



Council for Trade in Services

REPORT OF THE MEETING HELD ON 1 JULY 2021

NOTE BY THE SECRETARIAT¹

The Council for Trade in Services held a meeting on 1 July 2021, chaired by Ambassador Villalobos (Mexico). The agenda was contained in document WTO/AIR/CTS/27.

The agenda was adopted.

The Chairman recalled that delegations were meeting both in virtual and in-person mode. He trusted that delegations attending were familiar with the main technical aspects of participation for both modes. He urged delegates to speak at a reasonable, moderate pace and, if possible, to provide the interpreters with an advance copy of any written statements they intended to deliver, to help ensure that interventions were properly conveyed and understood when translated in the other two official languages.

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 the Russian Federation (in documents S/C/N/1048 and S/C/N/1049); Egypt (S/C/N/1050); Guyana (S/C/N/1051); Macao, China (S/C/N/1057); and Thailand (S/C/N/1058 and S/C/N/1059).

1.2. He suggested that the Council take note of the notifications.

1.3. It was so agreed.

1.4. 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 (in document S/C/N/6/Add.1); Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the European Union (S/C/N/680/ADD.1); Australia, New Zealand, Samoa, Solomon Islands, Tonga (S/C/N/1052); India and Mauritius (S/C/N/1053); Costa Rica, El Salvador, Honduras, Nicaragua, Panama, and the Republic of Korea (S/C/N/1054); the United Kingdom and Albania (S/C/N/1055); Antigua and Barbuda, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago and the United Kingdom (S/C/N/1025/Add.1); and the United Kingdom (S/C/N/1056).

1.5. The representative of India said that India and Mauritius had signed the Comprehensive Economic Cooperation and Partnership Agreement (CECPA) in February 2021. The CECPA was the first trade agreement signed by India with a country in Africa. The agreement, which had entered into force on 1 April 2021, covered, *inter alia*, trade in services, the movement of natural persons, telecommunication and financial services.

1.6. As concerned trade in services, Indian service providers would have access to around 115 subsectors from the 11 broad service sectors, such as professional services, computer and related services, research & development, other business services, telecommunication, construction, distribution, education, environmental, financial, tourism and travel-related services, recreational, yoga, audio-visual services, and transport services. India had offered around 95 sub-sectors from

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the 11 broad services sectors, including professional services, research & development services, other business services, telecommunication, financial, distribution, higher education, environmental, health, tourism and travel-related services, recreational services and transport services.

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

1.8. It was so agreed.

1.9. With regard to the notifications made under Article VII:4 (Recognition), he drew the Council's attention to the communication received from the Russian Federation (S/C/N/1047). He suggested that the Council take note of the notification.

1.10. It was so agreed.

2 ITEM B: OPERATIONALIZATION OF THE LDC SERVICES WAIVER

2.1. The Chairman recalled that, on 2 and 3 June, the Council had organised a webinar on "Least Developed Country services export performance and facilitating implementation of preferences notified under the LDC Services Waiver".

2.2. The WTO Director-General, Dr Ngozi Okonjo-Iweala, the Minister of Chad, His Excellency Mr Ali Djadda Kampard, and Commissioner Mr Emmanuel Mutahunga, representing the Ministry of Trade, Industry and Cooperatives of Uganda, had given welcome remarks.

2.3. The first session of the webinar had provided an overview of LDC services trade. The WTO Secretariat had presented the most recent and disaggregated information available, which had also illustrated the ruinous impact of COVID-19 on LDC services trade. Members had also heard the perspectives of national statistical compilers, from Bangladesh, the United Kingdom and Turkey. Overall, it was apparent that there were considerable data gaps with regard to LDCs services trade data. Although some work was under way to try to improve the situation, it required both time and resources.

2.4. In Session 2, Members had heard from exporters and importers of LDC services, in sectors as diverse as audio-visual services, IT services, business and professional services. One clear thread that had run through speakers' interventions was the enabling role of digital technology, which had significantly impacted how businesses were run and foreign markets accessed. At the same time, the point had been made that adequate digital infrastructure was an essential element to successfully participate in services trade.

2.5. In Session 3, representatives of LDCs had presented initiatives they had undertaken to strengthen the domestic services sector and support service suppliers in their attempts to penetrate foreign markets, including by making use of notified preferences. Representatives of notifying Members and other relevant cooperation partners had also reported on their strategies, highlighting certain of the technical assistance and capacity-building programmes in place to help integrate LDCs into global services trade.

2.6. The final Session had heard some views about lessons that had emerged from the webinar, and a number of suggestions about possible steps that could be taken to increase LDCs' participation in world services trade.

2.7. The Chairman believed that the webinar had offered plenty of food for thought, and he would welcome hearing delegations' further reflections and reactions.

2.8. The representative of India thanked the Membership for coming to the consensus that Least Developed Country Members shall not be required to apply the provisions of the TRIPS Agreement for another 13 years. Her delegation was happy to note that the special needs of LDCs had been recognised by all Members.

2.9. The representative reiterated that India attached utmost importance to the meaningful implementation of preferences granted under the LDC Services Waiver by all preference-granting Members, with the ultimate objective of increasing the LDCs' share in global export of services.

2.10. During the webinar, India had provided specific information regarding the utilization of preferences it granted, in the three areas of visa-related preferences, technical assistance and capacity building, and market access. Her delegation had also provided some suggestions on better utilisation in future of those preferences by LDCs. India looked forward to further meaningful engagement with all Members on that important issue in the run up to MC12.

2.11. The representative of the United Kingdom thanked the LDCs and the Secretariat for organising the webinar. Her delegation believed that that kind of information-sharing exercise had been extremely useful in evidencing both the challenges and the opportunities with increasing LDC participation in global services trade. The United Kingdom recognised that the need to support the resilience and recovery of LDC services suppliers had become more acute in light of the impact of the COVID-19 pandemic.

2.12. The United Kingdom had been pleased to be able to actively support the webinar, through contributions from its Office for National Statistics, which had set out the efforts that they were making to improve data collection of UK services trade with LDCs, and also from KPMG UK, which had shared the company's experiences and reflections on importing services from LDCs.

2.13. The United Kingdom believed that a greater collective effort was needed to support LDCs in that area, including through more effective operationalisation of the Waiver. Her delegation was continuing to consider the LDC response to the UK notification under the Waiver at the previous meeting of the CTS in March. The United Kingdom was also keen to work with other Members to consider what more could be done to support LDCs, and would continue to engage in initiatives to deepen its understanding.

2.14. The representative of South Africa thanked the Secretariat for organising the June webinar. The event had highlighted that LDC services exports continued to be low and unbalanced, with mode 3 amounting to only 7.2% of LDC trade whilst the corresponding share for developed economies was 62.5%. In addition, LDC services exports were dominated by only a few players, with the top 5 capturing 52.2% of LDC services exports. Moreover, one of those top 5 exporters was not a WTO Member and, therefore, did not enjoy MFN market access and was not a beneficiary of the LDC Services Waiver.

2.15. The data on the collapse of LDC services exports in 2020 highlighted the risks of an undiversified economy and the cost of dependency on tourism exports. The data presented indicated that the Waiver preferences were not having the desired impact in terms of economic transformation and diversification of LDCs.

2.16. The session of the webinar that had focused on experience-sharing by exporters and importers of LDC services had been, in her delegation's view, the most critical input for constructive discussions, firstly, to review and promote the operationalisation of the LDC Services Waiver and, secondly, to better tailor government initiatives to support LDC service suppliers. To that effect, Members needed more insightful information sharing for all services sectors, from both exporters and importers. It was also necessary to institutionalize continuous assessments, in an effort to understand what related restrictions were discouraging preference utilization so that governments could work with relevant stakeholders and introduce targeted solutions.

