



**Council for Trade in Services**

**REPORT OF THE MEETING HELD ON 22 OCTOBER 2021**

NOTE BY THE SECRETARIAT<sup>1</sup>

The Council for Trade in Services held a meeting on 22 October 2021, chaired by Ambassador Villalobos (Mexico). The agenda was contained in document WTO/AIR/CTS/28.

The delegation of Mongolia asked for the addition of an item of Other Business, on the impact of container shortages on trade costs.

The agenda was adopted as modified.

The Chairman recalled that delegations were meeting both in virtual and in-person mode. He trusted that delegations were familiar with the main technical aspects of participation for both modes. He urged them 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: ANNUAL REPORTS OF THE SUBSIDIARY BODIES TO THE COUNCIL FOR TRADE IN SERVICES**

1.1. The Chairman recalled that, in accordance with WTO reporting procedures, the Council was to consider the Annual Reports of its subsidiary bodies. He drew Members' attention to the Reports that had been adopted by the respective bodies, namely the Annual Report of the Committee on Trade in Financial Services (S/FIN/97); the Annual Report of the Committee on Specific Commitments (S/CSC/27); and the Annual Report of the Working Party on GATS Rules (S/WPGR/72).

1.2. As concerned the Annual Report of the Working Party on Domestic Regulation, the Secretariat had circulated that morning a communication with a further revised draft Annual Report (contained in document S/WPDR/W/64/Rev.2), incorporating comments received on the previous version. The communication set a deadline of 25 October for any comments.

1.3. Given that the Working Party on Domestic Regulation had not yet adopted its Annual Report, he suggested that: first, the Council take note of the three reports that had been adopted, on the understanding that they would be annexed to its own Annual Report; and, second, that as soon as the draft Annual Report of the WPDR was adopted, it also be deemed taken note of, and annexed to the Council's own Annual Report.

1.4. It was so agreed.

**2 ITEM B: ANNUAL REPORT OF THE COUNCIL FOR TRADE IN SERVICES TO THE GENERAL COUNCIL**

2.1. In accordance with WTO reporting procedures, the Council for Trade in Services was to report each year to the General Council on its activities, as well as those in its subsidiary bodies. In that regard, the Chairman drew delegations' attention to the draft Annual Report of the Council for Trade in Services on its activities in 2021, contained in document S/C/W/385. The Report was factual and

<sup>1</sup> 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.

self-explanatory, covering the period from the 2020 Report up until the Council's last meeting, in July.

2.2. No comments were made on the draft Annual Report.

2.3. The Chairman explained that, in light of the fact that the Annual Report of the Working Party on Domestic Regulation had not been adopted yet, the Council could not formally adopt its own Annual Report at that meeting. He therefore suggested that Members agree to the text of the draft 2021 Annual Report of the CTS contained in document S/C/W/385, and, as soon as the draft Annual Report of the WPDR was adopted, the Council's own Annual Report also be deemed adopted, and be transmitted to the General Council.

2.4. It was so agreed.

### **3 ITEM C: NOTIFICATIONS PURSUANT TO ARTICLES III:3 AND V:7 OF THE GATS**

3.1. 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 (S/C/N/1062 and 1063); Hong Kong, China (S/C/N/1064); and Lesotho (S/C/N/1065 to 1071).

3.2. The representative of India wished to raise the issue of the operationalisation of transparency obligations. She drew the Council's attention to the submission made in December 2020 by her delegation, the African Group and Cuba titled "Strengthening the WTO to promote development and inclusivity" (WT/GC/W/778/Rev.3).

3.3. When it came to services, GATS Article III:3 required Members to "promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement". Therefore, regular notification of entry-related measures affecting existing mode 4 commitments of Members were required, in order to understand the full implications of the commitments made by Members. She said that some developed Members had not been implementing that obligation.

3.4. At the WTO, some Members had proposed higher obligations on transparency for trade in goods. When it came to transparency, the rationale for collecting information on trade in goods held equally for trade in services.

3.5. She requested that developed Members lead by example in submitting comprehensive, timely and accurate notifications.

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

3.7. It was so agreed.

3.8. Concerning the notifications made pursuant to Article V:7 (Economic Integration), the Chairman drew the Council's attention to the communications received from: the United Kingdom and Mexico (S/C/N/1060); and the United Kingdom and Canada (S/C/N/1061).

3.9. He suggested that the Council take note of the notifications and that the agreements notified be referred to the Committee on Regional Trade Agreements (CRTA) for consideration.

3.10. It was so agreed.

3.11. While on the subject of the CRTA, the Chairman drew delegations' attention to the fact that, at its meeting scheduled for 1 and 2 November, the CRTA would be considering three regional trade agreements that covered services trade. The agreements in question were: (a) the Free Trade Agreement between the European Union and Viet Nam; (b) the Agreement between the United States, Mexico and Canada and (c) the Comprehensive Economic Partnership Agreement between Indonesia and Australia. He trusted that that information would be of interest to delegations.

3.12. He suggested that the Council take note of the statement he had made.

3.13. It is so agreed.

#### **4 ITEM D: OPERATIONALIZATION OF THE LDC SERVICES WAIVER**

4.1. The Chairman recalled that, at the July meeting, Members had shared their reflections on, and reactions to, the webinar the Council had held in June, on "Least Developed Country services export performance and facilitating implementation of preferences notified under the LDC Services Waiver".

4.2. All delegations who had intervened had expressed appreciation for the event, which, in their view, had highlighted the significant gaps in LDC services trade data and helpfully illustrated the opportunities and challenges faced by LDC suppliers in participating in global services trade.

4.3. The LDC Group had put forward a number of suggestions for next steps, and had been encouraged by other Members to submit its suggestions in writing.

4.4. After apologising for his late arrival, due to the need to attend another meeting and the lack of resources that LDCs have to contend with, the representative of Chad, speaking on behalf of the LDC Group, informed Members that LDC Trade Ministers had met earlier that week within the framework of preparing for MC12 and had adopted a joint Declaration which contained the main priorities for LDCs. Those were the areas where LDCs were hoping to see significant results at MC12 that responded to their expectations. The LDC Ministerial Declaration was intended to guide LDCs in the negotiations in the WTO also beyond MC12. The LDC Group wanted to see an intensification of efforts towards achieving results that would support LDCs in getting back on the path towards development and strengthen their commercial capacity.

4.5. In that sense, LDCs had announced that they would be submitting a proposal for MC12 that reflected their assessment of next steps following the Council webinar held in June with regard to operationalization of the LDC Services Waiver and of notified preferences. The LDC Ministerial Declaration was still being formatted and would be distributed to Members by the following Monday. It contained a number of areas of special interest for LDCs and of joint work with other Members for MC12.

4.6. With regard to services, the LDC Ministerial Declaration invited Members to do what was necessary to improve implementation of the Waiver Decisions, as well as notifications of preferences in favour of LDC services and service suppliers.

4.7. Specifically, Ministers asked that: the WTO Secretariat explore improvements that could be made in terms of services exports from LDCs; the Secretariat also monitor service suppliers from LDCs and consumers of LDC services in preference-granting Members' markets; options beyond the preferences themselves be evaluated, to facilitate the use of preferences themselves; an evaluation be undertaken if any changes in information on LDC services had improved or new opportunities had emerged since the COVID-19 pandemic; notifying Members introduce programmes to orient LDC service suppliers and consumers of LDC services in preference-granting Members to the Waiver notifications they had made; and that the Waiver be made permanent, given the challenges to track the data and information difficulties faced, as well as fluctuating capacities in LDCs.

4.8. The LDC Group would provide delegations with the Declaration adopted on 19 October, and wished to thank Members for their commitment to LDCs and the Secretariat for its technical support.

4.9. The representative of Uganda echoed the statement delivered by Chad and reiterated her delegation's commitment to the work that was being done in the Council on that very urgent matter. She wished to express her gratitude to the Ambassador of Chad and recognize the hard work that had gone into the LDC Ministerial Declaration and the LDC Services Waiver, and also thanked Members, the Chairman and the Secretariat for their support. Uganda continued to support the efforts of its fellow LDC countries and would continue to work with Chad on that important issue.

