RESTRICTED

TN/CTD/M/52

12 December 2017

(17-6847) Page: 1/32

Committee on Trade and Development
Fifty-Second Special Session

NOTE ON THE MEETING OF 19 JULY 2017, RECONVENED ON 14 AND 21 SEPTEMBER 2017

Chairperson: Ambassador Tan Yee Woan (Singapore)

A. ADOPTION OF THE AGENDA

1. The agenda as contained in Airgram WTO/AIR/TN/CTD/4 of 5 July 2017 was adopted.

B. SUBMISSION BY GUYANA ON BEHALF OF THE ACP GROUP, THE AFRICAN GROUP AND THE LDC GROUP (JOB/DEV/48 – JOB/TNC/60)

2. At the outset, the Chairperson stated that the objective of the meeting was to provide an opportunity to the proponents to introduce special and differential treatment (S&D) proposals contained in JOB/DEV/48 - JOB/TNC/60 that the G90 had tabled on 10 July 2017 at the Special Session of the Committee on Trade and Development (Special Session). After the formal introduction of the proposals, she would offer the floor to Members for their general statements and comments. She hoped that Members would engage in a substantive discussion on the proposals. With a view to facilitate a frank discourse, she proposed that discussions should take place in an informal mode. Accordingly, after the introduction of the proposals, she said that she would switch the meeting to informal mode. After concluding this work, however, she intended to reconvene in formal mode so as to share her thoughts on how she intended to proceed with the post-summer work in the Special Session in preparation for the 11th WTO Ministerial Conference (MC11).

3. The representative of Rwanda, speaking on behalf of the G90, said that the revised proposals were the fruit of a lot of hard work. In undertaking a review of the WTO's S&D regime and introspection, theG90 members had drawn up the proposals based on a realistic assessment of past discussions, including the Nairobi process. The low ambition in the revised proposals, coupled with the fact that the number of proposals had also been substantially reduced, reflected the pragmatic and result-oriented approach followed by the proponents in the review process. He hoped that Members would move beyond the rhetoric and positively engage so as to address the fundamental constraints and structural challenges that confronted the economies of developing countries and LDCs in fully integrating into the multilateral trading system (MTS). These economies were faced with a myriad of challenges including, among others, high levels of unemployment, low household incomes, poverty, disease and migration, etc. Efforts to find solutions to these chronic issues had failed because of the inability to address the root causes that led to these problems. While noting that 65% of all uncultivated land was in Africa, he stated that the question for WTO Members was to see how WTO rules and the trade policy instruments could

be effectively used to provide enhanced employment opportunities, increase incomes, promote forward and backward linkages between agriculture, services and manufacturing – all of which could contribute to sustainable economic growth and help achieve development aspirations. A pro-development MTS which is sensitive to the chronic challenges faced by the proponents' economies would help address if not all, then, at least most of these problems and pave the way for development in these economies.

4. He said that part of the solution was to look at S&D provisions in the WTO Agreements. There were 148 S&D provisions contained in the WTO Agreements which had been classified into six categories: provisions aimed at increasing trade opportunities for developing countries; provisions under which WTO Members should safeguard the interests of developing country Members; flexibility of commitments, of action and use of policy instruments; transitional time periods; technical assistance; and provisions related to LDC Members. The challenge was that most of these provisions were couched in hortatory and best endeavour language. Complex procedural hurdles were built into some of them, which had the effect of diluting and negating the intended flexibilities. These were of a non-binding nature and often lacked clarity, which rendered them difficult to operationalize, as they contained onerous conditionalities. As a result it was difficult for developing countries to use them effectively.

5. He went on to state that the main objective of S&D was to assist poor countries and provide policy space for integration into the MTS. In 2001, WTO Members had acknowledged the problems with S&D proposals and had resolved to address the challenges in line with paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-related Issues and Concerns. He noted that with the exception of five LDC-specific S&D provisions adopted in the Hong Kong Ministerial Conference in 2005, no other substantive decisions had been made in this negotiating area, despite repeated efforts on the part of the proponents to revise their proposals. On top of that, the decisions taken on the five LDC-specific proposals in Hong Kong had not been effectively implemented or were not implementable. He added that the G90 had lowered its ambition from the original 88 proposals tabled in 2002 to only ten. However this did not preclude in any way a Member or a group of embers of the G90 from making submissions on the remaining S&D proposals in the Special Session. The ten proposals contained in JOB/DEV/48 - JOB/TNC/60 were structured around three themes - structural transformation, industrialization and diversification.

6. He added that the G90 had carefully looked at the issues and in tabling the revised proposals had suggested win-win solutions for all as these would facilitate structural transformation, diversification and promote industrialization in their economies. The G90 hoped that after the summer break Members would engage in a detailed and substantive consideration of each of these proposals with an open mind with a view to agreeing on proposed solutions in the proposals in line with the mandate in paragraph 44 of the Doha Ministerial Declaration before or by the Buenos Aires Ministerial.

7. Subsequently, the representative of Cameroon introduced proposals 1 to 5. In explaining the rational of Proposal 1 relating to the Agreement on Trade-Related Investment Measures (TRIMs), he stated that the Agreement provided flexibilities for developing countries to introduce TRIMS inconsistent measures on a temporary basis inasmuch as the GATT and Balance-of-Payments (BOPs) provisions allowed. Also, the TRIMS Agreement enabled the Council for Trade in Goods to extend the transition period for the elimination of TRIMs notified by a developing country Member or LDC that demonstrated particular difficulties in implementing the provisions of the Agreement. However, the flexibilities were limited by the onerous requirements in the GATT and BOP provisions. Several developing countries, in particular LDCs, faced difficulties in implementing the TRIMS Agreement and needed flexibility to use measures including local content requirements. Thus, developing countries, in particular the LDCs and low-income developing countries, should be allowed to introduce TRIMS inconsistent measures without being constrained by GATT Article XVIII. They should also be given a six-month period to notify new TRIMs, and the measures should be of a sufficient duration of up to 15 years. LDCs should be exempted from TRIMS obligations until they have graduated from LDC status.

8. In introducing proposals 2 and 3 pertaining to GATT Article XVIII which deals with infant industries and balance of payments, the representative stated that the Preamble of Article XVIII stipulated that developing countries enjoy additional concessions so as to enable them to maintain sufficient flexibility in their tariff structure to be able to grant tariff protection required for infant

industries and apply quantitative restrictions for BOP purposes. However, procedural requirements under Article XVIII, replicated to a large extent as well in GATT Articles XII and XXVIII, constrained the intended concessions to developing countries *vis-à-vis* what was otherwise available to all WTO Members. Talking about Proposal 2 on infant industry protection that dealt with sections A and C of Article XVIII was intended to allow developing countries and LDCs to modify or withdraw concessions or provide governmental assistance in order to protect those industries. The current conditions and procedures for invocation of these concessions were too strict. Section A had never been utilized since the inception of the WTO. Section C had even more onerous conditions, and as such, it had not been operational. In order to address these challenges, he stated that the G90 had proposed a simple process for temporary modification or deviation from WTO commitments for developing countries and LDC, using a broader definition of infant industries. Procedural clarity and definite duration would provide much needed certainty for investments and long-term industrialization in the proponents' economies.

9. Continuing with his explanation of proposal 3 that dealt with GATT Article XVIII section B on BOPs, the representative stated that the current provisions allowed Members to impose import restrictions in certain BOP situations. The need for BOP measures remained pertinent due to instabilities in the global monetary system. However, here again, due to onerous procedural requirements, developing countries, small and vulnerable economies (SVEs) and LDCs had not been able to fully utilize these provisions. The G90, in their proposal, had suggested better guidelines for determining the adequacy of Members' monetary reserves and the suspension of right to retaliate against developing country Members that faced BOP challenges and resorted to the provisions in Article XVIII Sections A and B.

10. On proposal 4 that related to Articles 9.2 and 10 of the Agreement on Sanitary and Phytosanitary Measures (SPS), he stated that developing countries and LDCs were regularly confronted with changing regulations and stringent SPS measures. The proposal by the G90 sought to clarify the concept of reasonable time-frame for making comments, which should be at least 180 days for the LDCs and developing country Members facing capacity constraints before the adoption of the measure. The challenge was that the special needs of developing countries and LDCs were not normally taken fully into account when the developed countries prepared and applied SPS measures. The current time-frame of six months for compliance was also insufficient. The G90 had proposed that a compliance period of no less than 12 months be allowed to developing country Members facing capacity constraints in case of such SPS Measures. The G90 had also proposed that importing developed countries should not ban importation of products from developing countries and LDCs based on the rejection of shipments from one or a limited number of suppliers.

11. The representative went on to introduce proposal 5 concerning Article 12.3 of the Agreement on Technical Barriers to Trade (TBT), which required Members to take account of the special development, financial and trade needs of developing countries in the preparation and application of technical regulations, standards and conformity assessment procedures and ensure that these TBT measures did not create obstacles to exports from developing countries. The G90 proposal sought almost similar concessions with respect to technical regulations, standards and conformity assessment procedures as had been requested in the case of the proposal on SPS.

12. Proposal 6 pertaining to the Agreement on Subsidies and Countervailing Measures (SCM) was introduced by Cambodia. The representative of Cambodia explained that the G90 proposal sought to seek the right to introduce subsidies to achieve legitimate development goals such as regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production. This, in effect, meant to reintroduce non-actionable subsidies that had expired in 1999. The proposal also referred to Article 3.1 of the Agreement on SCM, which prohibited subsidies contingent upon the use of domestic over imported goods. Article 27.3 had provided for a five-year transitional period for developing countries and an eight-year period for LDCs. However, developing countries and LDCs were constrained by the TRIMS Agreement, which prohibited the use of local content requirements. Also, the periods provided for under Article 27.3 had already expired, and the Hong Kong Ministerial Decision on this issue only provided flexibility to LDCs on TRIMs until 2020, which could also be constrained by Article 3.1(b) of the Agreement on SCM. In order to solve these challenges, the G90 proposed that developing country Members in Annex 7 be exempted from the obligation in Article 3.1 (b) of the Agreement on SCM to allow them to implement subsidies contingent on the use of domestic over imported content.

