms in terms of costs, the project found a niche market for them, i.e. high-quality organic chicken raised in a natural environment outdoors. Wuyi is a mountainous county with scattered small villages, thus it created an ideal environment for outdoor chicken-raising.

4.11. Second, in order to minimize the risks of infectious diseases and market fluctuations, JD.com signed fixed-price purchasing contracts with small farmers joining the project and provided farmers with 60-day-old chicks instead of the traditional new-born chicks, as studies had shown that new-born chicks were more vulnerable to infectious diseases and were not suitable for outdoor breeding. In addition, both JD.com and local governments provided small loans for farmers to start that business.

4.12. Third, e-commerce helped to provide traditional intermediate links such as marketing and distribution. All the chickens raised under the programme were distributed via the e-commerce platform of JD.com, which also provided highly-efficient cold-chain transport and last-mile delivery, which was at the competitive edge of large e-commerce platforms.

4.13. Last, and this was key, the competitive edge of the chickens lay in their quality, but the issue was how to guarantee this. The baby-chickens were supposed to be raised outdoors for at least 160 days to ensure their best taste. But what would happen if small farmers kept the chickens indoor for their convenience or, in other words, if they passed ordinary chicken as organic chicken? An organic chicken was sold for more than US\$30 in the market, while the cost of an ordinary chicken was between US\$5 and US\$8, which could constitute a motivation to cheat the customers, particularly considering that chickens were raised in dozens of scattered villages, making it too costly to conduct on-site inspections. The answer to this question was big data. An electronic ring was put on the right leg of the chicken to track and record its daily activities, thus guaranteeing that chickens enjoyed a free and happy life outdoors. The rings also provided early warning for potential infectious diseases. The ring was not cheap, but it could be reused, thereby reducing the extra cost to an acceptable level.

4.14. The chicken-raising project was bringing change to those poor and small villages. Since raising chicken outdoors was not very laborious, women, old people and even people with disabilities could manage it. Thanks to the project, the average annual per capita income of Wuyi had increased by RMB 3000 (more than US\$400), and Wuyi had graduated from the "national-level poverty-stricken county" in 2018. E-commerce was not only changing lives in cities and developed countries, it was also bringing change to rural areas and developing countries, which was an important conclusion to be learnt from that project.

4.15. The representative of India thanked China for its interesting case study on e-commerce and poverty alleviation. She wished to make two points. First, regarding the submission by the United States on the economic benefits of cross-border data flows, India had already made clear its views in the statement delivered at the June meeting. Second, she noted that the e-commerce Moratorium, which was a cross-cutting issue, would expire in less than 2 months unless it was renewed. During 2018 and 2019, India and South Africa had tabled two submissions on that issue in the General Council, given the cross-cutting nature of the issue. Her delegation's position on that very critical issue had been spelt out in detail during the various meetings of the General Council over the previous year, including at the informal open-ended meeting on the issue held on 1 October 2019 and again during the General Council Meeting on 15-16 October 2019.

4.16. The representative of Senegal thanked China for the case study, which showed how e-commerce could be used to reduce poverty and promote economic development, particularly in rural areas. He also thanked the United States for providing further clarifications on its submission. His delegations had taken note of the submission made by the United States in the context of e-commerce Joint Statement Initiative, which stipulated that, for financial services, access to data was one of the conditions for not requiring the localisation of specific data in a determined territory. Against that backdrop, when it came to regulation and supervision, access to data was important not only for financial services, but also for other services, where regulators in general, and in specific sectors, required access to such data to perform their tasks properly. On the difference between the treatment of personal data and non-personal data, he noted that according to certain legislation on personal data, the scope of the latter could be very broad and include any personal information of an identifiable or identified person, as well as economic information. In his delegation's view, the borderline between trade restrictions and the treatment of personal data and non-personal data was tenuous. Therefore, it was important for delegations, such as his own, to continue discussions on the issue in order to better understand the implications and associated policies.