4.10. The representative of India reiterated that her delegation 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 services exports.

4.11. During the webinar on the Waiver held on 2-3 June, India had provided specific information regarding the utilization of preferences it had granted in the three areas of visa-related preferences, technical assistance and capacity building, and market access. Her delegation had also shared some suggestions on better future utilisation by the LDCs of those preferences.

4.12. India looked forward to further meaningful engagement with all Members on that important issue in the run-up to MC12.

4.13. The representative of China stressed that his delegation attached great importance to the LDC Services Waiver. China supported the increasing participation of LDC Members in the multilateral trading system and world services trade. In 2015, his delegation had submitted China's notification of preferential treatment in favour of LDC services and services suppliers. China had subsequently actively implemented those preferential measures, and assisted LDC Members in capacity building, in particular in medical services, education services and other areas.

4.14. His delegation had also taken note of the valuable events organised, such as the webinar on the Waiver held in June, which had provided ample information on how to better utilize the mechanism. He added that the Tenth China Round Table organized by the WTO Secretariat would take place the following month. China highly appreciated Members' contributions to LDC development under the WTO framework and believed that further discussions in that regard would make capacity building and technical assistance more targeted. Bearing that in mind, his delegation would continue to actively engage in relevant discussions and encouraged more information-sharing on the LDC Services Waiver.

4.15. The representative of Chad, speaking on behalf of the LDC Group, thanked all Members, and particularly China and India, for their support with regard to the LDC Services Waiver. The Waiver was an absolute priority for LDCs; he was certain that Members were cognizant that the pandemic had had a great impact and grave consequences in LDC economies, especially as far as services were concerned. As a result of the pandemic, LDCs were facing up to a number of challenges and the Waiver was a vital issue as they moved forward and dealt with the impact of COVID-19 on their services exports. That was a real priority for the Group, and Members needed to do their utmost to help LDCs reach their goals and move forward on the Waiver along the lines highlighted in the LDC Ministerial Declaration. The Group was looking forward to continuing to collaborate with Members in a constructive and open way with the necessary flexibility, so as to ensure that LDC concerns and priorities were taken into account by all Members.

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

4.17. It was so agreed.

## **5 ITEM E: WORK PROGRAMME ON ELECTRONIC COMMERCE**

5.1. The Chairman recalled that, at the previous meeting, a couple of delegations had presented their experiences and latest developments related to e-commerce. Members had also exchanged views on the Work Programme more broadly.

5.2. The representative of India recalled that her delegation had consistently been a proponent for strengthening the multilateral work under the non-negotiating and exploratory 1998 Work Programme on e-commerce. That was all the more important in the context of the pandemic, which had exposed the existing and widening digital divide.

5.3. India and South Africa, in their submission dated 4 December 2021 and titled "Re-invigorating the Work under the 1998 Work Programme on Electronic Commerce", had emphasised the need for structured discussions in the relevant WTO bodies, including the CTS, in accordance with the General Council's mandate as contained in WT/L/274.

5.4. Her delegation remained open and eager to work on the rejuvenation of the Work Programme and work with all like-minded Members to drive a constructive outcome in a space which would fundamentally influence how the world would operate in the times to come. India urged all Members to support the Work Programme and come together for joint global good.

5.5. The representative of China thanked Members for their interventions and sharing their experiences. In the past few years, China had actively participated in discussions on e-commerce issues at the WTO and had shared its experience on e-commerce development, South-South cooperation on e-commerce, logistics and e-payments, amongst others. The COVID-19 pandemic had spurred more online shopping, and in that context e-commerce had played an increasingly prominent role in economic and social activities. China encouraged more in-depth discussions and experience-sharing on e-commerce at the CTS.

5.6. With MC12 approaching, China was willing to work with all Members towards a multilateral Ministerial Decision to reinvigorate the Work Programme and extend the Moratorium. China believed that such an outcome at MC12 would contribute to the rapid growth of global e-commerce, help the WTO respond to the needs of the times and keep itself relevant.

5.7. The representative of the Republic of Korea said that, since co-sponsoring the proposal on exploratory discussions on supporting the digital capability of businesses and consumers, his delegation had actively participated in the discussion of that issue, in two regards.

5.8. First, his delegation had provided updates on Korea's online shopping trends following the COVID-19 outbreak and related statistics. Prior to the pandemic, the proportion of online shopping among total retail sales was around 22%. That share had skyrocketed to around 27% annually in 2020. That figure reflected an ongoing upward trend and consumer behaviour in favour of e-commerce in the process of overcoming the pandemic. Changes in online shopping trends were going to continue to be observed in the future, especially in the period transitioning to normal business and consumption activities.

5.9. Second, Korea had presented to the CTS in-depth information about domestic programmes, such as the MSMEs remote work facilitation programme and the online business support programme. Through those domestic programmes, the Korean government was trying to help MSMEs be equipped with digital capability and be able to carry out their regular tasks even in a period of tightened social distancing.

5.10. In the future, in addition to the two aspects mentioned, Korea would introduce its digital ODA programme, which it hoped would contribute to closing the global digital gap. His delegation was looking forward to other Members' active participation regarding that issue.

5.11. Wishing to respond on the issue of the Moratorium on customs duties on electronic transmissions, the representative of India noted that the Moratorium had had a substantive impact, both in terms of revenue and policy space and the ability to support industrialization. It was incumbent upon the proponents of the Moratorium's extension to establish a clear and direct link, providing evidence that the Moratorium had had a substantive positive impact on the development of e-commerce around the world, including during pandemic. India advocated an evidence-based decision. That would also help Members understand how the growth of the sector depended on the extension of the Moratorium, and how it would be affected if the Moratorium was not renewed. There was a need for a clear understanding on the scope of the Moratorium. Her delegation requested Members to come up with evidence and proposals for extending the Moratorium.

5.12. 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.

5.13. It was so agreed.

## **6 ITEM F: UPDATE OF THE SECRETARIAT BACKGROUND NOTE ON MODE 4 – REQUESTED BY INDIA**

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

6.2. As had been emphasized by her delegation on several previous occasions, the representative of India reiterated its request for the update of the Secretariat Background Notes on all four modes of supply and also supported Secretariat work on inter-modal linkages.

6.3. As previously clarified, while India welcomed the proposal by the United States on the issue of inter-modal linkages, that should not substitute its request to update the separate modal Background Notes by the Secretariat. India was of the view that having an inter-modal linkage Note made no sense without first updating the modal Notes.

6.4. India had, in the past, identified some of the possible areas in the 2009 Background Note on mode 4 that could be updated. These included: improved methodology for statistics on mode 4, including the work in the Trade in Services data by Mode of Supply (TISMOS); how mode 4 and related issues, such as MRAs, provisions for facilitating trade in professional services and others, had been addressed in some recent RTAs, covering not only commitments but also regulatory disciplines on mode 4; updating information on the number of MRAs in professional services concluded amongst WTO Members since 2009; mode 4 commitments and MFN exemptions of recently acceded Members; sectoral specificities, given that the 2009 Background Note provided an analysis of mode 4 commitments on a more horizontal basis; obstacles to mode 4 based on new literature and empirical information.

6.5. Additionally, the update could include specific information on the priorities of LDC service suppliers. Further, all Members had experienced the dampening effects of the pandemic on trade in services through mode 4. In that context, it would also be useful for the 2009 Note to be updated to incorporate an examination of the measures taken during the COVID-19 pandemic related to mode 4 and the impact that those measures might have had on the exports of Members, especially developing countries for whom that was an area of key interest.

6.6. As Members had asked for higher levels of transparency on COVID-related measures and timely reporting of such measures, there should be no objection to updating the mode 4 Secretariat Note as an exercise that promoted transparency through dissemination of updated information. India urged those delegations who did not see value added in the updating of the mode 4 Note not to stand in the way of analytical work that other delegations found useful for promoting knowledge building. That exercise should be seen as a technical support initiative. Further, her delegation also believed that the updated Note could serve as useful background information to facilitate comprehensive and structured discussions, especially in the context of the interests of developing countries in the CTS-SS.