2.17. In that regard, she reiterated South Africa's previous statements and highlighted the need to continuously monitor and evaluate the impact of the implementation of the preferences granted under the Waiver, with a view to introducing measures that could advance positive changes to LDCs' share in global services trade.

2.18. Her delegation had made a practical suggestion in December 2020, namely the introduction of an on-line WTO-hosted portal for LDC service suppliers and importers of such services, so that they could record bottlenecks or challenges in activating the preferences granted. The portal could facilitate the real-time collection of sector and mode-specific data and could also give preference-granting Members the opportunity to look into ways to address issues recorded therein.

2.19. The representative of Chad, speaking on behalf of the LDC Group, again thanked the Secretariat, Members and its partners for the preparation and conduct of the workshop on the implementation of the LDC Services Waiver held in June.

2.20. The workshop followed the one Members had held in 2019. The LDC Group had worked to provide inputs that had been shared by exporters as well as importers of LDC services in various markets. The Group had been able to gather very important information by interacting with them. LDCs expressed appreciation to the Members who had contributed to the imports in their markets and thanked the LDC colleagues and partner organizations for their contributions.

2.21. Indeed, the Group had requested updates on the status of LDC services trade data. All Members were aware of the difficulties in collecting data on services trade in general. For LDCs, the situation was especially difficult. The Group appreciated the work done by Barbara d'Andrea of the Secretariat and the suggestions made, on which the Group planned to follow up.

2.22. LDCs also thought that South Africa's idea of the WTO setting up a service portal for LDCs was useful. The portal could facilitate real-time collection of sectoral and specific data and could also give preference-granting Members the opportunity to consider different ways of dealing with reported issues and information on government and private sector programmes.

2.23. An important conclusion of the 2019 CTS seminar and of the webinar just held was that there was a serious lack of detailed data on LDC services trade, particularly in heavily traded sectors such as business services, as well as the absence of bilateral statistics. Particular issues reported included the lack of coverage of entire sectors. Existing data collection systems were not designed to capture details, and there was a significant time lag between surveys.

2.24. From that perspective, the LDC Group wished to recommend the following:

- a. Surveys could be designed to also provide information on LDCs' services exports through digital intermediation platforms, in line with the OECD-WTO-IMF Manual on the Measurement of Digital Trade issued in 2020;
- b. The Enhanced Integrated Framework (EIF) could be used to explore funding for the development of harmonized services surveys in LDCs. That should be accompanied by sustained technical assistance and a programme of statistical capacity building in LDCs, including the use of statistical software and new data sources. In that regard, the Group believed that the Secretariat's guidance remained important.
- c. Notifying Members should report annually on initiatives taken in relation to LDCs. That would provide guidance to LDC exporters on how to use preferences and provide information about consumers in their markets who used LDC services.
- d. The WTO should set up a service portal for LDCs that would record obstacles or difficulties in using the preferences granted. The portal should facilitate real-time collection of sector-specific data, would give preference-granting Members the opportunity to consider different ways to address reported issues, and would provide information on government and private sector programmes.
- e. The Group intended to bring recommendations to MC12 that Members take stock of by MC13. These would include:
 - i. Consideration of any improvements in LDC services exports;
 - ii. Further analysis to improve the preferences granted, to ensure that increases in LDC participation in services trade correspond to requests for LDC-provided services from consumers in preference-granting Members;
 - iii. Assessment of options beyond the preferences themselves, so to facilitate their utilisation;
 - iv. Assessment of changes in information on services in LDCs since the pandemic; and

- v. The possibility of making the Waiver permanent, in light of the difficulties of tracking data, the information challenges faced, and the fluctuating capacities in LDCs.

2.25. Those were some of the recommendations that the Group hoped would be addressed.

2.26. The representative of Canada thanked the LDC Group and the Secretariat for the successful webinar. Canada had been pleased to participate as a panellist and hoped that its concrete examples, including of its free online matchmaking service with Canadian buyers, had been useful. As indicated by the Executive Director of Trade Facilitation Office Canada, Canada hoped that LDC services exporters would take advantage of that tool and register. Her delegation continued to welcome further constructive exchanges on how to support a better integration of LDCs in the multilateral trading system.

2.27. The representative of the European Union said that her delegation attached great importance to assisting LDCs to strengthen their economies, including services trade, and the LDC Waiver was a very significant instrument in that respect, in addition to the development and capacity-building programmes.

2.28. The EU had found the webinar very constructive, with a number of interesting and useful interventions from panellists and Members. The European Union had been pleased to contribute to the event, to share information about relevant development support instruments and programmes. Many Members had stressed the impact of the COVID-19 pandemic, especially on the two key services sectors for LDCs trade, namely travel and tourism, as well as the importance of digital trade for the future of services trade, including for LDCs.

2.29. The representative underscored the importance of comprehensive government and international cooperation approaches to strengthen LDCs' services economies and trade, including the need for LDCs to have the relevant domestic regulatory frameworks in place. As previously stated, the European Union stood ready to continue discussions on the operationalisation of the LDC Services Waiver. Finally, with regard to the proposal for a dedicated WTO website, she asked the LDC Group to provide further details in order to enable her delegation to adequately assess and react to the proposal.

2.30. The representative of the United States thanked the LDCs and the Secretariat for the very informative webinar. The event had been quite useful in highlighting some of the key challenges facing LDC in developing services exports. Lack of country data on LDC services trade was a problem, and his delegation could look to support work to continue to improve statistics and the gathering of data.

2.31. The webinar had shown that COVID-19 had hit key LDC export markets, particularly in tourism and transport services, and it was in the interest of all Members to see those markets rebound. Through those workshops and webinars, his delegation continued to learn from LDC service suppliers about the challenges they faced in expanding their offerings, and supported continued identification of capacity constraints and opportunities for technical assistance.

2.32. He indicated that at that point the United States was not ready to support some of the ideas on next steps. His delegation had a number of questions on the suggested web portal, and like other Members would welcome the circulation of the proposal in writing. He had questions on who would maintain the portal, verify and monitor the information in the portal. The lack of data collection proved that it was a challenging exercise and he asked if the WTO would be the data collector in that regard. He also asked if the portal would also identify restrictions that were in LDC domestic markets that hindered the development of services markets and the LDC ability to export. He noted that some of the improvements in the areas of services exports were not necessarily related solely to the Waiver preferences.

2.33. The United States supported continued engagement on that issue, identifying technical assistance needs and capacity-building opportunities.

2.34. The representative of Japan stated that Japan was one of the Members that had notified preferences for LDC services and service suppliers under the Waiver. Japan placed significant importance on promoting the integration of LDCs into global trade. The webinar had been a very

informative and useful occasion to hear from the Secretariat, Government officials and services exporters and importers on relevant data and efforts to promote LDC trade in the midst of the pandemic. In particular, it had been very valuable to know that even under the pandemic, there was a growing opportunity to expand LDC services trade through the use of new technologies. Japan was ready to continue to engage in the discussion on that important matter.

2.35. The representative of China thanked the Secretariat for the successful organization of the webinar and all the Members who had contributed to the event. The webinar had shed more light on the development of the services industry in LDCs and the challenges facing LDC services suppliers, especially in the context of the COVID-19 pandemic. It had highlighted the urgency of more capacity-building and technical assistance efforts.

2.36. During the webinar, China had shared its experience in providing technical assistance to LDCs governments and service suppliers, and it was ready to continue to actively contribute to the effective implementation of the LDC Services Waiver. China also encouraged Members to exchange best practices in that regard, with a view to providing more effective support for LDCs to further participate in, and benefit from, global services trade.