13. Regarding proposal 7 on the Agreement on Customs Valuation (CV), she stated that the proposal was LDC-specific in highlighting the challenges that these Members faced in implementing the provisions of the Agreement on Article VII of the GATT 1994 (Customs Valuation Agreement). Article 20.3 of the CV Agreement required developed country Members to furnish, on mutually agreed terms, technical assistance to developing countries. She stated that under-invoicing was an issue that plagued these economies of these countries. It deprived governments of money for development expenditures. The G90 proposal was about allowing LDCs to use minimum or reference values for up to 10% of their tariff lines in cases where they had difficulties in utilizing the rest of the valuation techniques while addressing under-invoicing. It also sought exemption for LDCs in implementing certain provisions of the Agreement until implementation capacity had been acquired. Finally, the G90 proposed the conclusion of Customs Mutual Assistance Agreements, or customs cooperation agreements.

14. The representative further introduced proposal 8, which addressed the Enabling Clause. She stated while formulating non-reciprocal preference schemes, the developed country Members hardly consulted the beneficiary developing partners which often resulted in no or less than meaningful market access for products of beneficiary's export interest. Therefore, the G90 had proposed that developed partners should consult with developing partners and the LDCs at the formulation stage to ensure that the beneficiaries obtained meaningful market access.

15. On proposal 9, the representative stated that the G90 proposal sought to operationalize various technology transfer-related provisions in the WTO Agreements, especially Article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPs) to ensure an effective transfer of technology to those who needed it most. It also called for targeted technical assistance to support LDCs in their domestic efforts to enhance their technological base with a view to moving up the technology ladder. The proposal would also require developed country Members to take into account the objectives and principles of the TRIPs Agreement as contained in Articles 7 and 8 respectively, as well as the objective of sustainable development contained in the Preamble of the Marrakesh Agreement.

16. The representative went on to introduce proposal 10, which related to LDC Accession. The proposal sought to ensure that the special treatment in terms of LDC accession was guaranteed through decisions adopted under the Special Session. The limited human, institutional, financial and administrative capacity of LDCs made LDCs accession more challenging. Therefore, in order to facilitate a speedy and smooth integration of LDCs into the MTS with a view to ensuring that no one is left behind, the proposal sought to operationalize the 2002 LDC Accession Guidelines and to discipline the "fast-track" accession procedure recently practiced for LDC's accessions.

17. The representative of the United States stated that the Special Session had a long and disappointing history - one that was driven by the efforts of a few Members and some non-governmental organization (NGO) advisors to impose a discouraging view of development, including on those Members in need of sustainable development. Those few Members were regrettably wedded to failed ideologies. They seemed unwilling to adjust to the opportunities around them, and profoundly unhappy that others who faced similar challenges might want to make different choices. They had bought into a mind-set that the path to sustainable development laid not in their full integration into the trading system, but in their de-integration. His delegation could not help reflecting on what could have been accomplished if those Members had taken the past two decades to implement WTO commitments, and to integrate into today’s global supply chains. Unfortunately, those Members viewed with suspicion the commitments that other Members had made in acceding to the WTO. They were dismissive of the accession process and seemed uncomfortable with the results, which consistently showed that Article XII Members had outperformed the rest of the Membership in trade growth, even when China was excluded. His delegation was not surprised by the proposals but was nonetheless disappointed. For some time, his delegation had asked those few Members to make a good-faith attempt to be constructive by considering a new approach. It was clear that that invitation had not been accepted. Most of the G90 proposals had been tabled in very similar forms in 2015, and they never came close to achieving consensus. The few elements that had been added reinforced, rather than addressed, the US' concerns.

18. Regarding the new proposals, his delegation viewed that proposal 9 on Transfer of Technology was a non-starter. He added that his delegation would not discuss narrowing the mandate of the Working Group on Trade and Transfer of Technology (WGTTT). Similarly, proposal

10 on Accession of LDCs had the clear intent of turning the WTO accession process into a political one. The long-term impact of that would be that acceding LDCs would be denied the opportunity to use the accession process to reform their trade regimes and to make commitments that attracted investment and trade. That would hinder, not help, sustainable development in LDCs. The proposal also implied that the 2012 LDC Accession Guidelines were not working, which his delegation flatly disagreed with. In the five years since the guidelines were agreed by consensus, five LDCs had joined the WTO, compared to just four in the ten years prior to 2012. Currently, another three LDCs were enthusiastically engaged and making progress on the accession front, and several more were showing strong interest.

19. The representative stated that if accepted, the ten proposals would initiate an immediate race to the bottom. If a subset of Members was right to have a permanent carve-out from previously agreed rules, every other Member would demand to receive the same. That would fuel more demands for carve-outs, and the cycle would repeat itself. Production might temporarily increase, but only until the inevitable backlash, marked by an avalanche of subsidies, local content rules, and other regressive measures. This would be followed by efforts to shut off market access. It was hard to see how the proponents themselves could expect that the proposals would achieve consensus. His delegation regretted to say that the goal appeared to be to pressure the Chairperson and Members into a process that would provide a platform to press the view that the WTO was anti-development and ineffective and to advance an image of dysfunction and failure. His delegation did not share this goal, and would not participate in an effort to achieve it. His delegation would not engage on the tabled proposals, beyond what it had stated at the current meeting. They were not a basis for work, and the United States could not conceive of any process that would allow for a productive discussion of these proposals.

20. The representative of Canada stated that Canada had undertaken a preliminary review of the G90 proposals and was struck by the similarity of these proposals to those tabled in 2015, all of which had failed to achieve consensus after extensive discussions and hard work both in the run up to and at Nairobi. At that time, Canada had outlined a number of concerns with the proposals which included, among others, the lack of differentiation between developing countries, the inclusion of obligatory technical assistance, broad carve-outs from core WTO obligations and limitations on Members' rights to regulate in the public interest. Canada had sought explanations from the proponents on the specific problems the individual proposals were meant to address and how policies that would remove certainty and predictability for investors, traders, and consumers would contribute positively to sustainable economic growth and the further integration of developing and LDCs into the MTS. Canada had engaged constructively and in good faith in numerous informal meetings in the lead-up to and during the Nairobi Ministerial Conference in an attempt to secure an outcome on S&D for the 10th WTO Ministerial Conference (MC10). Though those conversations were difficult, yet some progress towards narrowing large gaps between positions on some proposals had been made. That progress, though incremental, did not seem to have been reflected in the recent submission by G90 in the Special Session. Canada had not been approached by the proponents to talk about the substance of the proposals on the table. Therefore, to the extent that the proposals had not changed and explanations had not been provided, her delegation's position remained unchanged. Canada could not accept the proposals. Past experience had shown that the type of approach taken had failed to deliver results. Canada was increasingly concerned about again launching an exercise whose outcome could weaken the rules-based MTS. Canada, together with other Members, had committed to upholding this system in the face of a backlash against globalization. Her delegation had committed to keeping markets open and fighting protectionism. Canada also acknowledged that the gains of trade had not been shared widely enough and that governments could and should do more to ensure that trade policy was more inclusive, both at home and abroad. Canada was not alone in developing progressive approaches to trade policy. The Special Session should be examining proposals that helped to better integrate, rather than alienate, developing and LDCs into the MTS. Her delegation encouraged the proponents and all developing country Members to reassess how this negotiating body could contribute to achieving meaningful outcomes on S&D. This was a conversation that Canada was prepared to engage in. Finally, regarding the Chairperson's suggestion of how to proceed and switch to informal mode, Canada indicated preference to continuing the discussions in a formal mode, so there would be a record of the statements, discussions and comments made.

21. The representative of Japan stated that his delegation shared the concern expressed by the US and Canada on the proposals tabled by the G90. For Japan, the trade and development issues were important, which was why Japan was actively engaging in the related discussions in all WTO

bodies, especially in the context of the Committee on Trade and Development (CTD) as well as the Special Session. They strongly believed that trade played a key role in the sustainable development of developing countries and LDCs. In order for a developing country to reap the benefits of trade, it was essential to attract investments and to be integrated into the global or regional value chains. For that goal, it was indispensable to create a predictable, transparent and stable business environment. The rules-based MTS gave Members a solid platform for such business environment, which was so essential for development. The WTO disciplines were its anchor. However the new proposals tabled before the Special Session today were totally incompatible with this approach. The proposals did not reflect the debate that had been held in the process towards MC10. Almost all the proposals aimed to largely deviate from the WTO disciplines, which would eventually decrease transparency and predictability – cornerstones of the MTS envisaged under the WTO - and thus injure a country's business environment. Of course, there would be some cases where deviation was necessary, but this should be considered as an exception and not a norm, and should be administered only for those countries that really needed it and only to the extent that was really necessary. It was a remedy that should be used with due caution and prudence. Japan's position on these issues remained the same as it had been two years ago. Japan was ready to engage in a discussion that focused on identifying the real problems and exploring remedies that genuinely helped countries in real need, in particular the LDCs. Japan could not, however, agree on giving a blank check for deviations without limiting to those who really needed them, otherwise it would endanger the rule of law under the WTO and ultimately damage the whole system. It appeared to be that Members were on the same trajectory as two years ago, where failure was guaranteed. They should not repeat the same error. Japan hoped that the proponents would review their approach so that meaningful outcomes for MC11 in this important area of development could be explored.