6.7. The topics mentioned by her delegation were only suggestions. India would be happy to engage with other interested Members on their views and suggestions on its proposal to update the mode 4 Note. Her delegation once again urged Members to positively consider its proposal. Updating all the Secretariat modal Background Notes, as well as the proposed additional Note on inter-modal linkages, would be a very useful exercise in trade in services.

6.8. The representative of the United States said that his delegation was still not persuaded that updating the 2009 Secretariat Note on mode 4 would add any value to the discussion. His delegation had suggested, and appreciated India's support for the US suggestion, that the Secretariat produce instead a Note examining inter-modal linkages as a way to advance Members' conversations, since Secretariat resources should be used to add value to Members' discussions. His delegation would continue to consult with India on that issue but its position had been well stated in the past and at that stage there was no need to repeat the US concerns with the Indian suggestion to update the 2009 Note on mode 4.

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

6.10. It was so agreed.

## **7 ITEM G: CYBERSECURITY MEASURES OF CHINA AND VIET NAM – REQUESTED BY JAPAN AND 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 delegations of Japan and the United States.

7.2. Regarding China's cybersecurity laws and regulations, the representative of Japan noted that China had explained at the previous CTS meeting that it "has comprehensively referred to internationally-accepted practices and legislative experiences of other Members" and "strictly followed transparency requirements, extensively solicited public opinions, and attached great importance to all comments" with the purpose of "protecting interests of all stakeholders."

7.3. Japan appreciated China's efforts to seek public comments from various domestic and foreign stakeholders in view of transparency. However, his delegation recognized that China's legislative process had continued without addressing the concerns raised by Japan and other Members. Japan again requested China to provide responses and improve its laws and regulations.

7.4. At the last CTS, Japan had expressed its concerns on the "Data Security Law" and the "Personal Information Protection Law" of China. However, the "Data Security Law" had come into effect on 1 September without reflecting Japan's concerns. The "Personal Information Protection Law" had also been enacted in August without fully taking into account the public comments submitted by Japan, and was scheduled to come into effect on 1 November. Japan further understood that the "Regulations for Automobile Data Security Management," on which it had raised concerns at the last CTS meeting, had come into effect on 1 October.

7.5. In those laws and regulations, Japan was particularly concerned by the obligation to store data domestically and by the implementation of a safety assessment by the State Internet Information Department for the data to be transferred overseas. His delegation had a concern on the obligation to store data in China, as that could imply additional costs for foreign service providers and effectively put them at a competitive disadvantage compared to Chinese service providers who aggregated and managed data in China. On the safety assessment, the standards for the assessment were unclear, and, depending on how it was applied, there was a risk of unfair treatment of foreign service providers. Those provisions could violate China's obligation of National Treatment under Article XVII of the GATS, and Japan requested China to remove the mandatory domestic storage obligation and to ensure transparency in implementation.

7.6. The Japanese government had submitted its public comments on the draft amendment to the "Measures for Cybersecurity Review" in July. The draft amendment added "data processing activities by data processors" in Article 2 and "data processing activities and overseas listing" in Articles 10 and 16 to the scope of cybersecurity reviews. Those measures required cybersecurity reviews when the targeted activities "affect or are likely to affect national security". However, that definition was unclear. Japan was concerned that adding "data processing activities by data processors" to the scope of cybersecurity reviews could lead to overly broad implementation of the measures. Depending on how the measures were applied, they could result in unfavourable treatment of foreign entities and therefore be inconsistent with China's National Treatment obligation under Article XVII of the GATS. Japan requested China to ensure that the measures would be implemented in a manner consistent with the WTO Agreements.

7.7. Finally, his delegation was aware that the Chinese government was currently seeking public comments on the "Measures for the Safe Management of Data in the Field of Industrial Informatization". Japan planned to submit its comments, including its concerns on the obligation to store important data domestically and the restrictions on cross-border transfers.

7.8. Turning to Viet Nam's measures, as his delegation had noted in previous CTS meetings, Japan was aware that the "Draft Decree to Implement the Cybersecurity Law" and the "Draft Decree on the Protection of Personal Information" were under consideration by the Vietnamese government.

7.9. In particular, Japan had a concern on Article 21 of the "Draft Decree on the Protection of Personal Information", as it had pointed out at the previous CTS meetings. That Article stipulated the obligation to store data domestically and the prohibition of cross-border data transfers. Depending on the application of those provisions, there was a risk that foreign businesses would be treated less favourably than Vietnamese businesses, and therefore there was a possibility that this could be inconsistent with Viet Nam's obligation of National Treatment under Article XVII of the GATS.

7.10. Japan appreciated Viet Nam's efforts to seek public comments from various domestic and foreign stakeholders in view of transparency. On the other hand, Japan requested Viet Nam to ensure

that its measures were in compliance with the GATS by limiting measures that restrict data distribution to the minimum amount necessary to achieve legitimate objectives, and by clarifying the scope and content of the measures to ensure transparency.

7.11. The representative of the United States recalled that his delegation had raised concerns in the Council that various Chinese measures, initially including in connection with China's Cybersecurity Law but more recently, also in connection with China's Data Security Law and Personal Information Protection Law, might restrict cross-border data flows and require localization of data.

7.12. China's Personal Information Protection Law had been finalized on 30 August and would enter into force on 1 November. The final Law did not address US concerns or the concerns raised by many other WTO Members.

7.13. Regarding the Law's potential impacts on cross-border data flows, the United States noted a particular concern that the Law imposed a data localization requirement on operators of critical information infrastructure, and on personal information processors that processed personal information whose volume reached a certain threshold. Those entities would be subject to a "security assessment" before being able to transfer any personal information out of China. WTO Members had repeatedly raised concerns about Chinese measures and policies that proposed those types of security assessments on data transfers.

7.14. Cross-border transfers of personal information should not and need not undermine the privacy and security standards China decided to adopt. To that end, comparable protection of personal information laws implemented in other jurisdictions generally included various mechanisms for transferring data across borders. The United States recognized that governments had a legitimate interest in ensuring the protection of personal information, regardless of the destination of the information transfer, whether domestic or cross-border. However, China's proposal to impose additional requirements on transfers simply because they were cross-border unfairly disadvantaged foreign suppliers and did not enhance protections for personal information.

7.15. Other provisions in the Law addressing cross-border transfers, if appropriately clarified and elaborated, might provide a step forward, including, as found in Article 38 (2), the possibility to use certifications by professional organizations as a basis for the cross-border transfer of personal information. Those provisions could benefit from expansion, including to allow for the use of cross-border data transfer mechanisms such as the APEC Cross-Border Privacy Rules (CBPRs).

7.16. The United States urged China to develop implementing measures for the Law that provided necessary mechanisms for enabling the transfer of data across borders.

7.17. China's Data Security Law had entered into force on 1 September. The United States and other WTO Members had raised concerns that the Data Security Law could have a draconian effect on service suppliers and on cross-border data flows.

7.18. The Law focused on protecting "important data" and made clear that China was planning to develop a very broad definition of that type of data. 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.

7.19. In connection with implementation of the Law, China's Ministry of Industry and Information Technology had recently released draft (trial) "Industry and Information Technology Data Security Management Measures" for public comment. Those draft measures raised further concerns by requiring data processors to categorize and classify the types of data they were handling. The measures would prohibit transfer abroad of "core data". "Important data" also would need to be stored in China unless very restrictive requirements could be met. Although the draft trial measures also acknowledged a classification of "ordinary data" that would not be subject to the same

restrictions, it was not clear how data processors could be certain that they could avail themselves of that category.

7.20. Turning to Viet Nam's measures, for the previous three years the United States had raised concerns in the Council about Viet Nam's data localization and local presence requirements in its Cybersecurity Law and its draft implementing Decree.

7.21. As his delegation had explained, those requirements would undermine the provision of services foundational to the digital economy, ranging from e-mail to electronic payments to cloud computing services, which were frequently provided on a cross-border basis. His delegation would welcome any update Viet Nam could provide regarding the status of that draft decree.