4.17. The Chairman recalled that the Buenos Aires Ministerial Decision on the Work Programme had instructed the General Council, in preparation for the following Ministerial Conference, to hold

periodic reviews on work under the Work Programme, based on the reports submitted by the relevant WTO bodies. The last such review had been conducted in July that year, and the Council had duly reported to the General Council at that juncture. Since the following Ministerial Conference would not take place in December 2019, but rather in June 2020, it was his intention to report once again to the General Council at its December meeting. 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 Council had had under the Work Programme at that meeting. The report would be purely factual, reflecting the essence of Members' deliberations. He took it that this was acceptable to all Members.

4.18. It was so agreed.

4.19. The Chairman suggested that the Council take note of the statements made and revert to this item at its next meeting.

4.20. It was so agreed.

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

5.1. The Chairman indicated that that item had been added to the agenda of the Council at the request of the delegations of India.

5.2. The representative of India said that, as previously clarified, her delegation would welcome the updating of all Secretariat modal Background Notes, 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. She understood that while most delegations supported the updating of all modal Notes and the production of a new Note on inter-modal linkages, the United States continued to have concerns on the updating of those Notes, and especially the one on mode 4.

5.3. Following previous informal discussions with the Chairman and the Secretariat, her delegation had been made to understand that the United States would be agreeable to having 'new' Notes in all modes, including on mode 4, plus a new note on inter-modal linkages. However, subsequent to the Council meeting in June 2019, there appeared to be some misunderstanding on that aspect, and she asked the United States to kindly confirm its position on that issue.

5.4. The representative of the United States said that his delegation's position had not changed or evolved and was the same as expressed over the previous few Council meetings. The United States had been flexible in suggesting that a Secretariat Note on the interlinkage of all the modes of supply would be interesting; indeed, that linkage had been mentioned also during the LDC workshop, and therefore such a paper would be useful. The United States did not support revised Notes on all the various modes, as it had explained a number of times. Again, looking back at the LDC workshop, one commentator had noted that the modes were often complementary, which would suggest that a Note on their interlinkages would be a contribution to the overall discussions on services. However, his delegation could not support taking 10-year-old modal Notes and trying to update them when things had not really evolved in that regard. A Note on the interlinkages between the modes of supply would, instead, be a good starting point.

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

5.6. It was so agreed.

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

6.1. The Chairman indicated that the item has been added to the agenda of the Council at the request of the delegation of Japan, and, as indicated at the start of the meeting, it was also being co-sponsored by the United States.

6.2. With regards to recent developments in China's cybersecurity measures, the representative of Japan said that WTO Members were aware that Japan had been requesting that China pay careful

attention to the regulatory measures and implementation of its draft Encryption Law in order to avoid hindering access to the Chinese market on the part of foreign enterprises and their operations in that market.

6.3. China had reportedly very recently adopted the draft Encryption Law, the content of which was currently being examined in Capital and closely compared with the comments that the Japanese government had submitted in September. At that juncture, Japan expected China to ensure that the Chinese Cybersecurity Law and related regulations, including the Encryption Law and its implementation measures, were fully consistent with China's GATS obligations.

6.4. On that occasion Japan would not repeat its concerns with China's Cybersecurity Law and related regulations, as those had already been elaborated at previous meetings. Japan would continue to pay close attention to how China addressed Japan's concerns. To conclude, Japan expected China to ensure that the related measures to be drafted did not unfairly hinder the level playing field of the business environment in China, both formally and in effect.

6.5. She then turned to Viet Nam's draft decree related to the Law on Cybersecurity, which Viet Nam had sought public comments on the previous December. Japan understood that Viet Nam was still giving consideration to the decree. Japan continued to request that Viet Nam appropriately reflect Japan's comments in its revised measures and expected Viet Nam to continue to ensure transparency and to take the inputs of all stakeholders into consideration before finalizing the related Law and regulations.

6.6. The representative of the United States recalled that his delegation had been raising concerns regarding China and Viet Nam's proposed measures relating to cross-border data flows and data localization at a number of Council meetings. The United States continued to raise the issue given the potential restrictive impact on trade in services, and because both China and Viet Nam had failed to adequately address concerns raised by trading partners on multiple occasions.

6.7. For both Viet Nam and China, those restrictive measures had been proposed in connection with broader laws ostensibly designed to promote broadly-defined goals of cybersecurity, encompassing both protection of networks and information transmitted over such networks. Viet Nam, in addition, addressed compliance by networks and platform with general laws through such measures.