2.37. The representative of Australia thanked the LDC Group and the Secretariat for the organization of the webinar. Her delegation had been very pleased to participate in the event by outlining some of Australia's targeted Aid for Trade initiatives aimed at supporting LDC service suppliers increase and improve the value of their services exports. The webinar had very usefully provided a broad range of views from experts, from notifying Members to, most importantly, LDC services suppliers, on those issues. It had also been particularly valuable to hear about the specifics of, and the challenges faced by LDC service suppliers because of the COVID-19 pandemic.

2.38. Australia was encouraged by the many Members that had notified comprehensive preferences under the Waiver, including, most recently, by the United Kingdom. As highlighted by a number of speakers at the webinar, and building on the comprehensive Waiver preferences notified, she said that Members' efforts should be focused on what could be done to help LDCs utilise market access opportunities and fully benefit from preferences notified under the Waiver, including by addressing domestic capacity and supply-side constraints that had been identified by LDCs themselves. Those included how Members could complement market access opportunities with Aid for Trade and targeted development assistance programmes. She would not outline Australia's activities that had been presented at the webinar but noted that Australia regularly evaluated its activities to ensure that they were responsive to the requests that it received from LDCs.

2.39. With regard to the specific portal suggestion, she echoed previous delegations' call for the proposal to be set out in writing, to facilitate consideration.

2.40. Speaking on behalf of the LDC Group, the representative of Chad thanked Members for their support towards enhancing LDC participation in world services trade. With regard to the comments by some delegations concerning the portal suggestion, he indicated that the LDC Group would submit its proposal in writing in a reasonable timeframe. He added that the portal proposal had not been made with the intention of creating difficulties for any Member, but only represented an attempt to find solutions to the challenges faced by LDC service suppliers. It was intended as a means to facilitate the real-time collection of data and improve the access to information.

2.41. The Chairman thanked all delegations who had intervened. He added that Members had had an interesting discussion on a challenging issue. He suggested that the Council take note of the statements and said that it would revert to that item at its next meeting.

2.42. It was so agreed.

3 ITEM C: WORK PROGRAMME ON ELECTRONIC COMMERCE

3.1. The Chairman recalled that, at the previous meeting, a couple of delegations had shared further contributions related to the joint communication from a group of Members, titled "Exploratory discussions on supporting digital capability of business and consumers" and circulated as document JOB/SERV/296/Rev.4. In addition, Members had heard about the role of e-commerce in promoting

high-quality business development. Members had also exchanged views on the Work Programme more broadly.

3.2. He then opened the floor for any delegation wishing to intervene either under the sub-item on "exchange of information and experiences" or to speak to the Work Programme generally.

3.3. The representative of Chad, speaking on behalf of the LDC Group, drew Members' attention to the LDC submission to the General Council regarding the Work Programme on Electronic Commerce, dated November 2019 and contained in document WT/GC/W/787.

3.4. The LDC Group wished to reiterate the important elements in possible discussions between then and MC12. With respect to the services elements of the submission, the Group had noted the following issues raised by LDCs: difficulties in accessing credit cards, which were the main means of online payments; a high proportion of unbanked consumers or those with limited access to online payments; inadequate online payment methods; and limited skills among businesses that wished to use e-commerce and strategic ICT for B2B, B2C or B2G buying and selling of goods and services.

3.5. Those were some of the LDC concerns, and the Group called on Members to support LDCs in addressing those important challenges for the efficient use of e-commerce, which offered important opportunities for development.

3.6. The representative of the Republic of Korea recalled that, at previous meetings, his delegation had explained Korea's online shopping trends following the COVID-19 outbreak and had presented related statistics. Prior to the pandemic, the proportion of online shopping among total retail sales was around 22%. According to the statistics authority in Korea, the ratio had skyrocketed to around 26.7% annually in 2020, reflecting an ongoing upward trend. In the fourth quarter of 2020, the ratio was around 28.7%.

3.7. The report issued by UNCTAD in June 2021 also highlighted the dramatic increase in the share of online retail sales among total retail sales. According to UNCTAD's report, online retail sales had grown noticeably in several countries, including China, the United Kingdom, the United States and Singapore. The Republic of Korea had reported the highest share, at 25.9% in 2020, up from 20.8% the year before. The UNCTAD figure was a little lower than Korea's official statistics, presumably due to methodology issues.

3.8. The sharp increase in e-commerce transactions in Korea reflected the fundamental shift in consumer behavioural trends, as well as tightened health measures in the course of combatting COVID-19. His delegation firmly believed that the Korean e-commerce industry had helped to tackle the COVID-19 pandemic and at the same time had led to economic resilience and recovery. Considering the growing importance of online trading activities, it was necessary for all Members to respond to that trend in a constructive manner as they rebuilt their economies during the pandemic and moved forward toward the new normal in the era of post-COVID-19.

3.9. At the December 2020 meeting, his delegation had presented a specific government programme, which was the MSMEs Remote Work Facilitation Programme. Under that Programme, MSMEs had been able to receive voucher-based services related to virtual communication, working from home, cybersecurity, and even childcare services so that they could carry out their regular tasks in the period of tightened social distancing. He wished to provide an update with regard to that Programme.

3.10. In the course of its implementation, some measures had been deployed for reasons such as efficiency, effectiveness, and customer satisfaction. Currently, online application was recommended, and simplified information of listed services was easily accessible. Within the annual ceiling amount of USD40,000 per beneficiary company, USD20,000 was the maximum amount that one beneficiary company could be provided by a specific service supplier. As a result, a beneficiary could be provided with various voucher services from at least two suppliers.

3.11. After receiving applications from potential beneficiaries in February, voucher-based services had started to be provided in April. The program operator was currently surveying customer satisfaction, which was expected to be reflected in the future operation of the Programme.

3.12. The representative of China thanked Korea for the information shared, and Chad for the statement made on behalf of the LDC Group, as indeed the digital divide was great and was becoming even more pronounced during the COVID-19 pandemic. That was an important reason why Members should continue and revitalize the discussions under the e-commerce Work Programme. At that meeting, he wished to share some information on the recent development of e-commerce in China.

3.13. Since the outbreak of the COVID-19, e-commerce had played a prominent role in ensuring supplies, resuming work and production, and enabling consumption, acting as a stabilizer for economic and social development. Taking China as an example, in 2020, China's national online retail sales had hit CNY11.76 trillion, or around USD1.8 trillion, an increase of 10.9% year-on-year, while the online retail sales of physical goods had reached CNY9.76 trillion, a jump of 14.8% year-on-year and accounting for nearly a quarter of the total retail sales of consumer goods. Import and export volume of China's cross-border e-commerce in 2020 was CNY1.69 trillion, corresponding to an annual growth of 31.1%.

3.14. The crisis had also seen the expansion of new e-commerce business models, such as contact-free delivery, intelligent logistics and e-sales live streaming. In 2020, major e-commerce platforms in China had hosted over 24 million live broadcasts in total. Online education sales had increased by more than 140% year-on-year, while online medical consultations had increased by 73.4%. E-commerce had also provided a strong impetus to rural revitalization and poverty alleviation, which his delegation had introduced at the CTS before.

3.15. China supported a continued exercise to share information and experiences on e-commerce issues within the WTO framework. China hoped that, through more in-depth discussions, Members would deepen their understanding on e-commerce-related services and find out what could be done to keep the WTO relevant and ensure a smoother post-pandemic economic recovery.

3.16. The representative of India noted that the digital revolution was still unfolding. While digital infrastructure has played its role during the ongoing pandemic, it had also brought out clearly the existing, and widening digital divide among Members, a divide exposed further during the COVID-19 crisis. Moreover, many Members were yet to fully comprehend the implications of e-commerce on competition and market structures; issues related to transfer of technology; data storage; automation and its impact on traditional jobs; and the gaps in e-commerce policy and regulatory frameworks in developing countries. That was why India had been a proponent of strengthening the multilateral work under the non-negotiating and exploratory 1998 Work Programme on Electronic Commerce.