22. The representative of India stated that his delegation believed that the MTS was in the best interest of developing countries, especially the poorest and most marginalized among them. The S&D provisions, which were an integral part of the MTS, were meant to enable developing country and LDC Members to meaningfully integrate into the MTS so as to derive maximum economic benefits. Given the concerns expressed by some Members regarding the effectiveness and operation of S&D provisions, Ministers at Doha gave a mandate as contained in paragraph 44 of the Doha Declaration to review all S&D provisions with a view to strengthening them and making them more precise, effective and operational. Although Members had been discussing these issues since 2002, unfortunately not much progress had been secured with regard to this mandate. In the run up to Nairobi, Members had held intensive negotiations on the 25 Agreement-specific proposals (ASPs) and India had participated constructively in those discussions, but no positive outcome on S&D at MC10 could be achieved.

23. In this context, his delegation believed that the textual proposals introduced by the G90 provided a useful input and basis to advance work in this very important area for developing countries, including the LDCs. His delegation understood that the ten ASPs would enable developing countries and LDCs to promote much needed industrialization, structural transformation and diversification of their economies for raising the standard of living of their populations and facilitate their integration into the MTS. India recognized and understood the reasoning behind the G90 proposals. For his delegation, substantial progress and outcome on "development aspects" of the Doha Work Programme was essential. India was ready to participate constructively in the Special Session discussions on the tabled proposals.

24. The representative of the European Union stated that his delegation had on many occasions expressed its readiness to engage constructively on development issues, in particular those concerning LDCs, on the basis of an analysis that clearly explained where specific problems and challenges justified specific courses of action. In this respect, the EU had encouraged Members to work on realistic proposals, taking into account the views and concerns expressed with regard to previous S&D proposals, like the ones discussed before Nairobi. Despite those calls, his delegation observed, with much disappointment, that the current proposals did not deviate in their essence from those of 2015. This was unfortunate and his delegation was curious to hear why the proponents had not taken into account the multiple comments made during the 2015 process, and why had they not decided to come up with new approaches. Instead they had come out with recycled proposals that were even more unrealistic, ambitious and seemed to widen the gaps in positions. They continued to sense an underlying perception, which in their view was incorrect, that whatever was binding in the WTO rules was, somehow, not good for development. India had just noted that these proposals were good for integration of the proponents in the MTS. He

wondered how suspending Articles III and XI for 15 years could help in this direction. As was the case before Nairobi, the EU was still striving to see the value-added in the G90 proposals which, in his delegation's view, would only result in weakening the WTO rules. To the extent that the concerns expressed on similar proposals in the past were not taken on board and that the proposals had become even more unrealistic, the EU delegation was not optimistic in achieving a consensus on the revised G90 proposals. He wished to reiterate the EU's position, as explained on several occasions in the past. When the EU referred to realistic proposals, it meant proposals which were coherent with the well-established fundamental principles underlying the WTO Agreements. Proposals that would aim to suspend provisions on the basis of vague criteria for 15 to 30 years with automatic renewable clauses were not what the EU considered realistic proposals. What the EU meant was that the proposals should target specific obstacles whose removal would benefit developing countries, and notably the least developed among WTO Members. He added that the EU remained committed to making Buenos Aires a success. However, his delegation feared that the proposals that had been put forward would not help achieve this objective. His delegation was, as always, ready to engage constructively on realistic ideas. A considerable amount of work and, most importantly, a substantial reality-check on the proponents' side would be necessary to justify such engagement.

25. The representative of Singapore said that in her delegation's view, the G90 had made serious efforts and introspection in reflecting on its priorities and in narrowing down its proposals to those that its Members felt would address their key economic concerns, namely structural transformation, industrialization and diversification. She also noted that there were some new proposals in the G90 submission, for example on technology transfer and LDC accessions. Singapore hoped that as the Special Session delved into deeper discussions on these proposals, members of the G90 would share specific examples and case studies that highlighted the difficulties and challenges faced by them in implementing or benefitting from the existing relevant S&D provisions in the WTO Agreements and how these provisions were inadequate. This would enable Members to better understand the background to these proposals, and collectively find ways to address the challenges in a manner which would not undermine the rules-based MTS. The representative said that active engagement by all Members was needed in order to forge an outcome at MC11 in the little time Members had on their side. Noting that the past discussions in the Special Session on the ASPs had been difficult, her delegation called on Members to keep an open mind and work creatively to find solutions that would be amenable to all. Singapore stood ready to engage constructively in this process.

26. The representative of Switzerland stated that her delegation attached great importance to development issues in the WTO, including the work on S&D. For Switzerland, finding ways to further enhance developing countries' integration in the MTS and to increase trading opportunities for developing Members remained a key objective. The experience over the past 16 years in the Special Session had shown that the work on the ASP proposals was a challenging one. With respect to the latest set of proposals, she doubted that they would bring Members any closer to common ground or even agreement. Her delegation's impression was that these proposals did not seek to build on the substantive discussions from two years ago in the lead up to Nairobi. Nor did they appear to be effectively addressing the issue of differentiation within the large and very diverse group of developing countries. There was an assumption, to which Switzerland disagreed, that the existing rules of the WTO tended to prevent developing countries from experiencing economic development and from adequately participating in global trade. The proposals sought flexibilities that would potentially erect new barriers to trade that could be invoked unilaterally by a large majority of WTO Members, thereby undermining openness and predictability in the MTS. That was a perspective and an objective Switzerland did not share. Her delegation believed that WTO rules played an important role in creating stability and predictability, that they supported good governance and in general enhanced trade and economic opportunities. As evidenced by the World Trade Statistical Review 2016, growing domestic markets in many developing countries provided for new trade opportunities for Members which were less advanced in their economic development. South-South trade had shown stronger growth than North-South trade. In Switzerland's view, new flexibilities for existing agreements should, therefore, avoid undermining these positive trends and remain limited to clear cases of need, principally for LDCs. The Trade Facilitation Agreement (TFA) provided a valuable example of how S&D could be approached in an effective way. She said that her delegation remained ready to explore targeted solutions that addressed challenges faced by proponents' economies, where possible.

27. The representative of Norway said that while considering the revised proposals, Members needed to keep in mind past discussions in the Special Session in order to be as efficient as possible. In recalling the discussions on proposals relating to TRIMS, Safeguards, Subsidies and Countervailing Measures and Customs Valuation, to name a few, in the run-up to MC10 Members did not see eye-to-eye and, ultimately, the fundamental differences marred any chances of outcome at Nairobi. In the run-up to Nairobi, Norway had worked very closely with other Members in the Special Session in trying to identify areas of convergence on the then 25 ASPs. However, during the process, it soon became clear that Members had fundamentally different views on these proposals and were not necessarily convinced that derogations from existing WTO Agreements, or the creation of new decisions relating to those proposals was the best way forward. These differences from two years ago were not likely to have changed. Some of the statements made today had confirmed this perception. In order to be efficient and result-oriented, she suggested that Members quickly identify the areas in which convergence was most likely, and focus on those areas in the next meetings. In analysing the revised G90 proposals, Norway continued to have a particular focus on the LDCs and the challenges they faced.

28. The representative of Chinese Taipei stated that since receiving the ten ASPs from the G90, her delegation had started a process of intense discussions on all these important issues for developing country Members and the LDCs. One thing that Chinese Taipei had immediately recognized was that the proposals covered a very wide range of different issues and that the proposals were somehow not substantively different from the ones Members had discussed in 2015. As a preliminary comment, Chinese Taipei saw some positive elements in the proposals, such as those on LDC Accession. Her delegation looked forward to participating in the negotiations on the revised proposals and very much hoped that these proposals would constitute part of the development package in MC11.

29. The representative of Pakistan stated that the development dimension was essential for an inclusive, rules-based MTS. The ultimate goals of trade policy and trade rules were poverty reduction, growth, welfare and development that worked for all Members of the global economy. Therefore, a key message Pakistan wanted from MC11 was that development was there to stay. It was important that the MTS must deliver, particularly for the poorest and most marginalized. Paragraph 44 of the Doha Ministerial Declaration mandated the strengthening of S&D provisions in the WTO Agreements in making them more precise, effective and operational. Pakistan believed that S&D issues together with implementation issues were key to the development component of the Doha Development Agenda (DDA) and were rightfully given priority status in the Doha Ministerial Declaration. Unfortunately, despite intense hard work over the past 16 years, the negotiations so far had not led to outcomes that complied with the clear mandate of paragraph 44. The representative said that his capital was still analysing the proposals, but his delegation could see that there were many important elements in the ten proposals and looked forward to constructively engaging in future discussions.

30. The representative of Korea stated that S&D was an important element of the WTO instruments which could provide flexibilities needed by developing Members, especially LDCs, to integrate into the MTS. S&D was an exception to WTO disciplines which could be applicable only under well-defined conditions. Therefore, if any proposal could be detrimental to the rules-based MTS, it would not be possible for Korea to consider the necessary exceptions. Korea already had reiterated this principle in the discussions leading up to MC10. The revised G90 proposals did not fully reflect this fundamental principle or those discussions. This situation would still make efforts difficult, as Members could expect to face the same fault lines due to fundamental differences in S&D approaches. In order for the Special Session to proceed with discussions on S&D, the revised proposals should be built on the core principle that S&D should be provided only to the most needed Members, under well-defined conditions. The representative urged the G90 members to have a relook at their proposals in light of the concerns expressed by Members during the MC10 negotiations and again voiced today.

31. The representative of Hong Kong, China expressed her delegation's appreciation for the proponents' hard work in putting together the revised proposals. She stated that development was at the heart of WTO rules issues – a view that all Members shared. Hong Kong, China was a staunch supporter of a rules-based MTS. Her delegation took note that S&D provisions were an integral part of WTO Agreements, and had no doubt that making these provisions effective and operational was crucial in enabling least developed and developing Members to better integrate into the MTS. She hoped all Members could remain open-minded and flexible, and contribute to an

intensive, innovative and constructive discussion on the tabled proposals with a view to achieving concrete and meaningful progress at MC11.