7.22. As it had noted in the previous CTS meeting, the United States was also very concerned to see that on 9 February Viet Nam had released a draft Decree on Personal Data Protection (PDP), which appeared to replicate and indeed expand the scope and restrictiveness of data localization requirements.

7.23. The United States had submitted written comments in April on that draft Decree. As his delegation had noted at the previous CTS, implementing sweeping requirements that companies store data locally, or that they seek 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 undertaken GATS commitments. Moreover, such requirements did not contribute to, and could in fact be counterproductive to, the objective of protecting data privacy.

7.24. He urged Viet Nam to seriously consider comments of the United States and other WTO Members on those measures, and to consider options for taking a less trade-restrictive approach to protecting personal data. His delegation would welcome any update Viet Nam could provide regarding the status of the draft PDP decree.

7.25. With regard to China's cybersecurity measures, the representative of Canada said that her delegation appreciated the opportunity China had provided, in July 2021, to submit comments to the Cyberspace Administration of China (CAC) on the draft Revised Measures on Cybersecurity Review.

7.26. Canada noted the extensive expansion of the scope of the measures, to include not just operators of Critical Information Infrastructure, but also any operator of data processing equipment. Her delegation believed that the measures would now encompass firms in a wide variety of technology industries (e.g. cloud computing, social media, entertainment platforms, gaming firms). In addition, the considerations operators had to use when conducting a cybersecurity review of the products they purchased had also been greatly expanded. She sought China's explanation of what the new cybersecurity risks were and why the new requirements were needed.

7.27. Her delegation would also appreciate clarification from China with respect to its Personal Information Protection Law. Canada understood that that Law would impose restrictions on the cross-border flow of information, where, under certain circumstances, companies processing personal information might be subject to the vague requirement of a security assessment before being able to transfer such personal information out of China.

7.28. Her delegation would appreciate an explanation from China as to how it considered its new Personal Information Protection Law to be consistent with its GATS commitments on 'Computer and Related Services - Data Processing Services', specifically with respect to mode 1. Placing restrictions like those found in the Law, such as those on the transfer of data, and requirements to obtain certification, raised concerns from Canada's perspective, and had the potential to negatively impact trade.

7.29. The representative of Australia said that her delegation 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 the Personal Information Protection Law and Data Security Law, passed on 20 August and 10 June respectively.

7.30. As set out in its submissions, Australia welcomed a number of revisions to both those draft Laws. Nonetheless, Australia still had concerns with the final legislation, particularly around extra-territoriality, trade retaliation measures, compliance costs for firms and the overall scope.

7.31. Her delegation continued to urge China to take into account the concerns of business and Members in the implementation of those measures and development of future measures. Australia remained concerned that provisions in those Laws had the potential to create inconsistencies with WTO rules. She noted that any measure or countermeasure taken under those Laws should only be applied consistently with China's WTO obligations.

7.32. Australia also continued to remain concerned about the lack of clarity when it came to definitions, jurisdiction and a number of other fundamental elements, to enable businesses operating in China to fully understand and implement their new obligations. Her delegation looked forward to continuing to work closely with China on those issues.

7.33. In relation to Viet Nam, Australia was encouraged by Viet Nam's interest in developing regulation to protect personal information, and to support development of the digital economy more broadly. However, she reemphasised the concerns that her delegation had previously raised in the Council about elements of the draft Decree on Personal Data Protection. She looked forward to continuing to work with Viet Nam on that Law and related measures.

7.34. The representative of the European Union said that, as in previous meetings, the EU shared the concerns expressed by other Members about the implementation of the cybersecurity policy in China. The scope was too broad, some requirements remained unclear and key terms were not yet specified in sufficient detail.

7.35. China's cybersecurity regime established strict restrictions on the cross-border transfer of a wide range of data. That, effectively, prevented companies from transferring much of the data collected or generated during their operations in China to anyone outside China without completing an official security assessment. In practice, it seemed to act as a strong deterrent to data transfers, as shown by a string of decisions by foreign investors to over-comply and localise all data in China.

7.36. The restrictions did not only apply to personal data but also to data that China considered "important" or data that was generated by "critical information infrastructure operators". The Data Security Law authorised regional government departments and industries to establish their own catalogues of "important data", which could result in an even broader scope, regulatory overlap and legal uncertainty.

7.37. Her delegation was also concerned that the Law covered activities beyond the territory of mainland China that might harm China's national security or public interests. The rules on critical information infrastructure seemed to include large parts of the economy, including telecommunications and information services, banking, finance, energy and transport, as well "any other important facility or system". The growing number and expanding scope of administrative review processes put foreign companies at risk of exposing sensitive information. Intrusive inspection regimes and an increasing number of filing, screening and approval requirements would affect foreign-invested enterprises more if they continued to rely on cross-border data transfers. The EU would appreciate replies from China on the concerns raised.

7.38. Turning to Viet Nam's Cybersecurity Law, the EU wished to reiterate its concerns about the Law's economic impact and its compatibility with Viet Nam's commitments under the WTO. Cybersecurity measures should not restrict trade by introducing data localization and local presence requirements. Her delegation would invite Viet Nam again to share the latest drafts of the Decree and inform Members of the date of its adoption.

7.39. The representative of Viet Nam thanked Members who had intervened for their continued interest in Viet Nam's Cybersecurity Law and the legislative drafting process for the Decree to implement that Law. As his delegation had previously indicated in the CTS, Viet Nam's process for the Decree had been transparent, and all stakeholders' comments had been reviewed by the Drafting Committee and submitted to the Government for consideration. Detailed explanations of certain provisions in the draft Decree had been provided to all interested Members, including the United

States and the European Union through the questions and answers of Viet Nam's second Trade Policy Review held in April that year.

7.40. He said that the draft Decree on Personal Data Protection shared the same objective that many other Members also pursued of protecting personal data in the current context of digital transformation. As Members would have noticed, Viet Nam's legislative process was open and transparent. At that time, the Drafting Committee and Ministry of Public Security were carefully reviewing all comments from both domestic and foreign stakeholders and would update the draft as deemed appropriate.

7.41. The representative of China said thanked Japan, the United States, Canada, Australia and the European Union for their continued attention to China's cybersecurity-related legislations. China had already responded to Members' remarks and questions at several previous meetings. In addition, some Members had also raised similar questions during China's eighth Trade Policy Review, to which his delegation had submitted written responses.

7.42. At that meeting, China would not repeat those responses. As had been previously emphasized, the legislative process of the legislations in question had been open and transparent. China welcomed and attached great importance to the constructive suggestions from all stakeholders. China had always abided by international rules and earnestly fulfilled its WTO commitments. Relevant laws and regulations were implemented in accordance with WTO principles, including National Treatment, MFN treatment and transparency. The legislations were not intended to hinder cross-border data flows, nor to restrict international trade.

7.43. China had learned a lot and would continue to learn from the experiences of many other Members in its cybersecurity-related legislation, with the purpose of guaranteeing cybersecurity, data security and protection of personal information, as well as addressing the development needs of the digital economy. In terms of the next steps, China would continue to formulate and improve supporting measures of relevant laws and regulations. In that regard, his delegation welcomed Members' comments and suggestions and was willing to work closely with other Members in that process in order to achieve a balance between cybersecurity, data security, protection of personal information and business development in the global digital economy.

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

7.45. It was so agreed.

## **8 ITEM H: 5G-RELATED MEASURES OF AUSTRALIA – 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 recalled that his delegation had raised strong concerns at previous CTS meetings several times, but the related issues had yet to be effectively addressed.

8.3. At that meeting, his delegation would not repeat its specific questions and concerns. China hoped that Australia would rectify the discriminatory practices as soon as possible and provide further clarification on the relevant restrictive measures, which were inconsistent with the provisions of Articles II, VI, XVI and XVII of the GATS, as well as the provisions of paragraph 5 of the GATS Annex on Telecommunications Services, and paragraphs 2 and 5 of the Reference Paper on Basic Telecommunications. China hoped that Australia would live up to its WTO obligations and create a fair, just and predictable business environment for all businesses, including Chinese ones.

8.4. The representative of Australia noted China's statement. China had first raised that issue elsewhere in the WTO in late 2018. Since that time, Australia had engaged constructively and in good faith with China to explain 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.