3.17. Under the multilateral Work Programme and with the intention of better understanding the implications of the Moratorium on customs duties on electronic transmissions, India, along with South Africa, had introduced submissions, which explained its understanding of the scope and the impact of the Moratorium. India and South Africa, in their latest submission dated 4 December 2020, titled 'Reinvigorating the work under the 1998 Work Programme on Electronic Commerce' and contained in document WT/GC/W/812, had emphasised the need for structured discussions in the relevant WTO bodies, including the CTS, in accordance with General Council's mandate as contained in document WT/L/274.

3.18. India was of the firm belief that multilateral avenues based on consensus were the most effective means to achieve inclusive development-oriented outcomes. In that context, India, along with South Africa, had recently made a submission in the General Council titled "Legal status of JSIs and their negotiated outcomes" (document WT/GC/W/819), wherein, inter alia, India's concerns on the plurilateral negotiations on e-commerce taking place under the Joint Statement Initiative (JSI) were articulated. Given that the Work Programme on Electronic Commerce clearly had a non-negotiating and exploratory mandate, which had been reaffirmed in successive Ministerial Decisions, her delegation believed that rule-making on trade-related aspects of electronic commerce by a group of Members would be tantamount to negating the decisions of past Ministerial Conferences and would be severely detrimental to the rules-based multilateral trading system under the WTO.

3.19. In December 2019, India had joined the consensus for a six month extension of the Moratorium, with an understanding that the Work Programme on Electronic Commerce would be reinvigorated with an objective of achieving clarity on various issues, including the scope of the

Moratorium and its impact on Members' policy space and revenue. Since then, due to repeated postponement of the 12th Ministerial Conference, the Moratorium had been extended by about two years, which was much beyond the six months agreed to in December 2019. During those few months up to MC12, Members needed to constructively engage on various issues under the Work Programme. Delegations also needed to have a clear understanding about the scope of the Moratorium, to enable Members to make an informed decision on its extension or otherwise at the upcoming Ministerial Conference.

3.20. Under the 1998 Work Programme (document WT/L/274), the Council for Trade in Services was tasked to examine the treatment of electronic commerce in the GATS legal framework. The General Council had identified specific issues to be examined by the CTS. Those included scope; MFN; transparency; increasing participation of developing countries; domestic regulation, standards and recognition; competition; protection of privacy and public morals and the prevention of fraud; market-access commitments on electronic supply of services; national treatment; access to and use of public telecommunications transport networks and services; customs duties; and classification issues.

3.21. India was working on a submission which sought to elaborate on some of those issues.

3.22. The representative of South Africa expressed her delegation's support for the interventions by Chad and India.

3.23. Supporting digital capability of business and consumers was key for solving some of Members' major development challenges. With respect to South Africa's national circumstances, the digital economy had to be as inclusive as possible, focusing on job creation, transformation and growth. With South Africa's unemployment rate at 32.6%, if digital platforms could target those three areas, in her delegation's view they would be able not only to scale effectively but provide services and products that were relevant across disparate income brackets.

3.24. Platforms had not only to employ low-skilled workers but to assist with rural economic development, to upskill South Africans and to provide support to MSMEs. Locally developed platforms focused on solving domestic problems that predominately occurred in rural areas or townships where service delivery was limited and had big relevance for other developing and LDC markets. For example, Lumkani was a South African tech-based solution, developed as an early warning system for shack fires. This was coupled with low-cost insurance products to provide both safety and financial security to clients.

3.25. But the full digital capability of business and consumers was constrained by lack of infrastructure, device and data availability, as well as digital literacy among consumers, especially in rural areas, who were largely excluded from the platform economy. Therefore, while there was a lot of promise held within the digital economy, a significant portion of it catered largely to the middle- and upper-income consumers. That meant that large portions of low-income consumers in Africa and elsewhere were excluded from the digital economy because the goods and services available were either not relevant to their needs or were unaffordable. Low-income households also needed support to unlock digital business capability; as her delegation had observed, that was where some of the best problem-solving for development emerged.

3.26. South Africa was committed to advancing the 1998 Work Programme in examining those issues, working with Members of the CTS and through consensus develop recommendations for action, CTS recommendations that were meaningful and impactful for universal digital inclusion. The e-commerce JSI would not have that meaningful impact as it left behind low-income households and the global poor.

3.27. The representative of Canada said that her delegation had not planned to intervene but wished to react to some of the statements made and to reiterate Canada's longstanding position.

3.28. As Members were considering way to address the pandemic and support a more inclusive economic recovery, her delegation remained convinced that ensuring a permanent, tariff-free space for cross-border electronic transmissions, including content was a meaningful way to provide long term predictability, certainty and openness for businesses and consumers. Canada had committed with many trading partners, through bilateral and regional Free Trade Agreements, to a permanent

customs duties prohibition on electronic transmissions. That approach had made Canada a more attractive destination for foreign investment, contributed to the creation of new employment opportunities and placed the country in a competitive position for engaging in digital trade.

3.29. While Canada strongly supported having the multilateral Moratorium become a permanent prohibition, it was pleased to see Members extend the practice of not imposing customs duties on electronic transmissions until MC12.

3.30. Canada was aware of the concerns raised by a few Members in recent years about the possible impact of the Moratorium. Her delegation had welcomed and actively participated in informal open-ended meetings and structured discussions which had been brought forward by Members. The dedicated and structured format had provided a conducive environment for Members' deliberations. She noted that the document referred to by India and South Africa asked to continue the structured discussions; that mechanism was already available to interested Members and Canada did not see the need to ask the General Council, or the CTS that day, to make any decisions in that sense. Having said that, her delegation would be interested to know more from the proponents if they were suggesting something different, especially in view of the upcoming structured discussions that the General Council would hold on 5 July, which in Canada's view provided the best forum for Members to engage on that issue.

3.31. In light of the desire to reinvigorate the Work Programme, Canada had been pleased to co-sponsor, with around 13 other Members, the proposal to engage in exploratory discussions on supporting digital capabilities of businesses and consumers. Those discussions had provided useful information on how governments were seeking to help address domestic challenges but also to support developing Members. Canada had participated in that exercise by providing its domestic experiences and had learnt from other Members' contributions.

3.32. Finally, Canada did not agree with statements suggesting that the e-commerce JSI negotiations negatively affected the WTO or specific groups of Members. The establishment of rules on e-commerce was more than overdue. An ambitious and comprehensive outcome would contribute to facilitating trade, providing certainty and creating inclusive economic growth. The JSI negotiations were open, inclusive and transparent. Any interested Member could join the Initiative, and she noted the increasing number of developing Members participating.

3.33. The representative of the Kingdom of Saudi Arabia reaffirmed her delegation's commitment to support the multilateral trading system and remain engaged to work with Members constructively to strengthen the work of the WTO. Since 1998, Members had agreed not to impose customs duties on electronic transmissions and to extend the Moratorium at the biannual Ministerial Conference. Members had continued addressing e-commerce related issues in the Council for Trade in Services, the Council for Trade in Goods, Council for TRIPS and Committee on Trade and Development, as with part of the e-commerce Work Programme. Having said that, and consistent with the Ministerial Decision of 13 December 2017 in document WT/MIN(17)/65, her delegation had agreed to extend the current practice of not imposing customs duties on electronic transmissions until the following Ministerial Conference. Saudi Arabia believed that the Moratorium did not stop Members from imposing internal tax or VAT on electronic transmissions.

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

3.35. It was so agreed.

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

4.1. The Chairman indicated 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 had been emphasized by her delegation on several previous occasions, India reiterated its request for the update of Secretariat Background Notes on all four modes of supply, and also supported the Secretariat work on inter-modal linkages, as requested by one delegation.