32. The representative of Bangladesh said that he would like to confirm that all the G90 members, including the ACP Group, the LDC Group and the African Group had all been actively involved in the drafting process of the proposals and that is why it had taken so long to finally make a submission in the Special Session. The process had started in October 2016 and they had only been able to submit the proposals in July 2017. The perception held by some delegations that the proposals were only being pushed by a small group of developing countries was incorrect. In the proposals tabled by the G90, the proponents had tried to capture the work and the discussions that had taken place on some of these proposals before and during Nairobi. The G90 understood the concerns and had tried to address them, but it could be the way they had addressed them that did not reflect the way other Members thought these should have been captured. The problem might be in different ways of thinking between proponents and other Members. However, discussions in the Special Session could always help in finding common ground. Referring to the comments made by some Members that by seeking flexibilities in the tabled proposals the G90 did not want to integrate into the MTS, the representative asked for an explanation as to why they had that perception.

33. The representative of Thailand stated that now that the Special Session had a submission from the proponents, it was important that all Members considered them with an open mind.

34. The representative of China said that her delegation firmly believed that the development dimension was the key dimension of DDA negotiations, and improving S&D provisions was one of the most important issues in that context. China welcomed the joint effort made by the proponents to put forward the proposal with ten priority areas related to S&D. While China was still conducting consultations back in the capital, it was willing to work together with the proponents and other Members on the basis of those proposals, with a view to achieving positive outcome at MC11. Her delegation expected that the Members would engage in constructive discussions to address the issues and concerns specified by the proponents, on the basis of paragraph 44 of the Doha Ministerial Declaration, so as to make S&D provisions more precise, effective and operational. This could go a long way in enhancing the inclusiveness and mitigating the development deficit in the MTS.

35. The representative of Uganda said that the G90 members were willing and ready to engage with all Members. The reason why the submission of the proposals had taken so long, was because the G90 was a large diverse group and the internal coordination and consultative process to get everyone on board was a challenging task. The suggestion that it had been just a small group of Members which was interested in dragging along this process was not accurate. The G90 had gone through an intensive process at all levels in their own groupings. What the G90 needed to justify were the proposals they had put on the table, not how they had arrived at them. The suggestion that NGOs or think-tanks were behind these proposals was unfair and very biased. Recalling the past discussions on the cluster on industrialization, he stated that it had the least engagement. There had not been sufficient discussion on many of the proposals that the G90 had brought back in the recent submission. After having heard today different perceptions on how the developing countries and the LDCs could better integrate in the MTS, the proponents were at a loss. It seemed that there were entirely different perspectives about what integration into the MTS meant. Members were well aware of the G90's contribution to world trade and the challenges it faced. There was nothing new in those proposals that had not been built upon the historical context of the existing WTO Agreements. In those Agreements, there were instances of carve-outs and transition periods. Members needed to think as to what was the objective and purpose of those instruments, were the flexibilities provided to the weaker Members sufficient as well as to what extent they had been used and had been beneficial? He went on to add that the point about differentiation was well understood by the proponents, but he was not convinced that such a systemic issue should be dealt with within the Special Session. This issue should involve everyone, horizontally within the WTO, so the G90 did not intend to resolve it here. What the G90 had tried to do was to narrow down the scope of application.

36. The representative of Indonesia stated that her country believed in the importance of S&D especially for developing countries and LDCs and found that some elements in the proposals would contribute positively to helping the proponents in achieving their development aspirations.

37. The representative of Cambodia said that her delegation took note of the comments made, and expected to have a detailed and substantive reading of each proposal. Her delegation would consult and reach out to other Members in different configurations to bilaterally and plurilaterally discuss the proposals.

38. The representative of the United States seconded Canada's proposal that the discussions be held in a formal mode where Members could have a record of the views expressed.

39. The Chairperson stated that Members broadly welcomed and supported further discussions in the Special Session based on the G90 proposals. She noted that there were new proposals in the areas of transfer of technology and LDC accession. Some Members felt that the proposals were on the same trajectory as was in the lead up to Nairobi and that, as such, the discussions were doomed to fail. Yet some others favoured a new approach. She viewed that there should be at least one detailed reading of the proposals. The first reading should be completed no later than mid-October. Thereafter, Members would be able to collectively assess the situation and decide on how to proceed. She encouraged Members to consult among themselves and try to find common ground on the way forward. Members must be willing to talk and listen to each other. Flexibility, accommodation and political will would be key successful outcome in this area for MC11. She also noted that one Member had proposed that the discussions on the proposals be held in a formal setting. She stated that she was ready to work in any manner the Membership was comfortable with.

40. The Special Session took note of the statements made.

41. Before suspending the meeting, the Chairperson announced that the next meeting would be held on 14 September 2017 at which the Special Session would begin a proposal-by-proposal reading. The meeting would be held in formal mode.

C. OTHER BUSINESS

42. No issues had been brought under Other Business.

43. The meeting was suspended.

RECONVENED SESSION (14 SEPTEMBER 2017)

44. The 52nd Special Session of the Committee on Trade and Development was reconvened on 14 September 2017.

45. The Chairperson stated that that at the meeting on 19 July 2017, the proponents had introduced their revised S&D proposals contained in document JOB/TNC/60 – JOB/DEV/48 and had provided a brief rationale on each one of them. At that meeting, Members had offered preliminary views and general comments on the proposals. The meeting was suspended with the understanding to reconvene on 14 September to start a first substantive reading of each proposal in a formal setting. She had also hoped that Members would constructively engage in the discussion on the proposals with a view to finalizing concrete S&D deliverables by MC11. Members had a lot of work ahead of them and the time was not on their side. With only ten weeks up to the end of November to identify deliverables for the Ministerial in Buenos Aires, the Special Session would need to work hard with one single objective of making concrete progress, so as to be able to deliver a positive outcome at MC11. Therefore, she urged Members to be succinct and task-oriented in their interventions. Thereafter, the Chairperson proceeded to discuss the proposals sequentially in the order of the numbering of the proposals tabled by the proponents. She also stated that her aim was to complete the first reading of all proposals by the middle of October 2017.

46. The representative or Rwanda made a general introduction of the proposals. He recalled that the G90 was composed of the African Group, the LDC and the ACP Group. The three Groups had an elaborate internal consulting process in agreeing to common positions and in arriving at decisions. The G90's objective in drafting the proposals contained in document JOB/DEV/48 - JOB/TNC/60 was to agree trade policy instruments that promoted structural transformation, diversification and industrialization in the proponents' economies. In the

G90'ssubmission, the G90 had suggested an approach that would serve the needs of its people in terms of addressing challenges as a result of high levels of de-industrialization, poverty, low income and unemployment, particularly among the youth in their constituencies. In Africa, 54% of the population in 46 countries was still living in poverty, one third of young people were unemployed, another third were vulnerably employed, and only one of every six was in wage employment. While 10 to 12 million of the young entered the work force each year, only 3.1 million jobs were created. However, UNECA had suggested that by transforming Africa's mineral export volume by just 5% before export, it could increase 5 million jobs per year. This was where S&D came into play.

47. Recalling the Ministerial mandate on S&D in paragraph 44 of the Doha Ministerial Declaration, he stated that the Ministers had agreed to review all S&D provisions with a view to strengthening them and making them more precise, effective and operational. While Members agreed on the importance and need for development in developing and LDCs' economies, they seemed to have different perspectives on what exactly the concept of development meant and how it could be achieved. He invited each Member to ask itself the following questions in considering the tabled proposals. How does its intervention address the priority challenges hindering developing countries, in particular LDCs and low-income country Members from participating in the MTS effectively? Does it have economic value in terms of promoting trade and development interests of LDCs and vulnerable economies? How does the intervention aim at increasing trade opportunities of developing countries, LDCs and low-income country Members? How does it contribute towards improving the effective delivery of technical and financial assistance or Aid for Trade? Does it provide development policy flexibility of action and use of policy instruments such as infant industry protection and industrialization? He went on to state that in fulfilling the mandate of paragraph 44, proposals must be drafted in legally binding language and not in best endeavour language, and must contribute towards addressing the specific challenges Members faced. They must be precise, accurate and specific, effective and operational. The Special Session should avoid sliding back into the rhetoric and circuitous discussions of 2015 and strive to find common solutions that would ensure the credibility of this organization in the eyes of those who felt that they had been losers.

48. Introducing the G90 proposal on GATT Articles XVIII A and C, the representative of Bangladesh stated that Article XVIII was the only Article in GATT which allowed certain developing countries, more specifically, the countries referred to in paragraph 4(a), to introduce traditional trade policy measures for economic development. During the Tokyo Round Contracting Parties to the GATT agreed to introduce some procedural changes in order for allowing paragraph 4(a) developing Members to introduce these measures soon after the notification without going through stringent procedures. The current proposal on Articles XVIII A and C intended to bring clarity in the process after introduction of the measures. This proposal was put forward by the G90 in December 2015 after extensive consultations on the initial proposal on the same Article in July 2015. However, Members did not have enough time to discuss that proposal in the run up to and during Nairobi. He went on to state that in line with the 1979 Decision paragraph 4(a), developing Members could notify and introduce the measures under Articles XVIII A and C in order to attain certain development objectives. It was the proponents' understanding that introduction of such measures for a product, which was included in the schedule of the introducing Members might affect the interests of Members having a substantial interest or principle supplying interest in that product. Therefore, the revised proposal suggested that the Member introducing the measure would, upon request, immediately enter into consultations with the Members having substantial interest or principle supplying interest in the product concerned. Such consultation would allow the Members concerned to reach an agreement and if such agreement required rebalancing the schedule, the introducing Member would be allowed to make necessary modification in the schedule, which would come into effect five years after the introduction of the measures. In case, after consultations, no agreement was possible, the proposal envisaged the possibility of retaliation but only after five years of the introduction of such measures. The five-year period had been proposed in light of the consideration that measures were taken to achieve certain development objectives. He also referred to the Agreement on Safeguard Measures that contained similar provision for retaliation after three years. In further explaining the rationale of the G90 proposal, he said that due to low level of development and lack of adequate human and financial resources, the Members referred to paragraph 4(a) were not in a position to resort to any other provisions in the WTO Agreements such as safeguard measures or any other contingency measures in order to ensure development of certain industries. For these countries, Article XVIII Sections A and B are the only options to ensure development of particular industries. However,

since 1995, efforts to invoke these provisions by any developing country Member could not yield a positive outcome due to procedural requirement. The proponents hoped that bringing minor changes in the procedures, as suggested in the revised proposal, could make the provision effective, operational and provide legal basis for developing countries to accord much needed protection to their industries. In this light, the proponents hoped that Members would constructively discuss the revised proposal tabled in JOB/DEV/48 – JOB/TNC/60. The proponents would be happy to respond to any questions from the floor.