6.8. In both cases, the main concern of the United States were requirements flowing from those measures that required local storage or information, and/or limited its transfer abroad. While the United States strongly supported efforts to enhance cybersecurity, i.e. protections of networks and the information they stored and transmitted, and understood governments' interest in ensuring compliance with other domestic laws, neither goal warranted data localization or restrictions on cross-border data flows as means to achieve that end.

6.9. Indeed, in many cases, a localization requirement actually increased cybersecurity threats, by exposing a network to additional, unnecessary points of attack. With respect to protecting networks and customers' information, there was now widespread support for developing approaches that achieved those goals without threatening the fundamentally transnational character of the digital economy, which depended on companies' abilities to leverage computing resources located in multiple jurisdictions. For example, the APEC Cross Border Privacy Rules system did so for personal information. And with respect to protecting networks generally, there had been important work done on developing voluntary frameworks applicable internationally, which he would describe in detail later on in his intervention.

6.10. With respect to China's draft Measures for Security Assessment for Cross-Border Transfer of Personal Information and the draft Measures for Data Security Management, and their proposed impact on cross-border data flows, China's feedback up to that point had been disappointing. There was lack of clarity on vague terms such as "important information" and "critical infrastructure", which triggered restrictive treatment; the continued advocacy of sweeping requirements to conduct ill-defined "security assessments", and in addition, in the case of personal information, obtain individual's consent, solely on the basis that a transfer was cross-border.

6.11. His delegation would appreciate an update on the status of those draft measures, including China's process for incorporating changes requested by foreign governments and other international

stakeholders. Had China released any additional draft measures relating to cross-border data flows or data localization?

6.12. With respect to Viet Nam's measures, the United States remained unconvinced that data localization, a key remedy proposed in the draft implementing measure, was at all relevant to Viet Nam's goal of ensuring that various domestic measures, none of which were directly related to cybersecurity, were adequately enforced. The United States looked forward to Viet Nam amending that draft measure, in a transparent manner, to fully address that basic concern.

6.13. The representative then offered some examples of ways in which standards for cybersecurity might be adopted that were less trade restrictive and which would enhance security and create consistency across regimes. He drew delegations' attention to a recent workshop conducted at the Asia-Pacific Economic Cooperation (APEC) forum in August 2019.

6.14. On the margins of the latest APEC Senior Officials meeting in August, APEC had held a 2 day-workshop on "Facilitating Trade through Adherence to Globally-Recognized Cybersecurity Standards and Best Practices", which had gathered a wide variety of speakers and experts to discuss cybersecurity standards. One objective of the workshop had been to demonstrate the alignment of cybersecurity standards as an opportunity to increase regional trade, as well as to strengthen overall cybersecurity in the region. The workshop had been designed to encourage economies to "develop or adopt globally recognized standards and best practices" in that area. A theme of the workshop had been that divergences in approach, coupled with a lack of consensus in multilateral coordination on cybersecurity, hampered the growth of global digital trade.

6.15. Standards were assuming an increasingly significant role in an environment where governments needed a more flexible approach to adapt and improve as the digital environment and innovation continued to change. Adopting globally-recognized standards, developed through transparent, multi-stakeholder and consensus-based processes, could minimize compliance costs for businesses, thereby both strengthening cybersecurity and creating trust.

6.16. Industry representatives, who were at the front line in defending networks, had emphasized the need for more certainty in compliance and a clearer understanding of risks, as well as the role for standards in speeding the adoption of technologies in companies and governments. Divergences in standards and frameworks among economies, particularly if mandatory, created challenges in doing business across borders. APEC would continue that work through its appropriate sub-bodies, as the workshop had demonstrated that a collaborative approach to those challenging issues raised awareness of policy-makers and might ultimately result in sound policy decisions.

6.17. The representative of Chinese Taipei expressed his appreciation to Japan for having raised that issue again in the Council and shared Members' statements in that regard. Members' measures on the international transfer of information would affect cross-border business operations and MSMEs' equal opportunities to access markets. From a systemic perspective, his delegation would carefully follow that issue in the future.