4.3. As her delegation had clarified before, while India welcomed the US proposal on the issue of inter-modal linkages, that should not substitute the request to update the separate modal background notes by the Secretariat. The representative urged the United States to reconsider its position, as having an inter-modal Secretariat Note made no sense without first updating the separate modal Notes.

4.4. While Members had asked for higher levels of transparency on COVID-related measures and timely reporting of such measures, they should not object to producing an update of the mode 4 Secretariat Note. For transparency, the rationale for collecting information on trade in goods should also hold good for trade in services.

4.5. India once again requested all Members to positively consider its proposal that was inclusive and comprehensive. Her delegation believed that it would be a very useful exercise for the Council to undertake.

4.6. The representative of South Africa expressed her delegation's support for the intervention made by India. South Africa reiterated its previous statements on that matter and echoed India's proposal for the updating of the 2009 Secretariat Background Note on mode 4. Her delegation also supported the updating of the other modal Notes, and the US proposal that modal interlinkages be included as part of the package of work covering the updated modal Notes.

4.7. The representative said that Members who did not see value added for their delegations should not stand in the way of analytical work by the Secretariat that other Members found useful. Her delegation cautioned that the suppression of technical support activities pertaining to collation and dissemination of information not only undermined capacity building but the role of the Secretariat as well.

4.8. As stated at previous CTS meetings over a number of years, the representative of the United States said that his delegation did not support an updated Secretariat Background Note on mode 4 and saw no value added in updating that Note.

4.9. The United States had suggested support for consideration of a new Secretariat Note examining interlinkages between modes of supply, which could be an interesting Note and stimulate discussions in the Council on trade in services. But his delegation could not support using the Secretariat's resources to simply update the Background Note on mode 4. The US position on that issue had not changed.

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

4.11. 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 indicated that the 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 said that in May and June, the Japanese Government submitted detailed opinions to the Chinese Government on the draft Data Security Law, the draft Personal Information Protection Law, and the draft Regulations on Automobile Data Security Management, for which China invited public comments.

5.3. He said that, first, the Data Security Law was enacted in June without fully taking into account the comments submitted by his delegation, and Japan understood that the Law was scheduled to be enforced on September 1. However, as his delegation pointed out in its comments, Japan had particular concerns about the security review of data activities (Article 24) and data export control (Article 25).

5.4. With regard to Article 24, if screening or implementation was carried out arbitrarily, it could be a violation of China's national treatment obligation under Article XVII of the GATS. Japan requested

China to develop fair and clear screening criteria and to ensure transparency of the new Law's implementation, in order to make sure that foreign entities would not be treated unfairly.

5.5. Regarding Article 25, if that provision meant a data localisation requirement, foreign service providers could be forced to bear additional costs associated with storing data in China. Foreign service providers would be placed at a competitive disadvantage compared to Chinese service providers that aggregated and managed data in China, which could constitute a violation of China's national treatment obligation under Article XVII of the GATS. Japan requested China to ensure that foreign service providers would not be treated, either formally or de facto, in a discriminatory manner.

5.6. In addition, Japan also requested China to ensure consistency with the WTO Agreements of the provisions in Article 21, Article 26, Article 34, Article 35 and Article 44 of the Law.

5.7. Second, with regard to the Personal Information Protection Law of the People's Republic of China, Japan had concerns about provisions of Article 38, Article 40, Articles 42 and 43, Article 52 and Article 53. Japan had concerns that, depending on the interpretation and manner of implementation, those provisions could excessively restrict data distribution, force foreign enterprises to refrain from their activities, and effectively place foreign enterprises at a competitive disadvantage compared to domestic enterprises in China. That could be a violation of China's national treatment obligation under Article XVII of the GATS. Therefore, Japan requested China to establish fair and clear screening criteria, to ensure transparency of its implementation, and to avoid introducing excessively trade-restrictive measures.

5.8. Third, with regard to the draft Regulations on Automobile Data Security Management, Japan had a strong concern on the obligation in Article 12 to store data in China, which could cause additional costs to foreign service providers and effectively put them at a competitive disadvantage compared to Chinese service providers who aggregated and managed data in China. In addition, the Article required a "Data Extradition Safety Assessment" by the State Internet Information Department for the data to be transferred overseas. Yet, the standards for the Assessment were unclear and depending on how it was applied, there was a risk of unfair treatment to foreign service providers. Those provisions could violate China's national treatment obligation under Article XVII of the GATS, and Japan requested China to remove the mandatory domestic storage obligation and to ensure transparency in its implementation.

5.9. Japan also requested China to ensure consistency with the WTO Agreements of the provisions in Article 3, Article 13 and Article 15.

5.10. Japan appreciated China's efforts to seek public comments from domestic and foreign stakeholders in view of transparency. However, the Government of Japan was concerned that the development of related laws and regulations was proceeding without addressing the expressed concerns, such as in the case of the above-mentioned Data Security Law.

5.11. Japan hoped that the requests and concerns expressed by the Japanese Government in the public comments would be considered and addressed in the future enactment process. Japan reiterated its request to ensure that the measures did not discriminate against foreign businesses, including Japanese, in terms of form and substance, and that consistency with the GATS was ensured.

5.12. With regard to Viet Nam, the Japanese Government submitted its detailed opinions to the Vietnamese Government in April on the draft Decree on the Protection of Personal Information for which the Vietnamese Government invited public comments. In the draft Decree, as pointed out in the public comments, Japan had a particular concern on the regulation of cross-border transfer of data and the obligation to store data under Article 21.

5.13. Article 21 stipulated that, in principle, personal information could not be transferred out of the country unless it met all of the following requirements: consent of the individual, storage of the original data in the country, issuance of a certificate of sufficiency, and written consent of the Vietnamese Personal Data Protection Commission (PDPC). However, such cross-border transfer requirements were overly restrictive and might lead to unfair treatment of foreign businesses

depending on implementation. Japan requested Viet Nam to ensure that the requirements would be applied in a reasonable, objective and fair manner.

5.14. In particular, the obligation to store the original data domestically could place additional burdens on foreign businesses and effectively place them at a competitive disadvantage compared to Vietnamese businesses that aggregated and managed the data domestically. If foreign businesses were effectively treated less favourably than Vietnamese domestic businesses, Japan could not deny the possibility of a violation by Viet Nam of its national treatment obligation under Article XVII of the GATS, and Japan therefore, requested the removal of such obligation.

5.15. Furthermore, while the Article listed specific cases where cross-border transfers were prohibited, there was a risk that data transfers could be prohibited by arbitrary decisions of the authorities, and depending on implementation, foreign businesses could be treated less favourably than Vietnamese businesses. That could conflict with Viet Nam's national treatment obligation under Article XVII of the GATS. Japan requested Viet Nam to ensure that the requirements were applied in a reasonable, objective and fair manner.

5.16. Japan appreciated Viet Nam's efforts to seek public comments from domestic and foreign stakeholders in view of transparency. On the other hand, measures to restrict data flows should be limited to the minimum necessary to achieve legitimate objectives and in a manner that was not overly trade-restrictive. Japan reiterated its request to Viet Nam to ensure transparency by clarifying the scope and content of such measures and consistency with the GATS.

5.17. The representative of the United States said that for several years, his delegation had raised concerns in the Council that various Chinese draft and final measures, including in connection with China's Cybersecurity Law and its National Security Law, might unduly restrict cross-border data flows and required localisation of data. The United States and several other WTO Members raised similar concerns in 2020 and at the CTS meeting in March over China's draft Personal Information Protection Law, of which a second draft was released on April 29. The United States submitted comments in that proceeding. In sum, the second draft of the Law did not address the US concerns with the first draft of the Law.