49. In expressing their readiness to engage constructively on development issues, in particular those concerning the LDCs, the representative of the European Union stated that any discussion on the proposals should be on the basis of an analysis that clearly explained where specific problems lay and justified specific courses of action. In that respect, the EU delegation had encouraged Members to work on realistic proposals, taking into account the views and concerns expressed with regard to previous S&D proposals. As such, his delegation would like to avoid repeating the hollow and frustrating debate that led Members to an unsatisfactory outcome on this topic at the Ministerial Conference in Nairobi. The EU's reaction to the proposals on the table remained that of disappointment. The first meeting in July had revealed clear differences of views between Members as to how to deal with S&D. More specifically, the revised proposals did not improve enough on the sweeping, one-size-fits-all carve-outs that the Special Session had discussed in the past. The EU held a firm view that the proposal did not serve a real developmental objective. Members needed to have a deeper and more fundamental conversation about how trade could be an engine to generate development. He went on to state that since the last meeting of the Special Session in July 2017, the EU had met with the proponents and had some constructive conversations, at which both sides had the opportunity to listen to each other's views and concerns. On the EU's part, he explained why it felt that, with the best of intentions, this negotiating process had little chance of succeeding on the track that it had been put on with these proposals. By saying so, he said that the EU did not intend to trivialize the development challenges that some developing countries and especially the LDCs faced in being competitive and in their efforts to integrate into the global trade. The EU firmly believed that the WTO rules and the MTS were the best insurance to achieve a level-playing field. Having said that, his delegation remained open to discussing difficulties and challenges that any Member might experience in applying WTO rules or the existing S&D. In such cases, those Members facing those challenges should bring forth concrete case studies and examples that highlight specific challenges, constraints and needs. He went to make three key points: (i) that deviating from existing commitments and rules, should be the exception – not the rule; (ii) fundamental principles of the WTO such as MFN and national treatment must be preserved; and (iii) the different level of industrial, trade and developmental situations of WTO Members would need to be reflected in any proposal. In assuring that the EU would continue to engage on the important issues flagged in the proposals, the representative of the EU hoped to have a rational conversation based on facts and concrete examples of the challenges that the proponents faced and aimed to resolve through these proposals. He indicated that his delegation would be seeking clarification and posing questions to better understand the rationale behind the proposals and also provide food for thought to the proponents when considering next steps. He said that his delegation would also like to suggest that the proponents seriously reflect on alternative and realistic measures that might be needed to pursue their developmental aspirations and the reason why they had the perception that the WTO rules barred this path?

50. In concluding his statement, the representative of the EU asked the proponents to explain as to what was meant by the term "developing countries facing capacity constraints" which seemed to be relatively broad and open concept that could, in theory, be all encompassing.

51. The representative of Canada stated that her delegation was sceptical of restarting a process that was similar both in substance and approach to that of the previous years - one which had failed to deliver results, despite constructive efforts from all sides. Her delegation agreed with the delegations of Rwanda and the EU that Members had different perspectives of what was needed. She strongly encouraged Members, in particular the proponents, to consider alternative approaches in the work of the Special Session and to examine what meaningful contributions this negotiating body could make towards the integration of developing and LDC Members into the MTS. Having said that, she expressed her delegation's willingness to engage in an honest and fact-based review of the proposals. She went on to make a few general remarks and questions applicable to all the proposals. The overarching concerns that Canada outlined in 2015 on most of the proposals continued to be valid in the case of the revised proposals tabled now by the G90. These included, among others, a lack of meaningful differentiation between developing country

Members, obligatory technical assistance, broad carve-outs from the core WTO obligations, and limitations on Members' rights to regulate in the public interest. Her delegation sought answers to the following questions, applicable to all proposals: (i) what were the specific development challenges being confronted by the proponents that the proposals meant to address? (ii) how would the proposed policies contribute to sustainable and inclusive economic growth? (iii) how did the proposals intend to further integrate members into the MTS?

52. She recalled her delegation's statement made at the suspended July meeting of the Special Session, wherein her delegation had stated that it was not in a position to accept the proposals. To the extent Canada's fundamental concerns were not addressed and satisfactory responses to the questions posed were not provided, Canada's position would remain unchanged.

53. The representative of Japan stated that it was encouraging to hear that the G90 wished to further integrate into the MTS rather than to deviate from it, though his delegation still had doubts whether such intention was duly reflected in the revised proposals. The basic position of Japan on the new G90 proposal remained the same as that was stated in the meeting on 19 July 2017. Japan could not, and would never, agree to a blank cheque to limitless deviations from the existing WTO rules. Special and differential treatment should be considered, to the extent necessary, in exceptional cases for those developing country Members which really needed it. He also emphasized that the Special Session must first undertake a faithful and honest discussion on the specific needs and then find pragmatic solutions that best served those needs. Japan was ready to sincerely engage in discussions to seek possible solutions or remedies once the challenges faced by developing country Members were discussed. But for such constructive debate to start, Members needed to see real, fact-based cases of the challenges that the proponents faced. Without them, it would be really difficult for Japan to engage in substantial and meaningful discussions, as only such a process could facilitate in-depth analysis of the proposal and help to identify the need to further operationalize the existing provisions and procedures, or the possibility of any other solutions, such as a better and more efficient use of waivers. On the contrary, if the proponents aimed to continue negotiations taking a conceptual approach without a factual basis, Members would inevitably witness a repeat of circuitous debate which was a recipe for failure as was experienced two years ago. Elements such as permanent and unlimited carve-outs from the obligations in the existing WTO rules, and obligatory financial and technical assistance, were extremely difficult to entertain. In addition, the question of real needs and how Members should tackle them still needed to be addressed. Regarding proposal 2, despite the explanation provided by the proponents Japan held the view that there was a significant difference between the procedures in the decision of 28 November 1979 (L/4897) and what was tabled in the revised proposal. Although the referred document provided certain flexibility in the application of GATT Articles XVIII A and C,.the process was supposed to start with the notification, not the introduction of the measures. In the proposal, the process was intended to start with the introduction of the measure. He also said that the text of proposal 2 suggested that the retaliation measures were prohibited for the first three years. The proposal seemed to aim to provide for a blank cheque for developing country Members to deviate from the obligations under GATT. Furthermore, the sequence in paragraph d was not clear. Japan had difficulty in understanding the intent of paragraph 2.2 because it only seemed to repeat what was provided for in Sections A and C of Article XVIII of GATT. He also requested that proponents clarify the meaning of the expression "facing constraints", and the difference between "substantial interest" and "principal supplying interest".

54. The representative of Switzerland stated that her delegation had a long tradition of supporting the integration of developing country Members, and in particular the LDCs, into the MTS. Together with the Membership, Switzerland had consistently been seeking ways to increase trade opportunities for developing country Members and the LDCs. With regard to discussion on S&D in the Special Session, Switzerland had remained open for dialogue over the 16 year-long process. At the same time, it had repeatedly underlined the importance of the WTO as a rules-based and rules-setting Organization for global trade upholding predictability, certainty and stability - principles, which had proven to play a key role in enhancing trade and development opportunities. Past discussions had shown that any broad-based and extensive derogations from existing WTO Agreements and commitments would go against those principles and would not have the potential of gathering consensus among Members. She said that her delegation would like to reiterate its concern that the latest proposals did not build on the substantial discussions Members had in 2015, nor did they address the challenge of differentiation. In underlining the importance of integrating LDCs and developing country Members into global trade, she stated that this objective

could be achieved by following an approach that was in conformity with the principles of the WTO. Having said that, the delegation of Switzerland was ready to go through and comment on the individual proposals. Turning to proposal 2, she said that discussions prior to MC10 had showed little progress and no convergence had been found on this issue. The text proposed elements that would undermine predictability and it would also affect South-South trade. For her delegation, there was little room for agreement on the proposal.

55. The representative of Nigeria said that proposals should be discussed on the basis of their merits. Members should avoid airing reactions or making interventions that could derail the effective consideration of the proposals. He added that he could not imagine how MC11 could be deemed successful without a result in the area of development.

56. The representative of Cameroon sought clarification from the representatives of the EU and Canada on what they had meant by asking for concrete development problems the G90 members faced. Citing the example of Japanese companies building primary schools and providing technical assistance in this regard in Cameroon, he said that it was a sufficiently illustrative example of a concrete problem that Cameroon or other countries faced in the field of providing basic education.