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

8.6. It was so agreed.

**9 ITEM 1: 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**

9.1. 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.

9.2. The representative of the United States recalled that his delegation and other Members had raised concerns about the Russian Law that mandated pre-installation of Russian software at a number of Council meetings. The US 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, email and other computer or telecommunication services.

9.3. In response to questions raised by the United States at the July meeting of the Council, the representative of the Russian Federation had undertaken to share the US questions with her Capital. The United States wished to know if the representative of the Russian Federation had answers from Capital at that meeting. Specifically, the United States remained interested in the consequences of incompatibility between software that must be installed and the underlying operating system. Specifically, 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 penalise that company for not installing that software?

9.4. In addition to those procedural issues, the United States was yet to hear a concrete response from the Russian Federation as to how mandating the use of Russian software complied with Russia's WTO obligations not to impose National Treatment limitations on email, on-line information and data base retrieval, on-line information and/or data processing, and computer and related services more generally. Up to that point, Russia had deflected the US concerns with vague assurances of WTO compliance. The United States remained interested to know how specifically a mandate to use Russian software in the provision of those services was consistent with Russia's obligations. 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. The United States had seen numerous new measures being passed by the Russian Federation that appeared to tilt the playing field towards its national service providers at the expense of foreign service providers. The measure that his delegation was raising at that meeting was emblematic of that trend in the Russian Federation. Therefore, the United States continued to raise its concerns with such measures in order to ensure that they were consistent with the commitments made by the Russian Federation.

9.5. The representative of the European Union shared the concerns expressed by other Members on the Russian Federation's software pre-installation mandate. The EU had serious reservations as to how the obligation to pre-install certain software on the basis of being considered to be Russian could comply with the National Treatment commitments the Russian Federation, had made in 'Computer and Related Services' (CPC 84) and in 'Telecommunications Services' (in particular, CPC 7523). Her delegation would invite the Russian Federation to review that question.

9.6. The EU would also welcome clarifications on Government Decree 1031 of 28 June 2021 and how it tallied with the Russian Federation's GATS commitments not to discriminate with respect to subsidies granted to foreign subsidiaries established in the Russian Federation, both from the perspective of the SME and of the entity developing the software. The Decree seemed to be introducing a scheme to subsidise the purchase of domestic software by SMEs; notably, the government would subsidise 50% of licence fees when SMEs purchased "Russian software". The EU would continue following that issue closely as well as other initiatives of the Russian Federation in the digital sector, which the EU was concerned could be discriminatory against foreign service providers.

9.7. As his delegation had pointed out at previous CTS meetings, the representative of Japan said that his delegation was concerned that the Russian measures could, depending on the details of the regulations and implementation, violate the principle of non-discrimination and impede the entry of foreign enterprises into the Russian market. Japan requested the Russian Federation to ensure that its measures were in compliance with the rules and obligations of the GATS.

9.8. The representative of Canada said that her delegation would appreciate clarification from the Russian Federation on how compatibility of the software was determined and whether this necessitated disclosure of source code from the company to a government authority. Canada looked forward to hearing the Russian Federation's responses to questions previously posed, and an elaboration with rationale as to how that requirement did not violate Russian National Treatment obligations under the GATS.

9.9. The representative of the Russian Federation said that it was encouraging to see that the United States, the European Union, Canada and Japan continued to study the Russian experience in software regulation.

9.10. The Federal Law No. 425-FZ "On amending article 4 of the Law of the Russian Federation 'On protection of consumer rights'" did not impose restrictions on foreign goods, service suppliers or their services. The Law did not prohibit pre-installation of foreign software or require de-installation of such software. The Law applied equally to all producers of technically complex goods on the Russian market, including Russian producers of such goods. The Federal Law did not impose National Treatment limitations on email, online information and database retrieval, on-line information and/or data processing. Therefore, existing requirements complied with the Russian Federation's WTO commitments.

9.11. The software installation mandate was stipulated in the Law "On consumer protection". The Ministry of Digital Development, Communications and Mass Media was responsible for selecting applications regarding proposed software for pre-installation. The Government approved that list of software. Such procedure of selecting could be appealed in accordance with Russian legislation. The existing regulation stipulated that, if the producer found that software was incompatible with the underlying operating system, the producer was released from the obligation to pre-install it.

9.12. The representative added that that was the first time that her delegation had heard the questions from EU on its other Decree. She had taken note and would consider them.

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

9.14. It was so agreed.

## **10 ITEM J: MEASURES OF THE UNITED STATES RESTRICTING TRADE IN SERVICES – REQUESTED BY CHINA**

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

10.2. The representative of China said that his delegation had noted the revoking of relevant Executive Orders of the previous US administration on TikTok, WeChat and other Chinese applications, which was a positive step in the right direction. But China had also noted that the US Government required a security risk review on Chinese apps and services and that the Committee on Foreign Investment in the United States (CFIUS) investigation on TikTok was still ongoing. Those measures were vague, trade-restrictive, violated the basic principles of the WTO, and undermined the legitimate rights of relevant Chinese companies.

10.3. His delegation urged the United States to treat Chinese enterprises in a fair and just manner, comply with WTO rules, fulfil its GATS commitments, and avoid politicizing economic and trade issues. China reserved the right to take further actions in the future.

10.4. The representative of the United States thanked China for its intervention. He recalled that the United States had stated in previous responses on that issue in the Council that the actions cited by China's intervention had been taken by the United States to protect the US national security.

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

10.6. It was so agreed.

## **11 ITEM K: MEASURES OF INDIA RESTRICTING TRADE IN SERVICES – REQUESTED BY CHINA**

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

11.2. The representative of China said that, in the name of national security, India had banned many applications with Chinese background, and had discriminated against FDI from countries sharing land borders with India. The above-mentioned measures seriously violated the basic principles of the WTO and India's GATS commitments. China strongly opposed India's repeated abuse of national security measures and the adoption of restrictive measures affecting Chinese services and services suppliers. China reserved the right to take further actions in the future.

11.3. China had always required Chinese enterprises overseas to operate in compliance with international rules as well as local laws and regulations. His delegation hoped that India would rectify those restrictive measures as soon as possible, and create a sound, transparent and fair business environment for all foreign investors.

11.4. The representative of India said that, as underscored at previous CTS meetings, 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 its GATS commitments.

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

11.6. It was so agreed.

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

12.1. 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.

12.2. The representative of the United States said that his delegation had hoped that the item would have been resolved, and he appreciated the delegation of the Kingdom of Saudi Arabia playing a constructive role in seeking to resolve that issue, which his delegation had raised in the previous Council meeting. However, he noted that the issue remained unresolved.

12.3. The United States had repeatedly sought clarifications from the Saudi Arabian Government on the scope of that measure and its impact on US companies that had presence in the Kingdom of Saudi Arabia, not just on companies located outside of the Kingdom. The United States had asked to clarify its scope in a publicly available manner. Unfortunately, it had not received a response and an uncomfortable level of uncertainty remained. The representative expressed his hope to resolve that issue quickly with the help of his Saudi Arabian colleagues.

12.4. The representative of the European Union shared the concerns expressed by the United States about Decision 112203 of the Kingdom of Saudi Arabia regarding the localisation of customer services. As the scope remained unclear, her delegation was concerned about the implication that it might have on foreign services suppliers that had made significant investments in the Kingdom. The European Union would appreciate more information on the Decision concerned and on how it would be implemented and looked forward to assisting in a resolution to that issue.

12.5. The representative of the Kingdom of Saudi Arabia thanked the United States for its statement and appreciated the efforts of the US mission in Geneva. The Kingdom of Saudi Arabia reiterated

and emphasised that the decision specifically regulated the contractual relationship between employers and employees within the Kingdom of Saudi Arabia for "teleworking" in customer services, which was only permissible for Saudi nationals, rather than regulating firms or "customer services" provided by firms.