5.18. Regarding the second draft of the Law's potential impacts on cross-border data flows, the United States was particularly concerned with provisions that imposed a data localisation requirement on operators of a potentially very broad category of critical information infrastructure, and on personal information processors that processed personal information whose volume had reached a certain threshold. Those entities would be subject to a "security assessment" before being able to transfer any personal information out of China. Imposing unduly restrictive requirements on data transfers simply because they were cross-border unfairly disadvantaged foreign suppliers and did not enhance protections for personal information. The United States, once again, requested China to remove those provisions from the Law.

5.19. In addition, the United States had raised concerns with provisions of the second draft of the Law that would require that data processors outside of China established an office or appointed a representative in China, a requirement that would appear unworkable for the thousands of foreign companies, many SMEs, that routinely processed China-related data outside of China.

5.20. At the March Council meeting, China noted that, as it was formulating its laws and regulations relating to cybersecurity (including in connection with the draft Personal Information Protection Law), it was comprehensively referring to the experiences of other WTO Members. The United States disagreed. The approach that China proposed in the second draft of the Law was in some respects very far from the experiences of other WTO Members.

5.21. The United States recognised that governments had a legitimate interest in ensuring the protection of personal information. However, China's proposal to impose additional requirements on transfers simply because they were cross-border unfairly disadvantaged foreign suppliers and did not enhance protection for personal information. The possibility to use certifications by professional organisations as a basis for the cross-border transfer of personal information, included in the current draft, was positive. Those provisions could benefit from expansion, including allowing for the use of cross-border data transfer mechanisms such as the APEC Cross-Border Privacy Rules (CBPRs).

5.22. In previous CTS meetings, the United States and other WTO Members also raised concerns that another measure that China was considering – its Data Security Law – could have a severe effect on services suppliers and cross-border data flows. On June 10, 2021, China promulgated a final version of the Data Security Law, which would enter into force on September 1, 2021.

5.23. The Law focused on protecting an unclear category of "important data" that China appeared intent on defining expansively and subjecting to onerous restrictions. The Law also required security assessments of any proposed cross-border transfer of information by an operator of critical information infrastructure (CII), according to the terms of the Cybersecurity Law. Other (non-CII) operators also would be subject to security assessments under procedures to be developed by China. The United States had serious concerns that China's focus on "important data" and its imposition of security assessments for cross-border transfers of data would result in new restrictions and burdens on companies, including in regard to the commercial data that they sought to use in the ordinary course of business.

5.24. With respect to Viet Nam, the United States had raised concerns about Viet Nam's data localisation and local presence requirements in its Cybersecurity Law and its draft implementing Decree for several years now. At the last Council meeting, the United States noted with great concern the draft Decree on Personal Data Protection that appeared to expand the scope and restrictiveness of data localisation requirements.

5.25. The United States submitted written comments in April on that draft Decree, and explained at the last CTS meeting that implementing such sweeping requirements that companies stored data locally, or that they sought government approval prior to transferring any personal data across borders, could impede the supply of cross-border services in many sectors, including ones for which Viet Nam had GATS commitments. The United States requested an update from Viet Nam on the status of that draft Decree and any others for which the United States had submitted comments.

5.26. The representative of the European Union, as in previous meetings, shared the concerns expressed by other Members about the implementation of the Cybersecurity Law of China. Her delegation considered that the scope was too broad, some requirements remained unclear and key terms in the Law were not specified in sufficient detail. The European Union also noted that the lack of clear and consistent implementing regulations, as many were still in draft form, created significant uncertainty for economic operators. The European Union would therefore welcome an update from China on when implementing measures would be adopted.

5.27. The growing number and expanding scope of the administrative review processes put foreign companies at risk of exposing sensitive information. China's cybersecurity regime established strict restrictions on the cross-border transfer of a wide range of data. That effectively prevented network operators from transferring personal information or important data collected or generated during the operations in China to anyone outside China without completing an official security assessment. The Chinese regulatory framework for data related to national security went beyond the depth of the Cybersecurity Law.

5.28. The Data Security Law, which would come into force on September 1, was also of concern to the European Union. Instead of clarifying certain concepts, the Law introduced yet another category of data, that of core data. Moreover, the Law had an excessively broad scope of application, covering data activities within China but also beyond the territory of mainland China that might harm China's national security or public interest. Her delegation would appreciate replies from China on the concerns that the European Union and other Members had raised.

5.29. Regarding the Vietnamese Cybersecurity Law, the European Union shared other Members' concerns and reiterated its remark about the Law's potential economic impact and its compatibility with Viet Nam's commitments under the WTO. The European Union was particularly concerned about the data localisation and local presence requirement and the liability of foreign companies. The framework for the implementation of data localisation and local office requirements needed to be clearer on the specific conditions based on which foreign companies would be requested to open local branches or localise the data that the processor hosted. The European Union expected that those conditions were subject to clear and defined limits stipulated by an independent oversight mechanism and judicial review and that they were in line with Viet Nam's commitments at the WTO.

Finally, the European Union would welcome further information on the overall implementation of the Cybersecurity Law in Viet Nam and the adoption of the implementing Decree.

5.30. The representative of Australia appreciated China's efforts to consult with interested parties on its measures relating to cybersecurity. Australia had been pleased to make submissions to the Chinese Government as part of public consultations on its cybersecurity framework, including most recently, China's second draft Personal Information Protection Law and second draft Data Security Law.

5.31. As Australia set out in its most recent submissions, it welcomed a number of revisions to both those draft laws. Nonetheless, Australia remained concerned that China was considering introducing provisions that had the potential to create inconsistencies with WTO rules. Australia noted that any measure or countermeasure taken under those laws should only be applied consistently with China's WTO obligations. Australia also recommended that both laws provided greater detail when it came to definitions, jurisdiction and a number of other fundamental elements that would enable businesses operating in China to fully understand and implement their new obligations. Australia continued to urge China to take into account the concerns of businesses and Members in the implementation of those measures and development of future measures. Australia looked forward to continuing to work closely with China on those issues.

5.32. With respect to Viet Nam, Australia was encouraged by Viet Nam's interest in developing regulations to protect personal information and support the development of the digital economy more broadly. However, Australia had concerns about elements of the draft Decree on Personal Data Protection. It was important to ensure that any new rules were business-friendly and consistent with the shared commitment to digital trade. Cross-border transfers of data were a critical driver of innovation and growth in the digital economy. Australia looked forward to continuing to work with Viet Nam on that law and related measures.

5.33. The representative of Canada supported further discussions on that item and was supportive of the remarks made by Japan, the United States, the European Union and Australia. Canada preferred to see Members take risk-based approaches to cybersecurity, as those were often better suited in addressing security challenges online and were more likely to adapt to changes in technology. Conversely, prescriptive cybersecurity requirements created unnecessary burdens for businesses and restricted trade online, and were particularly detrimental to MSMEs and individual entrepreneurs, which comprised so much of the global digital economy. Members should be considering how best to adopt measures which, while addressing 21st-century digital trade challenges and security concerns, struck a balance in helping to facilitate digital trade as well.

5.34. The representative of China thanked Members who had taken the floor for their continued attention to China's regulatory measures on cybersecurity. At previous meetings, China had already provided very detailed responses to Members' remarks and questions. As emphasised before, in the legislative drafting process, China had referred comprehensively to the internationally accepted practices and legislative experiences of other Members. Also, China had strictly followed the transparency requirements, extensively solicited public opinions, and attached great importance to all the comments, as always, with the purpose of better coping with regulatory challenges, protecting the interests of all stakeholders, and promoting the sound development of the Internet and the digital economy.