57. The representative of the United States said that his delegation stood by the comments it had made at the 19 July 2017 Special Session meeting and asked for the full inclusion in the formal records of the meeting. In that meeting, he stated that the Special Session had a long and disappointing history - one that was driven by the efforts of a few Members and some non-governmental organization (NGO) advisors to impose a discouraging view of development, including on those Members in need of sustainable development. Those few Members were regrettably wedded to failed ideologies. They seemed unwilling to adjust to the opportunities around them, and profoundly unhappy that others who faced similar challenges might want to make different choices. They had bought into a mind-set that the path to sustainable development laid not in their full integration into the trading system, but in their de-integration. His delegation could not help reflecting on what could have been accomplished if those Members had taken the past two decades to implement WTO commitments, and to integrate into today's global supply chains. Unfortunately, those Members viewed, with suspicion, the commitments that other Members had made in acceding to the WTO. They were dismissive of the accession process and seemed uncomfortable with the results, which consistently showed that Article XII Members had outperformed the rest of the Membership in trade growth, even when China was excluded. His delegation was not surprised by the proposals but was nonetheless disappointed. For some time, his delegation had asked those few Members to make a good-faith attempt to be constructive by considering a new approach. It was clear that that invitation had not been accepted. Most of the G90 proposals had been tabled in very similar forms in 2015, and they never came close to achieving consensus. The few elements that had been added reinforced, rather than addressed, the US' concerns.

58. Regarding the new proposals, his delegation viewed that proposal 9 on Transfer of Technology was a non-starter. He added that his delegation would not discuss narrowing the mandate of the Working Group on Trade and Transfer of Technology (WGTTT). Similarly, proposal 10 on Accession of LDCs had the clear intent of turning the WTO accession process into a political one. The long-term impact of that would be that acceding LDCs would be denied the opportunity to use the accession process to reform their trade regimes and to make commitments that attracted investment and trade. That would hinder, not help, sustainable development in LDCs. The proposal also implied that the 2012 LDC Accession Guidelines were not working, which his delegation flatly disagreed with. In the five years since the guidelines were agreed by consensus, five LDCs had joined the WTO, compared to just four in the ten years prior to 2012. Currently, another three LDCs were enthusiastically engaged and making progress on the accession front, and several more were showing strong interest.

59. The representative stated that if accepted, the ten proposals would initiate an immediate race to the bottom. If a subset of Members was right to have a permanent carve-out from previously agreed rules, every other Member would demand to receive the same. That would fuel more demands for carve-outs, and the cycle would repeat itself. Production might temporarily increase, but only until the inevitable backlash, marked by an avalanche of subsidies, local content rules, and other regressive measures would hit global economy. This would be followed by efforts to shut off market access. It was hard to see how the proponents themselves could expect that the proposals would achieve consensus. His delegation regretted to say that the goal appeared to be

to pressure the Chairperson and Members into a process that would provide a platform to press the view that the WTO was anti-development and ineffective and to advance an image of dysfunction and failure. His delegation did not share this goal, and would not participate in an effort to achieve it. His delegation would not engage on the tabled proposals, beyond what it had stated at the current meeting. They were not a basis for work, and the United States could not conceive of any process that would allow for a productive discussion of these proposals.

60. He added that the United States would not engage further on the tabled proposals since in his delegation's view they did not form a sound basis for work, and no amount of tinkering would help to get a result.

61. The representative of Norway took the floor to state that his delegation was pleased to note that G90 has narrowed down the number of proposals to 10 in their new submission. It had become clear during the negotiations leading up to MC10 in Nairobi that Members had fundamentally different views on the best approaches for the integration of developing Members, in particular the LDCs into the MTS and whether there was a need to derogate from existing WTO Agreements or create new decisions to achieve that goal. The views from two years ago did not seem to have changed. In that context, he noted that several of the current proposals were not materially different from those on which Members spent enormous time in 2015. As such there was little possibility that the revised proposals could gain consensus. Norway had been and would remain focused on discussing and exploring solutions faced by the LDCs. In Norway's view, Members should quickly identify areas in which convergence was more likely to achieve and focus their work on them. Commenting on Proposal 2, the representative of Norway said that although the proponents had explained that their intention was to seek clarity on the procedures in the Decision of 28 November 1979 (L/4897), yet the proposal seemed to considerably expand the scope of Article XVIII and the decision referred to above.

62. The representative of the European Union, in response to the intervention from the delegation of Cameroon, clarified that in his earlier intervention he had sought clarity from the proponents on the specific development measures that they wished to pursue, but were barred to do so by a particular provision in the WTO Agreements, and how those measures would promote development in that particular country and other developing countries. For example, he would like to know how suspending TRIMS obligations or allowing a BOP measure for five years would help a country in addressing specific challenges.

63. The representative of Australia said that his delegation very much supported discussion on trade and development. Assisting developing country Members, in particular the LDCs, in their efforts to better integrate into the MTS was a priority for his delegation. Flagging his delegation's concern with the revised proposals, he stated that some of the proposals submitted by the G90 sought exemptions from fundamental WTO rules, which in Australia's view was not in line with how, it thought, these Members could better integrate into the MTS. The current set of proposals was almost identical to the proposals that were comprehensively discussed ahead of MC10. He believed that revisiting those discussions would not be useful. For any discussion to be productive, Members would need to better understand developing country Members' concerns and challenges that they confronted with existing obligations in the WTO Agreements. In particular, his delegation wanted to understand how those agreements impacted Members' ability to implement measures necessary for development. On proposal 2, he sought to have greater clarity on the phrase "Members facing constraints".

64. The representative of Rwanda thanked Members for their active engagement and requested that the questions asked by Members should be made available, through the Secretariat, in written form so that the G90 could carefully reflect on them and come back with responses and clarifications at the next meeting of the Special Session.

65. The Secretariat took note of the request.

66. The representative of Uganda introduced proposal 1 relating to the Agreement on Trade Related Investment Measures (TRIMS Agreement), He stated that trade-related investment measures (TRIMS) when used in conjunction with other measures, such as local content/performance requirements and technology transfer requirements played a vital role in the industrialization process. Indeed a number of developed Members had used them on their path to

industrial growth and development. He stated that Article 4 of the TRIMS Agreement allowed developing country Members to "deviate temporarily" from the provisions of Article 2 to the extent and in such a manner as the BOP-related provisions in Article XVIII permitted the Member to deviate from the provisions of Articles III and XI of GATT 1994. Article 5.3 of TRIMS Agreement gave the Council for Trade in Goods (CTG) the authority to extend the transition period for elimination of TRIMS that were notified by developing country Members including the LDCs that demonstrated particular difficulties in implementing the provisions of the TRIMS Agreement. The CTG was required to take into account the individual development, financial and trade needs of the Member in question. He explained that the challenge with the current provisions was that the flexibility provided in Article 4 for developing country Members to deviate from Article 2 was limited to exceptions allowed under GATT Article XVIII and the related provisions therein on BOPs. The procedures and requirements for invoking infant industry measures and taking BOP measures were very stringent. This basically meant that the flexibility provided in Article 4 of the TRIMS Agreement was limited by stringent requirements under Article XVIII. In addition, the current provision did not clearly define the term "free to deviate temporarily". A number of developing county Members, including members of the G90, had been questioned, either in the Committee on TRIMS or under the dispute settlement understanding (DSU) when they took TRIMS that were intended to promote their industries and determined that those measures were necessary to accelerate industrialization.

67. He went on to explain that these issues were also covered under "Outstanding Implementation Issues (JOB(02)/152/Rev.1). Tiret 39 of this document noted that "Developing countries shall be exempt from the disciplines on the application of domestic content requirement by providing for an enabling provision on Articles 2 and 4 to this effect". Although the Hong Kong Decision in 2005 did allow some flexibility to LDCs in the case of TRIMS, the LDCs could not notify the TRIMS inconsistent measures pursuant to the Hong Kong Decision, and might face similar challenges as they adopt measures to accelerate industrialization. According to the United Nations Department of Economic and Social Affairs (2012), the most common issue of non-compliance with a WTO obligation raised by respondents was related to notifications. Some LDCs acknowledged that the non-notification of TRIMS measures was due to a lack of familiarity with, or understanding of the TRIMS Agreement. Most LDCs surveyed, indicated that they had not eliminated any measure that was inconsistent with the TRIMS Agreement during the transition period. The other challenge was that the Hong Kong Decision would expire in 2020 and the situation of LDCs would not have changed much.

68. He said that in order to address these challenges, developing countries, in particular LDCs, and low-income countries, should be allowed to introduce TRIMS inconsistent measures as provided for in Article 4 of the TRIMS Agreement but without being constrained by GATT Article XVIII. This would enable G90 members to, among other things, promote domestic manufacturing capabilities, stimulate transfer of technology, promote domestic competition and correct restrictive business practices, among other things. They should be given a six-month period to notify new TRIMS. The measures would be for an initial period of 15 years in order to ensure that there was adequate time to promote industrialization and economic transformation in developing country Members and LDCs. Given that LDCs spend a lot of time and resources negotiating extensions, there was a need to exempt LDCs from TRIMs until they graduated from LDCs status. This would create investor certainty.

69. It ought to be recalled that TRIMS were used by a number of countries to industrialize and support their domestic industries. Today however, there were many WTO cases and discussions in the Committee on TRIMS involving local content requirements and which showed the challenge that developing country members had with the prohibition on local content requirements. During the period from 1995 to 2015, of the 29 items considered by the Committee on TRIMS, 20 items related to measures of developing country Members, and the overwhelming majority (28/29) of these measures included issues relating to local content. Although in some cases, they also included other aspects. By 2015, 41 dispute settlement proceedings had been initiated, which included a claim under the TRIMS Agreement. Of these 41 proceedings, 27 involved a developing country Member as a respondent, and 25 out of 27 - about 93% - and included an allegation relating to local content. This showed that a number of developing countries still required flexibility to use local content requirements to promote upstream and downstream linkages with the local economy and achieve industrialization and economic transformation. Since a number of LDCs were beginning to put in place or were reviewing their industrialization policies, their interests needed to

be taken more fully into account than those of developing country Members in terms of using TRIMS to achieve their industrialization objectives.