12.6. It was worth mentioning that the United States' concern stated in the previous Council meeting regarding the mentioned Decision was that "the decision requires the localisation of all customers' services activities of companies selling or distributing products to customers within the Kingdom of Saudi Arabia". In that regard, the Kingdom of Saudi Arabia had conducted various meetings with the US delegation and Capital-based officials and emphasised that the concern was raised as a result of misinterpretation of the Decision. The Kingdom of Saudi Arabia had tackled that confusion immediately to resolve any concern for companies investing in the Kingdom, if any, through publishing an updated version of the Decision's procedural manual, which formed an integral part of the concerned Decision.

12.7. The procedural manual had fully responded to the concern raised on pages 5, 6, 9 and 10: "the Decision applies to entities that are subject to the Labour Law of the Kingdom of Saudi Arabia and specifically regulates the contractual relationship between employers and employees within the Kingdom of Saudi Arabia, pursuant to the Saudi Labour Law".

12.8. For further clarification and to avoid misinterpretation of the word "Tawtin"; she explained that "Tawtin" in Arabic was defined as a synonym to "Saudization of workforce" and had nothing to do with localisation.

12.9. The decision did not target entities outside Saudi Arabia that served customers inside the Kingdom, such companies were not subject to Saudi Labour Law.

12.10. The Decision aimed at limiting the "teleworking in customer services" employment and its provision to the entity's customers, within the Kingdom only, and did not apply to non-Saudi employees who were physically working from the entity's premises – rather than through teleworking contracts.

12.11. "Teleworking" was defined as "an employee performing his duties in a location other than the usual place of work using any of the communications and information technology means".

12.12. She concluded that nothing in the Decision, which had entered into force on 31 July 2021, warranted the concern raised by the United States, as none of the international firms, either located in the Kingdom of Saudi Arabia or abroad, were required, either de jure or de facto, to relocate their operations into the Kingdom in order to provide customer services within the Saudi Arabian market. Her delegation hoped that that clarification answered the concern of the United States.

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

12.14. It was so agreed.

### **13 ITEM M: RECENT DEVELOPMENTS IN TRADE IN SERVICES STATISTICS**

13.1. The Chairman recalled that, in 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. Hence, the Secretariat had once again been invited to update the Membership on recent developments in trade in services statistics.

13.2. A representative of the Secretariat noted that 2020 had witnessed the worst-ever decline in trade in services, not only since the global financial crisis when services trade had decreased by 17% in the second quarter of 2009 but also since estimates for world trade in services started being produced in 1980. Global services trade, measured as the average of exports and imports, had fallen by 21% in 2020. However, some countries had seen even sharper declines, such as the LDCs, whose exports had decreased by 35% in 2020.

13.3. Estimates for the third quarter of 2020 confirmed earlier expectations that trade in services would be hit harder by the COVID-19 pandemic than trade in goods as consumer demand for services

such as leisure, international travel and recreational services had shifted to goods. Goods trade had recovered quickly, reaching pre-pandemic levels in November 2020. In the first quarter of 2021, trade in services was still 9% below the value of 2020, while trade in goods had risen by 12%.

13.4. Travel and transport services, which had accounted for 43% of total trade in services prior to the pandemic, had experienced the sharpest drop. Travel services had decreased by 81% in the second quarter of 2020 and had plateaued at -68% in the third and fourth quarters of 2020. In the first quarter of 2021, they were still 62% below the value of 2020.

13.5. Transport services had seen a decline of 29% in the second quarter of 2020, and 14% in the fourth quarter. However, the sector had witnessed a quick rebound, reaching pre-pandemic levels in the first quarter of 2021. Freight transport, which was the largest component of international transport, had helped that sector to partly offset the decline recorded in passenger transport.

13.6. Annual export estimates showed a 20% decline in commercial services in 2020, more than twice as much as trade in goods (-9%) on a Balance-of-Payments basis. Most services sectors had declined, and particularly those that required physical proximity. Travel exports had fallen by 63%, passenger transport through all modes of transport by 44%, construction by 18%, and personal, cultural, and recreational services by 14%.

13.7. While almost all sectors had suffered losses, two major sectors had fared well during the pandemic. Firstly, exports of insurance and pension services and financial services had risen by 3% and 4% respectively. Secondly, exports of computer services, being the most dynamic and fastest-growing services sector in the last decade, had increased by 8% in 2020, boosted by the shift towards remote working and digitalization.

13.8. The representative noted that the official estimates for the second quarter of 2021, jointly compiled with ITC and UNCTAD, were still being finalized and would be released by the end of October. However, initial visualizations of the sectors most affected by the pandemic could already be shown.

13.9. Turning to travel exports, many countries had seen substantive year-on-year growth in the second quarter of 2021. However, she noted that such a recovery was normal as the base in 2020 was very low. A more accurate analysis was a comparison with pre-pandemic levels, which showed that travel exports in the second quarter of 2021 were still 70% below the value of the second quarter of 2019. There had been sharp declines around the world, with all countries still having to catch up, and particularly LDCs that heavily relied on international tourism. The representative expressed her hope that as travel restrictions were progressively being lifted the recovery of travel services would further accelerate.

13.10. For some countries, such as the United States, monthly data were available that allowed to identify more recent developments. While travel exports had not caught up as strongly, travel imports, i.e. the travel-related expenditure of US residents in other countries, had increased, showing an acceleration in the last months. In other countries, too, such as in Europe, a small catching-up process had been observed in the summer months.

13.11. In contrast, the results for transport services were completely different: exports in the second quarter of 2021 had been 4% above the value of the second quarter of 2019, despite the heavy losses in air passenger transport. The recovery of the transport sector had been boosted by the high demand for goods. That had resulted in surging freight rates due to port congestions, testing and quarantine, shipping delays and a global shortage of empty containers. For instance, Chinese transport exports in the second quarter of 2021 had been 136% higher than in the second quarter of 2019, but also other economies in the region had recorded large increases.

13.12. Monthly statistics for China showed that transport exports had further increased in July and August 2021. That sharp increase in exports had coincided with the recovery of trade in goods starting in November 2020.

13.13. The Freightos Baltic Index (FBX) Global Container Index represented the spot market rates of 40-foot container shipping in US dollars. The latest data from October 15 showed that the global price of shipping a container at sea averaged US\$ 10,396. That was an increase of 4% compared to

8 October and a year-on-year increase of 365%. According to a comparable index for air freight from the same company, the increase in price was only 21% since the beginning of 2021, from US\$ 5.6 per kilo to US\$ 6.8 per kilo.

13.14. Certain routes had recorded particularly sharp rises in costs, while others had seen a more modest increase. For example, shipping costs from China and other East Asian ports to the west coast of North America had increased to US\$ 17,377 on October 15, from US\$ 3,847 last year, an increase of 350%. While prices had plateaued in January, they have been rising since August.

13.15. The same applied when looking at shipping costs to the east coast of North America, where a large increase had also been recorded. However, also for shipping the other way around, from North America to Asia, prices had risen, but they were significantly lower. For example, shipping a container today cost a little more than US\$ 1,000 compared to US\$ 400 a year ago. Other routes had also seen increases, such as East Asia to North Europe, where the price per container was US\$ 14,500, up from US\$ 2,150 in 2020. It had become apparent that there was a lot of pressure on certain goods within Asia and some developed destinations.

13.16. The RWI/ISL Global Container Shipping Index, which was based on container throughput, i.e. handling on containers in ports worldwide, was very high through August. The representative noted that the description of the current situation as a shortage of containers was inaccurate since the world was more likely to be confronted with a misallocation of containers. Traffic in various ports remained at an all-time high, and that was due to the high activity particularly in Chinese ports in the previous months.

13.17. The problem was not a global shortage of containers, but rather the high demand for goods that exceeded existing capacities, starting with the strong rebound of merchandise trade at the end of 2020. The Secretariat expected that demand would cool off in the coming months and ease some pressure on prices. According to the latest statistics from the Port of Los Angeles, empty containers accounted for 83% of all outbound container traffic. That should ease to resolve the misallocation of containers, but it would take some time to clear the backlog. In the Port of Los Angeles, 39 ships at anchor were currently waiting to unload goods, with an expected delay of 14 days. Prices would remain high, and they would also be reflected in the official statistics, as long as the backlog persisted.