5.35. China took the opportunity to briefly introduce the Data Security Law and shared with Members the latest progress of the legislation. Since the announcement of the legislative plan of the Data Security Law in 2018, China had taken a series of steps to advance the relevant legislative work, including conducting in-depth research and widely soliciting opinions from various stakeholders including many WTO Members' enterprises in China. It took nearly one year from the public consultation in July 2020 to the approval of the legislation by the Standing Committee of the National People's Congress on June 10, 2021. That Law would officially enter into force on September 1, 2021.

5.36. In recent years, the digital economy with data as a key element had been thriving. China's Data Security Law placed equal emphasis on security and development. While regulating data-related activities, the Law had introduced rules regarding promoting data security and development, open use of government data, etcetera. By facilitating the legitimate, reasonable and effective use

of data, the Law would ensure that data would play an important role as basic resources and engines for innovation, so as to accelerate the growth of a digital economy driven and supported by innovation, and better advance economic and social development.

5.37. At present, the Data Security Law had been published. China was willing to further exchange views with Members on its implementation in the future. His delegation reiterated that China had always followed international rules and earnestly fulfilled its WTO commitments. Relevant laws and regulations were not intended to prohibit the cross-border transfer of data or disrupt international trade. China would continue to develop and improve the supporting measures of relevant laws and regulations and wished to work closely with Members to achieve a balance between security and development of the digital economy.

5.38. The representative of Viet Nam thanked the United States, the European Union and other Members for their continued interest in its Cybersecurity Law and legislative drafting process for the Decree to implement that Law. As explained in previous sessions of the Council for Trade in Services, Viet Nam's process for the Decree had been transparent. All stakeholders' comments had been reviewed for continuing internal consideration. Further explanation of certain provisions in the draft Decree had been provided to all interested Members through the Questions and Answers of Viet Nam's recent Second Trade Policy Review.

5.39. Concerning the draft Decree on Personal Data Protection mentioned by Japan, Viet Nam shared the same objective of properly protecting personal data in the current context of digital transformation, like many other Members. As Members already noticed, Viet Nam's legislative process was transparent. In particular, the draft Decree had been posted on the Portal of the Government and the Ministry of Public Security of Viet Nam to seek broad comments from agencies, organizations, businesses, and people until April 9, 2021. At the moment, the Drafting Committee, the Ministry of Public Security, was carefully reviewing all comments from both domestic and foreign parties in order to advise the Government on formulating the Decree to suit the circumstances of Viet Nam, as well as to ensure compliance with Viet Nam's international commitments.

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

5.41. It was so agreed.

6 ITEM F: 5G-RELATED MEASURES OF AUSTRALIA – REQUESTED BY CHINA

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

6.2. The representative of China said that, since 2018, his delegation had raised continuous concerns on Australia's 5G-related restrictive measures in previous CTS meetings, but related issues had yet to be effectively addressed. At that meeting, his delegation would not repeat the specific questions and hoped that Australia would rectify the discriminatory practices as soon as possible, faithfully implement its GATS commitments, and provide further clarification on the relevant restrictive measures which were inconsistent with various articles of the GATS.

6.3. The representative of Australia noted China's statement. She said that China first raised that issue elsewhere in the WTO in late 2018. Since that time Australia had engaged constructively with China to explain in detail the rationale for its position. Australia reiterated that its position on 5G networks was country-agnostic, transparent, risk-based, non-discriminatory, and fully WTO-consistent.

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

6.5. It was so agreed.

7 ITEM G: RUSSIAN FEDERATION SOFTWARE PRE-INSTALLATION MANDATE (FEDERAL LAW DATED 2 DECEMBER 2019 NO. 425-FZ "ON AMENDING ARTICLE 4 OF THE LAW OF THE RUSSIAN FEDERATION 'ON PROTECTION OF CONSUMER RIGHTS'") – REQUESTED BY THE UNITED STATES

7.1. The Chairman indicated that the item had been added to the agenda of the Council at the request of the delegation of the United States.

7.2. The representative of the United States recalled that his delegation had raised concerns in a number of CTS meetings about the Russian Law that mandated the pre-installation of Russian software. However, questions remained about the regulations implementing that Law and how those regulations would ensure that there was a level playing field for software providers and in turn, the services provided through that software, namely Internet browsing and search, e-mail, and other computer or telecommunication services. The United States understood that the Russian Federation had proposed amendments to the regulations governing the pre-installation mandate. The representative asked whether the Russian Federation could provide an update on the status of those regulations.

7.3. At the March CTS meeting, the Russian Federation confirmed that if the software was not compatible with the operating system, the Law did not require installation. However, it was not clear who had the burden of demonstrating that the Russian software was or was not compatible with the operating system. The representative said that that uncertainty raised a number of questions: Who had the responsibility to remedy any problems that arose with compatibility issues? Was it the software developer who bore that responsibility? What was the process for any appeal of decisions related to the software's compatibility? Would the Ministry of Digital Development, Communications and Mass Media mandate a company to pre-install software that the company believed was incompatible with its operating system or device, or penalize a company for not installing the software?

7.4. The United States remained concerned about those pre-installation mandates that favoured Russian suppliers of software and thereby favouring the use of Russian services suppliers that offered an array of services for which the Russian Federation had WTO commitments. The United States was concerned specifically about how mandating the use of Russian software complied with obligations not to impose national treatment limitations on e-mail, online information and database retrieval, online information and/or data processing, and computer and related services more generally. To date, his delegation had only heard broad assurances that it complied with WTO commitments, but it would be helpful to know specifically how a mandate to use Russian software in the provision of those services comported with its obligations.

7.5. That measure was part of a growing trend of measures adopted by the Russian Federation that impeded the growth of a vibrant and open digital economy. For example, after the CTS agenda closed for that meeting, the Russian Federation adopted a measure that now required technology companies with an audience of greater than half a million Russians to open up offices in the Russian Federation by 2022. In addition, as his delegation had raised in the past, certain tax measures appeared to favour Russian or Eurasian Economic Union (EAEU) countries companies over foreign companies. In short, through those, and other measures, the Russian Federation appeared to be implementing a digital protectionist policy through local content requirements that extended to services, not just goods. The United States would continue to raise its concerns with such measures in order to ensure they were consistent with the commitments made by the Russian Federation.

7.6. The representative of Canada said that on its website, last updated on March 12, 2021, the Ministry of Digital Development, Communications and Mass Media of the Russian Federation described the pre-installation of programs for certain types of technically complex goods as one of the measures that allowed the import substitution of programs for consumer electronics by means of software products, the countries of origin of which were the Russian Federation and other member states of the Eurasian Economic Union. The selection criteria of the software to be pre-installed were accordingly designed to achieve that import-substitution objective.

7.7. The classes of computer programs that were targeted represent software whose use required, in almost all cases, the continued provision of a service from the program supplier, notably by mode 1. Therefore, by seeking to advantage software products of Russian and EAEU origin, the

measure would, in all likelihood, accord foreign services and services suppliers a treatment less favourable than the measure accorded to Russian and EAEU-like services and services suppliers. The Russian Federation took no limitation on national treatment in mode 1 in computer services nor other potentially relevant sectors.

7.8. Canada noted that that measure could therefore constitute a violation of the Russian Federation's national treatment obligations under the GATS. If the Russian Federation considered that that was not the case, Canada would appreciate further clarification from the Russian Federation as to exactly which limitations on national treatment as part of their services schedule would provide sufficient flexibility.

7.9. On the same website, it was stated that the measure would create more balanced conditions for competition between developments from the EAEU and foreign software. In Canada's view, the optimal means to restore online competition in the face of anti-competitive conduct such as self-preferencing via app pre-installation was competition enforcement against any such anti-competitive conduct, not more app pre-installation. Where governments chose regulation and policies, policymakers should carefully consider the resulting effects on market competition and innovation. They should also take appropriate steps to ensure policy responses were pro-competitive, led to greater consumer choice, empowered consumers and stimulated productivity, economic growth, and innovation. Any measures that could restrict competition should be necessary, narrowly cast, and proportionate.