70. History had shown that most developed country Members, while in the early stages of their industrial development, employed protective industrial, trade and technological measures including local content. Local content could assist the development of weak local industries, facilitate technology transfers and thereby close the huge technology gap between many of these countries and the more developed ones. This could potentially increase domestic production and job creation. Local content requirements could help to protect infant industries and curb the market power of multinational companies and direct it towards developing linkages for the range of supplies sourced locally and local value addition. For example, promotion of linkages was very important in the mining sector where in a number of African countries, the mineral value chain was characterized by weak linkages and mines largely relied on imports, while local businesses were not supported in entering the supply chain. The agro-processing sector was another area where the G90 members wanted the flexibility to use local content requirements to promote agro-food processing. Linkages in this area within the local economy could have a positive impact especially on women who were mainly involved in agriculture.

71. The representative of India said that the proposal in paragraph 1.1 provides developing countries necessary flexibilities for implementing development policies intended to promote their industries. Developing countries and LDCs should be allowed to introduce new TRIMs such as local content development policies, in order to promote domestic manufacturing capabilities, stimulate the transfer of technology, promote domestic competition and correct restrictive business practices, among other things. The developing countries shall be allowed to deviate temporarily from the provisions of Article 2 of TRIMS and introduce new investment measures related to trade in goods and be given a six-month period to notify new TRIMS. He said that the proposal seeks an initial period that does not extend beyond 15 years in order to ensure that there is adequate time to promote industrialisation and economic transformation in developing countries. He said that India fully supported paragraph 1.1 of the proposal.

72. He went on to support paragraph 1.2 of the proposal and stated that it was specific to LDCs. He said that the proposal envisaged that the LDCs would not be obliged to implement, apply or enforce provisions of the TRIMS Agreement until they ceased to be an LDC. He also stated that the when the Hong Kong Decision would expire in 2020, the situation of LDCs would not have changed much. Therefore, there was need to exempt LDCs from TRIMs until they graduated from LDC status.

73. The representative of the European Union requested the proponents to explain the economic rationale for allowing all developing country Members, regardless of size, to introduce TRIMS-inconsistent measures for a potentially indefinite duration. He also wondered whether this was not equal to allowing for a permanent waiver from the TRIMS Agreement if the requests to renew temporary modifications were automatically granted.

74. The representative of Nigeria took the floor to state that repeated questions had been asked as to which Members were facing difficulties or had challenges that could necessitate the proposals. He said that these difficulties and challenges were not theoretical or abstract as these issues had been raised repeatedly in the TRIMS Committee, in the CTD and in Trade Policy Reviews. It was a fact that developing country Members, regardless of their size, were facing challenges. It was not hard to find instances where it was legitimate to say that the WTO Agreements constrained development policy in terms of domestic economic environments. The challenge was to see how those Members could get relief on the basis of these flexibilities.

75. The representative of Japan said that his delegation had serious concerns on this proposal since it sought to allow a wide range of developing country Members to apply inconsistent measures without any practical review mechanism. In the process of review of extensions of these measures, the CTG was only expected to accord the extensions. He also said that the objectives mentioned in subparagraph 1.1(a) were too broad and difficult to verify.

76. Recalling their statement made at the 19 July 2017 meeting of the Special Session, the representative of Korea said that his delegation was of the opinion that the S&D discussions should contribute towards the integration of developing country Members and especially LDCs into the

MTS. However, any deviation from multilateral trading rules should be strictly limited. With regard to the proposal on TRIMS Agreement, the delegation of Korea was afraid that it seemed to give developing country Members a broad discretion to deviate from the basic principles of rules-based trading system. The objectives of the sought deviations were neither sufficiently defined in the proposals nor there were any suggestions for appropriate review mechanism for such measures. He also sought clarification on what exactly was meant by the term "developing countries facing constraints".

77. The representative of Australia said that his delegation would like to know how the proponents would deal with the issue of differentiation, particularly how this proposal would apply to larger economies.

78. The representative of Switzerland said that in the run up to Nairobi, Members had had extensive discussions on the issues in paragraphs 1.1 and 1.3 of the proposal and they had shown no progress. The tabled proposal contained no changes from the text of 2015 and, therefore, her delegation saw very slim chance of success. In her delegation's view, such measures would discourage foreign investors. On the issue referred to in paragraph 1.2, Switzerland had, previously demonstrated willingness to address certain aspects and still remained so.

79. The representative of Norway stated that the proposal extended far beyond what was on the table in the last round of negotiations. It appeared very unlikely that it could be accepted.

80. The representative of Egypt introduced proposal 3 of GATT Article XVIII B. He stated that many developing country Members and LDCs had demonstrated declines in manufacturing and insufficient or a lack of growth that had devastated the potential for sustained industrialization, structural transformation of their economies and diversification. The end of commodity price cycle had negatively impacted the current accounts and financial markets, which might have a deep impact on future competiveness enhancing investments. Since the decline in commodity prices in 2014, revenues had not managed to keep up with expenditures and it had not been easy for adjustment to a diminishing inflow of capital. For example, over the past two years, the aggregate macroeconomic environment of Africa had worsened due to higher debt, higher public deficit and lower savings.

81. The BOP issues that reside at the crux of development - illustrated the intersection of trade and finance and revealed the relationship of a given economy to the international marketplace. The reasons for the BOP crises among developing countries stemmed from the basic obstacles that they faced in trying to become industrialized. A traditional cause of BOB crises was a sudden and severe increase in a country's trade deficit. Such an increase might occur, for example, if bad weather drastically reduced production of key export crops and export earnings. Another classic case was one in which a steep rise in oil prices dramatically increased a country's import bill. In recent years, the capital account side had become an increasingly frequent source of BOP difficulties for developing countries including LDCs. A sudden and sharp reduction of foreign investment, typically short-term portfolio investment, in domestic assets could also produce a sharp drop in demand for domestic currency relative to foreign currency, creating the same effect as a rapid rise in the trade deficit.

82. Article XVIII:B of the GATT 1994 established rules allowing WTO Members to impose restrictive import measures specifically in order to address BOP concerns. In recent times, the international economic order has gained considerable authority and coherence, in the context of a country applying quantitative restrictions, and through the close coordination between the WTO and the International Monetary Fund (IMF). The need was that the WTO rules should not pursue an unduly narrow understanding of the goals of the international economic order in the application of provisions of Article XVIII.B On BOPs, the main objective of the G90 proposal was to simplify the procedures for invoking BOP measures. The G90 had, among others, proposed to: (i) devise better guidelines under Article XVIII Section B to determine the adequacy of countries' reserves within the context of their economic development programmes, (ii) to suspend the right to retaliate against developing countries and LDCs when they took BOP measures under this Article; and (iii) that short-term financial flows should also be excluded while determining the reserves of a country, as they did not give an accurate picture of a country’s BOP position. In conclusion, he hoped that Members would engage constructively in making the relevant provisions in Article XVIII.B precise, effective and operational.

83. The representative of European Union asked whether the proponents thought that adding further discretion to the assessment of adequacy would not further complicate the achievement of consensus even for the application of existing provisions.

84. The representative of Japan stated that the substance of the proposal was contained in paragraph 3.2. He wondered why the proponents had included paragraph 3.1. He also asked for clarification regarding the technical differences between the current proposal and the different versions of it that had been discussed in 2015.

85. While introducing proposals 4 and 5 on the SPS and TBT Agreements, the representative of South Africa said that the number of SPS measures, technical regulations and standards introduced by developed country Members were increasing significantly. For many developing country Members including LDCs, those measures, in most cases, acted as barriers to trade, that had the potential of impeding their export trade and their integration into the world trading system. A study by UNCTAD showed that developing countries encountered significant additional costs while adapting their production processes to comply with foreign regulatory measures and standards and that could lead to *de facto* discrimination against exports of those countries that faced difficulties to comply with the regulations in export markets. The incorporation of S&D provisions including on technical assistance in the SPS Agreement and the TBT Agreement was an acknowledgement that there were challenges faced by developing country Members in complying with SPS and TBT measures. Those provisions were meant to assist developing country Members in implementing those stringent requirements. On the contrary they had proved to be difficult to utilize. The S&D provisions in those Agreements lacked clarity and often involved complex procedural hurdles. All this had made it difficult for developing country Members to operationalize them effectively.

86. The G90 proposal on SPS and TBT aimed to provide clarity and suggested timelines with regards to the following areas of the SPS and TBT Agreement; reasonable time for making comments; consultations; and procedures to be followed by developing or LDC Member facing capacity constraints, that was or would be adversely affected by a proposed or final measure. She went on to explain the rationale of G90 proposals in these areas. The G90 had proposed that the reasonable time for making comments on any SPS measure or TBT measure notified by the developed country Members should be understood to mean at least 180 days for least developed country Members and developing country Members facing capacity constraints, before the adoption of the measure, which should commence with the circulation of the notification by the WTO Secretariat. Upon request, a longer period of time should be granted for least developed country Members.

87. On the issue of consultations, the proposal was that a developed country Member proposing an SPS measure, a technical regulation or standard "shall consult directly", at an early stage, with any LDC Member or developing country Member facing capacity constraints, exporting a product that would be covered by the proposed measure in order to take into account the special needs of those countries. Article 10.1 of the SPS Agreement required Members to take account of the special needs of developing country Members and in particular of the LDC Members. Similarly, Article 12 of the TBT Agreement provided for S&D of developing country Members.