6.18. The representative of Australia said that, like other Members, her delegation appreciated China's efforts in consulting with interested parties on its draft measures related to cybersecurity, most recently on measures related to the Encryption Law, on which Australia had provided a written submission of views in September 2019, and previously on measures related to the cross-border transfer of personal information, on which Australia had also provided views in July 2019. Her delegation continued to urge China to take into account the concerns of business and WTO Members in the implementation of those measures and development of future measures. Australia looked forward to continuing to work closely with China on draft measures related to cybersecurity.

6.19. Her delegation also appreciated Viet Nam's engagement on its cybersecurity measures. As she had raised in previous meetings, like other Members, Australia continued to have a number of concerns with concepts in Viet Nam's Cybersecurity Law. Her delegation looked forward to continuing to work with Viet Nam on that Law and related measures.

6.20. The representative of the European Union said that, like other Members who had intervened previously, the EU continued to closely monitor the developments around China's draft Cryptography Law. The European Union understood that the draft Law was another step toward the first unified

Law in that field and the EU had submitted written comments in a public consultation organized by China in early September. The EU remained concerned about the wide scope of the Law in conjunction with a lack of clarity of a number of foundational concepts, as well as administrative procedures described in the text, and it was concerned that both of those aspects could negatively affect business confidence.

6.21. The EU called on China to ensure that legal and regulatory requirements were based on non-discrimination, did not favour specific technologies nor limit market access. Regulatory procedures related to products containing cryptographic components should be transparent, predictable and consistent with international practices. The representative therefore urged China to address the concerns raised by trading partners in the final version of the draft Law and trusted that China would keep its trading partners informed of the next steps in that process.

6.22. She also reiterated her delegation's previously raised concerns in relation to Viet Nam's Cybersecurity Law, which applied as of the beginning of 2019. The EU continued to have concerns with regard to the potential economic impact of that legislation and its compatibility with Viet Nam's international commitments. Her delegation therefore welcomed the public consultations on the draft implementing decree on cybersecurity setting out further details for some articles of the Cybersecurity Law on which the EU had also provided comments.

6.23. She hoped that Viet Nam's government would seriously consider the concerns expressed and would continue the dialogue with the EU and other Members on that matter, to ensure that it was aligned with international best practices. She therefore invited Viet Nam to provide up-to-date information on any plans for taking into consideration comments provided by interested parties, including industry and other stakeholders, and would appreciate an update on the timing for the adoption of the implementing decree.

6.24. The representative of Canada echoed previous Members' comments on China's cybersecurity measures, including China's new Encryption Law. Canada had also taken part in China's public consultation process and had submitted comments in August 2019, which pertained mainly to the regulations of goods used to encrypt data. Overall, Canada shared the view that the draft Law would benefit from improved clarity in order to assure predictable market access. While her delegation understood that the Encryption Law had been adopted recently by the National People's Congress, she would appreciate an update on any changes to the Encryption Law following the public consultations and on efforts to address concerns received through that process. As it continued to discuss that issue in the Council, Canada also looked forward to discussing the issue at the November meeting of the Technical Barriers to Trade Committee.

6.25. The representative of New Zealand welcomed China's openness to discussing the implementation of its cybersecurity regulations further, and to enhancing international cooperation in cybersecurity. New Zealand recognized the right of States to take measures in order to protect legitimate matters of public policy. He appreciated China's assurances that such measures should be implemented in a manner consistent with international obligations and minimizing negative impacts on trade. Lack of clarity about how China would implement its cybersecurity measures created uncertainty and introduced additional unnecessary compliance costs for foreign operators.

6.26. New Zealand encouraged China to have a more narrow and focused scope in implementation, including utilising a targeted and clear definition of what constituted networks and critical information infrastructure. His delegation also encouraged China to look at the trade implications of requiring assessment before data was able to be transferred to board. New Zealand continued to encourage China to implement its cybersecurity regulations in a transparent manner and consistent with the letter and spirit of the obligations contained in the GATS.

6.27. Turning to Viet Nam's measures, in line with his delegation's interventions at previous Council meetings, 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.

6.28. The representative of China thanked Japan and other delegations for the comments on the Encryption Law of China. He took the opportunity to update Members on the latest development of that legislation. After soliciting public comments from 5 July to 2 September 2019, the Encryption

Law had been adopted by the National People's Congress on 26 October and would come into force on 1 January 2020.