7.10. The representative of Japan said that, as pointed out at the previous CTS meetings, his delegation had a concern that the Russian measures could, depending on the details of the regulations and implementation, impede the entry of foreign enterprises to the Russian market and violate the principle of non-discrimination. Japan requested the Russian Federation to ensure that its measures complied with GATS rules and obligations.

7.11. The representative of the European Union shared the concerns expressed by the United States and other Members on the Russian Federation's software pre-installation mandate. As requested in previous CTS meetings, the European Union would welcome clarifications on how the obligation to pre-install certain Russian software would comply with the national treatment commitments that the Russian Federation had made in computer and related services as well as in telecommunications services.

7.12. The European Union would further welcome updates on the implementing measures envisaged. Finally, the European Union also observed other developments in or impacting the digital sector which it would continue monitoring closely.

7.13. The representative of the Russian Federation thanked Members who had intervened for their interest in the Russian Federation's consumer protection-related measures. Her delegation took note of all comments and would provide them to Capital for further consideration. At the same time, the representative was surprised to hear from the United States such a long list full of concerns and limitations with regard to Russian legislation which was not the subject of today's discussion and went far beyond that agenda item.

7.14. Secondly, the representative reiterated that the Russian Federation disagreed with the allegation that the measure requiring the pre-installation of software was inconsistent with the Russian Federation's obligations under the WTO agreements, in particular, under the GATS. The Law did not impose restrictions on foreign suppliers or their software. The Law did not prohibit the pre-installation of foreign software or required deinstalling of such software. The Law equally applied to all producers of technically complex goods on the Russian market, including Russian producers of such goods. The measure with regard to smartphones was in force since April 1, 2021. The mechanism operated properly, all requests from foreign and Russian companies were being considered carefully.

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

7.16. It was so agreed.

8 ITEM H: MEASURES OF THE UNITED STATES RESTRICTING TRADE IN SERVICES – REQUESTED BY CHINA

8.1. The Chairman indicated that the item had been added to the agenda of the Council at the request of the delegation of China.

8.2. The representative of China said that, since the last CTS meeting, where his delegation reiterated its concerns regarding measures taken by the United States restricting trade in services, China had noted the revoking of relevant executive orders by the previous US administration on TikTok, WeChat and other Chinese applications, which was a positive step toward the right direction.

8.3. China urged the United States to treat Chinese enterprises in a fair and just manner, comply with the WTO rules and fulfil its GATS commitments, and avoid politicising economic and trade issues. China had always required Chinese enterprises operating overseas to obey the laws and regulations of host Members and was willing to work with all WTO Members to maintain an open and transparent business environment and a trading system based on international rules.

8.4. The representative of the United States thanked China for its intervention. He said that the United States stated in previous responses in the Council that the actions in that regard had been taken by the United States to protect its national security.

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

8.6. It was so agreed.

9 ITEM I: MEASURES OF INDIA RESTRICTING TRADE IN SERVICES – REQUESTED BY CHINA

9.1. The Chairman indicated that the item had been added to the agenda of the Council at the request of the delegation of China.

9.2. The representative of China recalled that at previous meetings, China raised concerns about India's tightened investment approval policy, ban on applications and a series of other measures restricting trade in services. It was regretful that India had not rectified its restrictive measures so far. China had always required Chinese enterprises operating overseas to comply with the international rules as well as laws and regulations of host Members. China hoped that India would take concrete measures to address the above concerns and create an open, transparent and non-discriminatory business environment for services suppliers from all WTO Members, including the Chinese ones.

9.3. The representative of India said that, as underscored at the previous meetings of the CTS, India was committed to upholding its obligations at the WTO. India valued, and was committed to protecting, the democratic rights of its citizens, including access to goods and services while reserving the right to take measures to ensure the protection of privacy, data security and national security. India firmly believed that the measures raised under that agenda item were fully consistent with India's GATS commitments.

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

9.5. It was so agreed.

10 ITEM J: KINGDOM OF SAUDI ARABIA MINISTER OF HUMAN RESOURCES AND SOCIAL DEVELOPMENT DECISION 112203 REGARDING LOCALIZATION OF CUSTOMER SERVICES – REQUESTED BY THE UNITED STATES

10.1. The Chairman indicated that the item had been added to the agenda of the Council at the request of the delegation of the United States.

10.2. The representative of the United States expressed his delegation's concern on a recent decision by the Ministry of Human Resources and Social Development of the Kingdom of Saudi Arabia that required the localisation of all customer service activities of companies selling or distributing

products to customers within the Kingdom of Saudi Arabia. That decision would pose significant difficulties and costs for many companies with major investments in the Kingdom of Saudi Arabia and imperil the ability of those companies to continue serving their customers in the Kingdom of Saudi Arabia with the same level of customer-service care that was critical to their reputation and an integral part of the service they offered.

10.3. The United States understood that various industry representatives had raised their concerns with the Government of the Kingdom of Saudi Arabia but had yet to receive assurances that that decision would be implemented in a way that did not undermine their business operations. The United States noted that in a number of sectors that could be significantly affected by that measure, including wholesale and retail distribution services, travel and tourism services, and computing services, the Kingdom of Saudi Arabia had no limitations on their cross-border commitments for the supply of those services.

10.4. The implementation date of that decision was July 31, 2021. It was important that the Kingdom of Saudi Arabia examined closely the trade implications of its decision, and at a minimum, delayed implementation of that measure so as to not disrupt the operations of businesses that had made significant investments in serving the Kingdom of Saudi Arabia's market.

10.5. The representative of the European Union shared the concerns expressed by the United States regarding decision 112203 by the Ministry of Human Resources and Social Development of the Kingdom of Saudi Arabia regarding the localisation of customer services. Her delegation was concerned about the implication that it might have on foreign services suppliers that had made significant investments in the Kingdom of Saudi Arabia. The European Union would also appreciate more information on the decision concerned and on how it would be implemented.

10.6. The representative of the Kingdom of Saudi Arabia thanked the United States for its statement. The Kingdom of Saudi Arabia emphasised that the Ministry of Human Resources and Social Development decision 112203 was in full conformity with the Kingdom of Saudi Arabia's GATS commitments and that the decision's objectives and implementation did not intend to change or modify market access regulations and requirements for either mode 1 or mode 3 on customer services. Neither required or limited companies, either located in the Kingdom of Saudi Arabia or abroad, to engage in contracts only with customer service providers located in the Kingdom of Saudi Arabia.

10.7. For further clarifications, international firms were not required to relocate or open new customer service branches in the Kingdom of Saudi Arabia. The Kingdom of Saudi Arabia had approved and specified only two types of work contracts for all sectors. The first type was the normal work contract, work from premises, which was applied on both nationals and foreign expatriates located in the Kingdom of Saudi Arabia. The second type was the telework contract, homeworking or work remotely, which was applied and valid only for Saudi nationals. The reference decision aimed at regulating the second type of contract for telework for customer services, professional services across all sectors, and was not limited to call centres, which fell within the Kingdom of Saudi Arabia's right to protect legitimate public interests.

10.8. Moreover, the Kingdom of Saudi Arabia confirmed that the objective was to regulate and prevent: first, circumventions of that type in contract registration requirement, procedure and process; second, violations and breaches of hiring illegal workers holding expired work permits or illegal work permits and; third, ensuring full conformity of the licensed entity with the relevant laws, regulations and decisions.

10.9. The Kingdom of Saudi Arabia expressed its hope that its reply gave a clear response to the concern of the United States and remained open and ready to continue the ongoing bilateral discussions with the United States.

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

10.11. It was so agreed.

11 ITEM K: OTHER BUSINESS

11.1. No issue was raised under that agenda item.

11.2. The meeting was adjourned.