13.18. The IHS Global Manufacturing Purchasing Manager's Indices (PMIs) showed that new export orders had increased to 54.9 in May but had been declining since then. On the other hand, stocks of finished goods had risen to 48.6 in September, meaning that inventories were being replenished. The high demand would thus be alleviated as firms were rebuilding their inventories and demand for goods was cooling. The Secretariat believed that the situation would take some time to adjust but would eventually return to normal. The decline in new export orders compared to the peak in May might have also caused the stability observed in delivery times and prices of inputs and outputs in September. In addition, while consumer demand had shifted from services to durable goods during the pandemic, a re-shifting towards services would also alleviate the pressure on goods and, at the same time, help the recovery of trade in services.

13.19. The representative of China thanked the Secretariat for the very informative presentation, which gave a clear picture of the trend in world trade in services over the previous two years, and especially after the COVID-19 pandemic. The pandemic had indeed had an impact on global trade in services and he hoped that the situation could continue to improve as vaccination was going on, with more people being vaccinated, and more international travel and transport being restored.

13.20. He noted that several statistics shown were related to China. It was true that China had seen a huge increase in exports of transport services. However, there was also a hidden picture, namely the huge increase of Chinese imports of transport services from the world. The transport sector had always been one of the largest sectors having deficits in China's services industry and that continued to be the case. Even with the large increase of Chinese exports in transport services, there were still big deficits in that sector. The increasing cargo container rates had negative effects on almost everyone, including China.

13.21. A representative of the Secretariat confirmed that the increase in container rates, as mentioned during the presentation, also applied the other way around. Large increases were seen

for shipping from Asia to North America, and, albeit slightly less, also for shipping from North America to China and other East Asian harbours, with costs of US\$ 1,064 today compared to US\$400 in 2020. Rising shipping prices were an issue for everyone, both firms and consumers, as those higher costs would result in inflation. The Secretariat hoped that there would be a stabilization of the situation, but that would take some time.

13.22. The representative of the United Kingdom echoed China in thanking the Secretariat for that very informative presentation which was a very useful data point for working on a number of files at the WTO. Regarding the observation that trade in telecommunications services had gone down, but trade in computer services had gone up, he asked whether that was a question of classification or human behaviour or a combination of the two.

13.23. A representative of the Secretariat responded that statistics published by some countries contained an aggregation on ICT services, which included various sectors behaving completely differently such as telecommunications, computer and information services, which also included database services. The observed declines in telecommunications were due to lower prices. Although there had been an increase in transmissions, and especially during the pandemic when internet transmissions had peaked, the actual cost of those transmissions was lower as many more companies worldwide engaged in that service. The telecommunications sector had seen a decline in price over the previous 20 years when the sector had been liberalised.

13.24. The Chairman asked, in view of the misallocation of containers, where those containers were located that they did not attend the market between China and North America, and why that correction would take so long.

13.25. A representative of the Secretariat responded that one had to go back to the peak of the pandemic where production had been halted. Nobody had expected such a quick recovery in trade in goods in a matter of months, as pre-pandemic levels had already been reached by November 2020. Those containers had been left where the original shipment had taken place, for example, in the Port of Los Angeles and other ports that provided statistics on container handling. The containers had not been returned because they had to be returned empty as demand was one-way.

13.26. Although not having access to those statistics, each container had a GEO number with which they could be localised. One could see that they were in the wrong places and had to be shipped back where they were needed and where production was taking place, which was mostly in East Asia. In Los Angeles, 83% of outbound traffic currently was empty containers going back to East Asia.

13.27. In addition, there was the issue of delays as harbours in China and elsewhere had to shut down because of COVID-19. The pandemic had had a big impact on the misallocation of containers and delays because there had been quarantine requirements also for seafarers. That had created a backlog and a big container bottleneck at the world level. Keeping the pandemic under control with vaccinations increasing worldwide would help resolve the issue of container misallocation. There was movement, but the backlog was so tremendous that it would take several months.

13.28. On another note, the representative indicated that she would try to include the latest numbers and some other trends on monthly data in her presentation to be distributed to Members. If Members believed it would be useful and would provide clarifications on the situation, she would also distribute her notes.

13.29. The Chairman extended his thanks once again to the Secretariat for the interesting and rich presentation and suggested that the Council take note of the statements made.

13.30. It was so agreed.

## **14 ITEM N: OTHER BUSINESS**

14.1. The Chairman offered the floor to the delegation of Mongolia, which, at the beginning of the meeting, had asked to add an item under "Other business" on the impact of container shortages on trade costs.

14.2. The representative of Mongolia drew Members' attention to the issue of the unexpected increase in trade costs caused by a shortage of shipping containers. Mongolia believed that Members would benefit from engaging in an exchange of views about the current situation, which had important trade implications. His delegation was aware that the Secretariat was monitoring the issue closely and would hold an information session for delegations on that critical issue.

14.3. For years, container shipping had kept supply chains and globalisation running. At the start of the COVID-19 pandemic, expectations were that seaborne trade, including containerized trade, would experience a strong downturn. World merchandise trade had fallen by 5.3% in 2020 and global supply chains had faced significant challenges.

14.4. Contrary to expectations, changes in consumption during the COVID-19 pandemic had led to increased import demand for manufactured consumer goods, a large part of which was moved in shipping containers. The increase in demand was stronger than expected and not met with a sufficient supply of shipping capacity, which had resulted in the delay of shipments and transport operations and a significant increase in container freight rates.

14.5. Since November 2020, the cost of shipping of 40-foot containers from Asia to Europe had risen more than threefold from around US\$ 2,200 to US\$ 7,900. The price of shipping goods from North America to Asia had doubled. The Drewry's composite World Container Index was 309% higher than it had been a year earlier.

14.6. According to the Freightos data, the total increase over the past twelve months was 526%. In some regions, the price of container shipments had increased ten times. Consignments were delayed leading to a demand-supply imbalance both in the domestic and international markets, thereby disrupting global supply chains. That issue had led not only to a shortage of essential food and medical goods but also to a halt of supplies of necessary materials for certain industrial sectors and even their shutdown.

14.7. During the WTO Public Forum 2021, a working session under the theme "Facilitating transit and transport operation in crisis situation: lessons learned from COVID-19" was held and panellists underlined the need for putting in place certain policies and procedures to help countries to respond to unforeseen events like the COVID-19 pandemic in a better way, without disrupting global value chains.

14.8. In the current situation, when freight rates would remain high and disruptions of global delivery chains would remain in 2022, it was important to raise awareness among WTO Members and to find a solution to strengthen the existing rules and, if necessary, to create new ones in order to avoid similar situations in the future.

14.9. The representative noted that his delegation had circulated the communication JOB/SERV/CTS/5 on the container shortage issue and looked forward to WTO Members taking an active part in future discussions on that issue.

14.10. The representative of India thanked the delegation of Mongolia for highlighting that very pertinent issue of a shortage of containers and the resultant steep increase in container freight rates, which was being faced by several countries today. She also thanked the Secretariat for their insights on the issue of container shortage in their report under the previous agenda item.

14.11. The pandemic had had a huge impact on transport operations, thereby disrupting global supply chains and contributing to an increase in trade costs. Just like the case in many other countries, India too was grappling with a huge shortage of timely availability of containers, along with a manifold increase in container freight rates. India supported further discussions on that important subject.

14.12. The representative of the United States echoed India in thanking the delegation of Mongolia for its communication. Since that had only come after the agenda of the CTS had closed, his delegation was still looking closely into the communication. Typically, substantive issues are not raised under "Other Business". He noted that the previous presentation had highlighted a number of key issues and his delegation believed that the issue was being looked at and was studying the communication from the trade in services angle.

14.13. The representative of Panama thanked Mongolia for circulating the document on seaborne transport. She echoed the United States in noting that the topic would require substantive discussion. It was perhaps not the right space for such a discussion, which would require a different meeting of the Council as the document had only been provided some days earlier and it contained elements that required consideration by Capital.

14.14. The representative of Uruguay appreciated the communication from Mongolia and its statement. It was publicly known that the logistics sector was currently in the middle of a global crisis, heightened by the pandemic, due to the shortage and localisation of containers and the consequent increase in the costs of maritime transport, to which Uruguay was not alien.