6.29. The National People's Congress had taken into account the valuable suggestions by different stakeholders during the legislative process of the Encryption Law, with a view to keeping a balance between guaranteeing encryption security and minimizing the burden for business. To that end, China had established tailored regulatory requirements for different encryption products, such as core encryption, common encryption and commercial encryption.

6.30. Regarding the questions raised by Japan on commercial encryption, he said that it was a common practice for authorities to regulate the production, sale and import of commercial encryption by implementing measures such as security certificate and import and export control.

6.31. According to the Encryption Law, the above-mentioned security certificate and import and export control would not apply to all commercial encryptions, but only to those commercial encryptions relating to national security, public interest or China's international obligations. In the meantime, commercial encryptions used for public consumption products would not be subject to import and export control. China would issue a list of products subject to the above-mentioned regulations, so as to provide more clarity on the scope of regulation.

6.32. With regard to the US comments, the relevant regulations and rules were still in the drafting process, and China was open to further dialogue both at the government and business levels.

6.33. The representative of Viet Nam thanked the Members who had intervened for their continued interest in Viet Nam's legislative drafting process for the decree to implement certain articles of the Cybersecurity Law. He emphasized that the process had been very transparent, with an open mind and all stakeholders' comments had been reviewed for the on-going internal consideration.

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

6.35. It was so agreed.

7 ITEM G: RECENT DEVELOPMENTS IN TRADE IN SERVICES STATISTICS

7.1. The Chairman recalled that, in October 2016, the Council had agreed that the Secretariat would present to the Council, on a yearly basis, the latest developments in trade in services statistics.

7.2. A representative of the Secretariat explained that there were four main areas of statistical work: the WTO's Trade in Services Data Hub, technical assistance, latest developments and new initiatives. Starting with the Trade in Services Data Hub, he indicated that all statistics were available on-line from the statistics gateway on the WTO website. The data was collected and disseminated jointly with UNCTAD and ITC in what was called the "Geneva Cooperation". Data was released with an annual frequency, in BPM6, up to 2018, and quarterly data had just been released for the second quarter of 2019. Monthly data was also available on the WTO website but was only compiled by the WTO.

7.3. Based on that data, analytical work was also produced in the World Trade Statistics Review. The latest version had been released in July and presented a broad description of the trends in international trade, including in the services sector, by sector, economy and economic groupings. The Secretariat also produced Trade Profiles by economy, with structural information for each economy. In addition, the World Trade Report, released in October 2019, was focused on trade in services and its evolution as influenced by digital technologies, demographic changes, rising per capita incomes and climate change.

7.4. The Secretariat was working on an experimental dataset with the OECD, looking at trade by partner. As this information was needed in the context of global value chain analyses, the OECD and the WTO together had established a methodology to estimate a balanced trade in services dataset by partner (BATIS). That dataset was currently available for 1995 to 2012 in BPM5; both organizations were currently working on developing a dataset for 2005 to 2018 in the BPM6 methodology. The plan was to release first provisional data at total level in the first half of 2020.

7.5. In July the Secretariat had also released a trade in services dataset by mode of supply, known as TISMOS. It was based on the BPM6 methodology and was available by partner from 2005 to 2017. Information was available for 66 services types for the four modes of supply. He explained that TISMOS was an experimental dataset: the Secretariat used the data that was available and completed it by adding estimations in order to come up with a complete dataset. In doing so, it used three principles: first, that of "baseline", where the starting point was an agreed and established methodology; the second principle was "modularity", implying that whenever data was obtained this would replace estimates (this would be done once a critical mass of revisions had been collected); the third principle was "transparency", meaning that the dataset was carrying relevant metadata on what was reported, what was estimated and how this was estimated. Given that the work involved was significant and would not be undertaken by different stakeholders, it was hoped that both datasets would develop into an international benchmark.

7.6. The kind of information one could draw from the TISMOS dataset, for example in terms of world trade by modes of supply, also highlighted some of the limitations of the dataset; for instance, it showed some but only limited variations in the share attributable to each mode, as constant shares over time had been used as a basis for the estimation methodology. As those shares were invariant, the variation over time was due to the total value of commercial services. The side-effect was that the Secretariat had developed a worldwide FATS output dataset for 200 economies which was also available online for research purposes. TISMOS included only local sales, to match FATS data with the scope of the GATS definition of mode 3.