14.15. He noted that it would be productive to maintain exchanges of information and experiences with Members in the instances that were deemed most relevant and timely. That could also include the eventual participation of experts and the private sector. The Secretariat had provided very interesting comments and his delegation hoped to have access to the results or studies. In particular, it would be interesting to know the actions that were being carried out at the national, regional and global levels, as well as possible actions that might be taken within the framework of the WTO.

14.16. The representative of Turkey thanked Mongolia for the communication on the container shortage issue. The container shortage that countries had started experiencing after the first effects of the pandemic on global trade had increased costs in terms of both trade in goods and services. It was also of importance to transport services in terms of managing risks related to the smooth flow of global supply chains.

14.17. He noted that the lack of prompt coordination among countries had exacerbated the scale of the difficulties experienced. Turkey believed that international cooperation would be critical to finding a common solution. In that context, his delegation was of the view that the communication by Mongolia was very timely and relevant.

14.18. As Members might remember, upon interventions by some delegations during the last TNC meeting, the Director-General had reacted to that issue and stated that the Secretariat would get in touch with relevant stakeholders. A webinar on digitalization and logistic resilience during the pandemic had been organised the previous week and sector representatives of Turkey also had taken part. His delegation believed that more needed to be done at WTO to address the container shortage issue properly.

14.19. On the other hand, as a consequence of the container crisis, Turkey had seen an increase in demand for and pressure on other modes of transport, namely road and rail transport. The current disruption, and risks of future disruptions, were naturally increasing the importance of road and rail transport for global and regional supply chains. The maritime transport sector was covered by relatively comprehensive and liberal commitments under the GATS compared with other modes of transport.

14.20. With that in mind, Turkey was of the view that considering and further discussing the level of commitments for all modes of transport as well as auxiliary logistics services, such as cargo-handling, storage and warehouse services, was becoming even more critical. Therefore, in addition to Mongolia's proposal, a study that compared the level of commitments in different modes of transport and logistics services could be useful. Turkey would like to present that idea for consideration to Members.

14.21. Lastly, the Reference Paper of the Joint Statement Initiative on Services Domestic Regulation was expected to be accepted during MC-12. If the disciplines included in the Reference Paper were implemented effectively, Turkey believed that that would contribute to the resolution of the container shortage issue in terms of reducing trade costs by providing transparency and predictability in that sectors. With those explanations, Turkey expressed its support for the proposal of Mongolia and would be ready to engage constructively on possible work in the Council.

14.22. The representative of China thanked Mongolia for the communication. The increased import demand during the COVID-19 pandemic had led to a serious shortage of shipping containers and a significant increase in trade costs. As a result, the healthy development of global trade had been seriously affected. Shipping containers, as an integral link of the global logistics system, played an

important role in the post-pandemic economic recovery. China was now assessing that communication internally and was willing to exchange information with Members in that regard.

14.23. In addition, he referred to a communication that China had circulated on logistics services (JOB/SERV/301) under the CTS-SS in July 2020. China encouraged further discussions on logistics services based on both Mongolia's and China's communications. Such discussions would contribute to more comprehensive research on how to improve the efficiency of logistics services and thus ensure a smoother global supply chain.

14.24. The representative of Honduras expressed his delegation's support for what was mentioned by the delegation of Mongolia. As indicated in the last TNC meeting, Honduras was currently facing an unprecedented increase in the logistics costs of imports and exports, specifically in the cost of freight worldwide, which was directly affecting the logistics, production and marketing chains of goods, affecting the price and supply of products, causing a reduction in the purchasing power of consumers and companies, in particular of small and medium-sized companies that had been especially affected given their vulnerable financial situation.

14.25. Given that the situation represented a serious threat to global macroeconomic stability and eroded competitiveness, affecting all countries that depended on international trade, Honduras hoped that all Members and relevant stakeholders could share information and exchange opinions about the limitations on import and export of goods due to those interruptions and discuss measures to mitigate the impact of those interruptions.

14.26. The representative of Switzerland thanked Mongolia for bringing that topical issue to the attention of the Council. He also expressed his thanks to the Secretariat for the excellent and insightful presentation on the container shortage issue and its consequences on international trade. As highlighted in that presentation, the logistics sector, and in particular multimodal container trade, was currently facing important issues. According to the latest World Bank Trade Watch, global carrying capacity had recovered to pre-pandemic levels but could not seem to increase to match demand. Meanwhile, trade in goods had been 13% higher in July 2021 than two years earlier.

14.27. Switzerland agreed that the current container issue and the logistics sector deserved discussion in the WTO. Some of that conversation should take place in the CTS, some of it in more dedicated fora such as the Committee on Trade Facilitation where also regulators and industry associations could be associated to the discussion. There had already been good discussions the previous year within the CTS-SS on the need for GATS commitments related to the logistics sector. Switzerland was interested in pursuing that discussion and in learning from the crisis.

14.28. The representative of the European Union thanked Mongolia for its communication. She also expressed her appreciation to the Secretariat for the update on the developments on trade in services statistics and for having already provided some data on the issues raised in Mongolia's communication.

14.29. The European Union was closely monitoring the development in the container shipping industry as well, and was aware that there had been large price increases in the container shipping sector over the course of the year on the routes to and from the European Union as well as in other parts of the world. In particular with respect to the large price increases and the related challenges in that sector, it had been noted that the causes of the price hikes and issues at stake were diverse. In terms of the CTS role in that debate, the European Union would need more time to consult and study Mongolia's suggestion, including on the angle of trade in services in that issue.

14.30. The representative of Canada thanked Mongolia for its proposal. As other delegations had mentioned before, the proposal had been received after the circulation of the agenda, and therefore Canada was still in the process of analysing the proposal. It was also interesting to see that the presentation of the Secretariat was linked to certain issues in the paper and allowed a first update of the situation. Therefore, it would perhaps be of interest to further discuss the proposal mainly on the proposed scope, especially with a view to considering to what extent it applied to the Council for Trade in Services.

14.31. The representative of Singapore thanked Mongolia for its proposal. As other Members had mentioned earlier, Singapore was also taking time to review the proposal. As a trans-shipment hub

in Asia, Singapore was experiencing the effects of the container shortage most keenly. The waiting time for the ships visiting Singapore was currently five to seven days, up from two days previously, and the number of ships that stayed in Singapore for more than two days had been 46 in January, which was 59% more than the same month a year earlier. Singapore was taking measures to mitigate the container shortage problem and would be happy to share more information in further discussions in the CTS.

14.32. The representative of Korea thanked Mongolia for its proposal and statement. He also thanked the Secretariat for the update on the recent statistics on services trade. Korea was going to review the proposal on how the WTO could contribute to the solution to that problem. Fortunately, according to the Secretariat, the PMI had eased recently, which would lead to an improvement of the situation of container shortages and price increases. An improvement of that issue would be expected.

14.33. The representative of South Africa appreciated the communication from Mongolia and her delegation supported the proposal outlined in paragraphs 2.1.a and b of the submission. South Africa was particularly interested in undertaking work in relation to evaluating the impact of the shortage on developing country freight and related services, especially on MSME's. Some of South Africa's key exports had been affected with exporters reporting that shipments that used to cost them around US\$ 4,000 previously had suddenly increased to around US\$ 7,000 per unit.

14.34. South Africa understood from reports that most agents were prioritising exports over empties since it made more financial sense than carting away empty containers. At some African ports, the issue was one of space and a reduced number of ships docking. Based on those preliminary reports suggesting different situational happenings, her delegation would not be in a position to support the suggestions in paragraphs 2.1.c and d of the submission at that time.

14.35. South Africa, however, was interested in working with other Members in developing recommendations for preventing and resolving similar situations in the future and exchanging ideas on how Members could cooperate or what cooperative action might be necessary to facilitate better circulation of containers. The representative also thanked the Secretariat for its complementary presentation preceding that item and looked forward to receiving further detailed research on that issue.

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

14.37. It was so agreed.

14.38. The meeting was adjourned.

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