7.7. The Secretariat was also working on improving reported data with data compilers at the national level by providing technical assistance within an inter-agency task force. The WTO was the focal point of the task force for technical assistance and statistical capacity building: the task force had brought out the Compilers' Guide, which presented good practices on collecting and compiling data according to the BPM6 methodology and had also developed an e-learning course together with UNCTAD and UNSD. Work was now focused on dealing with the technical difficulties that economies faced in compiling those statistics, particularly in a more disaggregated form.

7.8. A course on trade in services statistics was held at the WTO practically on an annual basis for trade in services statisticians. It was fully sponsored by the WTO and the e-learning course was a pre-requisite to participate. In 2019, there had been more than 700 people worldwide participating in the e-learning course across more than 110 economies. Of those, only 30 had been selected to follow the Geneva-based course, where the focus was on particular sectors that were of trade interest, with the participation of national compilers from WTO Members, who shared their experience on the ground, and closed by a round-table discussion on the way forward.

7.9. The Secretariat had also worked on new products. One such product was the Services Trade Barometer, an index which evaluated to what extent services trade was developing compared to the trend. The Barometer took account of the evolution of the Purchasing Managers Index, indicators for financial services, ICT services, air travel, container shipping and construction. Those elements were equally weighted to form the indicator on which the Barometer was based. As trade in services was measured in value, in nominal terms in USD, a proxy had also been calculated for the volume of such trade by deflating the nominal values by the inflation and exchange rate. The Barometer would be computed and made available twice a year. The Secretariat also had released the second quarter trade in commercial services statistics, which illustrated global and regional performance in four sectors, i.e. transport, travel, goods-related services and other commercial services. Further, the representative observed that TISMOS included estimates for the distribution sector. On that basis, distribution services were the most important service sector.

7.10. In terms of conceptual issues, he highlighted that the Manual on Statistics of International Trade in Services foresaw the possibility of complementary groupings, such as ICT services and ICT-enabled services that had been included based on the recommendation of the UN Statistics Commission and developed by UNCTAD, for which some first results were available for India and Costa Rica. Another new initiative the Secretariat was working on was a handbook on measuring digital trade. It was being developed by an expert group under the auspices of the inter-agency Task Force. The handbook would be a living document because digital trade was a fast-evolving area for which there were no cross-country comparable data available at present. The handbook would define a conceptual framework and list compilation experiences of countries as they became available.

7.11. The representative of India thanked the Secretariat for sharing the latest developments, including methodology, new concepts and findings, in the area of services statistics. She asked the Secretariat to confirm whether it had conducted any outreach programmes with national statistical agencies and Central Banks to share those developments, including on TISMOS, and take their views on board and, if not, if it had any plans to do so.

7.12. A representative of the Secretariat indicated that the Secretariat was conducting outreach. He noted that all the data was available online and that experts had been informed through the inter-agency task force and various other channels during the development of the TISMOS dataset. More activities were planned with international compilers to spread the news about the dataset. There was a huge interest in the feedback that had been received. At that stage, as it was much more difficult to develop the dataset in a bilateral way, the plan was to do a small feasibility study with some selected economies to see how the bilateral angle might work out.

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

7.14. It was so agreed.

8 ITEM H: OTHER BUSINESS

8.1. As indicated at the start of the meeting, the Chairman recalled that, as he had announced at the June meeting, barring any unforeseen or urgent matters, that would be the last meeting of the Council for 2019. As such, the Council needed to adopt its Annual Report for 2019, in order to submit it to the General Council in December. Given that there was some time before that meeting of the General Council, he suggested that the Council follow a written procedure to adopt its 2019 Annual Report. In the course of the following week, the Secretariat would circulate a draft Report to all Members, with a deadline for comments. If any comments were received, there would still be sufficient time, before the General Council meeting, for Members to resolve them, either via a revised draft, to be again submitted for Members' written approval, or by discussing them at an informal Council meeting. He took it that his proposal was acceptable to all delegations, and said that the Council would take note of the statement made.

8.2. The meeting was adjourned.