88. On the procedures that should apply for developing country Members or LDC Members facing capacity constraints or that would be adversely affected by a proposed or final measure taken by a developed country Member, it had been proposed by the G90 that where the appropriate level of SPS protection or technical regulation or standard allowed scope for the phased introduction of measures, the phrase longer time-frame for compliance referred to in Article 10.2 of the Agreement on SPS Measures and also in paragraph 12 of Article 2 of the Agreement on TBT, "shall be understood to mean a period of not less than 12 months and 18 months respectively". This would allow LDC Members and developing Members facing capacity constraints to maintain opportunities for their exports. Where investments were required in order for an exporting LDC Member or a developing country Member facing capacity constraints to fulfil the SPS measures or technical regulation or standard proposed or applied by a developed country Member, the developed country Member "shall, provide financial and technical assistance required for compliance with the SPS measure or technical regulation or standard in order to enable them to maintain and expand its market access opportunities for the product involved as envisaged in Article 9.2". Similarly, in situations where the SPS or TBT measure were adopted in urgent circumstances, a developed country Member "shall provide a developing or least developed

country Member that is or will be adversely affected by the proposed or final measure compensatory adjustment such as to ensure maintaining the market share of the developing or least developed country Members in their export markets and supporting the technological and infrastructural capabilities of the concerned developing or least developed country Member". For SPS measures - importing developed country Members "shall not ban the importation and marketing" of products originating from a least developed country Member and developing country Member facing capacity constraints based on the rejection of shipments from one or a limited number of suppliers from that Member.

89. She expressed hoped that members would engage constructively on the proposals with a view to making these provision precise, effective and operational.

90. The representative of Nigeria stated that "capacity constraints" did not need a definition, because it was obvious, not only in terms of notification challenges but also on implementation of the SPS Agreement.

91. The representative of India said that even though the SPS and TBT Agreement fully acknowledged the particular difficulties and challenges that developing country and the LDC Members might face in the implementation of such technical agreements, the special needs of developing Members and LDCs had not been fully taken into account when preparing and applying SPS and TBT measures. Even in instances where the appropriate level of SPS and TBT protection allowed scope for the phased introduction of new SPS and TBT measures, developing and LDC Members had not been accorded longer time-frames for compliance as there was no clarity on the concept of longer time-frame. With the decline in tariffs, there had been a proliferation of non-tariff measures and non-tariff barriers. Products from developing country and LDC Members had increasingly been subjected to SPS and TBT measures which had effectively prevented them from entering developed markets. Against this backdrop, India had found that the G90 proposals 4 and 5 were an important contribution towards reinforcing the development dimension of the Agreement, and making these provisions more precise, effective and operational.

92. Commenting more superficially the SPS proposal, the representative of India continued to state that the proposal on SPS sought to enhance the comment period to 180 days for LDCs and developing country Members facing capacity constraints. The developed country Members, upon request, were to consult the developing partners at an early stage, prior to the adoption of the measure. Developing and LDC Members would be accorded longer a time-frame of at least 12 months for compliance with the measures. He said that his delegation supported the proposed obligation on the part of the developed Members to provide financial and technical assistance so as to enable an adversely affected developing or LDC Member to maintain and expand its market opportunities. India also supported the proposal in paragraph 4.4, which stated that importing developed country Members would not ban the importation and marketing of products originating from a developing and LDC Member based on the shipments from one or a limited number of suppliers from that Member.

93. On the TBT proposal, he stated that the first paragraph of the TBT proposal sought to enhance the transparency provisions of the TBT Agreement for the benefit of the developing country and LDC Members. It included the provisions relating to notifying a TBT measure and providing a comment period. The proposed requirement of notifying all TBT measures by the developed Members would assist the exporters of the developing country and LDC Members in becoming aware of the contemplated measures on goods of their export interest, so that they could appropriately adapt to the new requirements well in time. The other proposal in the paragraph for an enhanced comment period of 180 days would also be of great value for the developing Members. Such Members, due to their capacity constraints, faced tremendous difficulties in preparing comments within the existing period of 60 days.

94. The second paragraph sought to ask a developed Member, proposing a TBT measure, to consult a developing country or LDC Member directly on request. This proposed element was well aligned with existing principles which called upon the developed Members to safeguard the interests of developing country and LDC Members when adopting trade measures. The third paragraph was a special provision for those developing country and LDC Members which would be adversely affected by a TBT measure. It also called developed country Members to provide financial and technical assistance so as to enable an adversely affected developing or LDC Member

to maintain and expand its market opportunities. India supported all elements of the proposals 4 and 5.

95. The representative of the European Union said that similar proposals, perhaps less ambitious, on SPS and TBT Agreements had been discussed in the past. Her delegation had concerns and questions on the proposals discussed in 2015. She asked if there was a definition of the term "capacity constraints" used in the proposals and also wondered as to what was the rationale behind proposing 180-day period and why was the 60-day period insufficient. She also asked whether there were instances in which extensions in the period for comments had been requested but not granted. Her delegation wanted to know why the proposal was limited to developed country Members, only given that developing country Members also adopted SPS and TBT measures. She also had questions about the thresholds for the obligation and whether the amount of exports was somehow defined. She asked for clarification of the terms "adversely affected", "compensatory adjustment", and on the obligation to provide mandatory financial and technical assistance.

96. The representative of Australia stated that his delegation's questions referred to both SPS and TBT. He asked for clarification on the phrase "Members facing constraints" and the rationale for suggesting the 180-day period.

97. The representative of Switzerland said that in 2015 extensive discussions had taken place on both of the proposals. Fundamental understanding between Members had not changed and neither had Switzerland's position. She said that the intention of the SPS Agreement was to allow Members to introduce measures to protect human, animal and plant health and life and that economic considerations entered only insofar as these measures had to be the least trade restrictive. The introduction of economic compensations in the proposal on SPS went against the protective spirit of the Agreement. She added that due to parliamentary processes and restraints, her delegation was not in a position to enter into across the board and long-term commitments on technical assistance in an international agreement. About the 180-day period, her delegation was surprised to see that the proposal went beyond what had been on the table in 2015.

98. The representative of Norway said that his delegation had noticed that in both proposals the comment period had been proposed to be double from what was proposed in the proposal discussed in the run-up to Nairobi. This was an example of how proposals had been reformulated in a way that widened the gaps in Members' positions instead of narrowing them.

99. The representative of New Zealand said that her delegation supported the integration of developing countries into the MTS, but for New Zealand it was extremely important to ensure that the proposals this Committee considered were consistent with this goal. In terms of proposals 4 and 5, she said that her delegation had expressed its concerns in 2015. New Zealand agreed with Switzerland that the overriding objective of the SPS Agreement was protecting health.

100. The representative of Japan said that the proposals were more ambitious than the ones that had been discussed ahead of MC10. He noted that apart from the comments other Members had made about the doubling of the comment period, in paragraphs 4.2 and 5.2 of the proposals on SPS and TBT, respectively, the phrase "upon request" that had appeared in the 2015 proposals had been removed. This meant that in the new version developed Members would be expected to approach developing Members even in the absence of an expression of interest. He wanted to hear the rationale for removing the phrase "upon request" from the revised proposals. His delegation also had strong reservations about any proposal that would seek to make technical assistance compulsory.

101. The representative of Nigeria made reference to a study by the Secretariat evaluating questionnaires regarding challenges in the implementation of the SPS Agreement. He also made reference to Articles 9 and 10 of the SPS Agreement which addressed technical assistance and S&D for developing Members, respectively. These provisions were insufficient and inadequate for developing country Members and did not help its proper implementation. Furthermore, the developing country Member lacked the capacity to examine all the notifications received.

102. The representative of Cameroon took the floor and proceeded to introduce proposal 6. He recalled that the Secretariat had identified and listed 148 S&D provisions contained in the WTO

Agreements in documents WT/COMTD/W/196 of 14 June 2013 and WT/COMTD/W/219 of 22 September 2016. Part VIII, Article 27 of the Agreement on SCM was dedicated to developing country Members. According to the listing given in the above referred documents, the Agreement on SCM contained 16 S&D provisions falling into three categories: (a) two provisions under which WTO Members must safeguard the interests of developing country Members (paragraphs 27.1 and 27.15); (b) ten provisions establishing flexibility of commitments, measures, and the use of means of action; and (c) seven provisions relating to transitional periods. This showed that the Agreement on SCM did provide S&D and the negotiators of the Tokyo Round had foreseen what level of flexibility was needed on this issue in favour of developing Members. Article 3.1 of the Agreement on SCM stated that subsidies contingent upon the use of domestic over imported products alone or among other conditions were prohibited. Article 27.3 of the Agreement provided a transition period of five years for developing country Members and eight years for LDCs in the context of this prohibition. The discussion among Members that took place in 1999 for extension in the transition period did not result in a consensus. Therefore, Article 8 had fallen into disuse.

103. At the Doha Ministerial Conference, the Ministers took a decision on the use of non-actionable subsidies and directed the Committee on Subsidies and Countervailing Measures to extend the transition period for certain developing countries and urged Members to exercise restraint and not to challenge the measures set out in Article 8.2 of the Agreement on SCM pending negotiations on this issue. The measures envisaged in Article 8.2 were precisely the measures implemented by developing Members to achieve legitimate development objectives, such as regional growth, financing of technological research and development, diversification of production, and the development and application of environmentally sound production methods. The basic problem with the issue of subsidies was that despite clear direction by the Ministers, the developing country Members needed to have an authorization from the Membership to use subsidies in the absence of which there was always a danger of legal action. The Committee could not achieve consensus on this issue. As of today, the relevant provision stands expired. The G90 proposal aimed to give a second life to non-actionable subsidies and to ensure that Article 27.1 of the Agreement became meaningful and played an important role in the industrialization and economic development programmes of developing country Members. He added that Article 27.1 recognized that subsidies "may" play an important role in the economic development programmes of developing countries. However, the challenge was that the use of the word "may" in Article 27.1 did not fully recognize the role played by subsidies in industrialization and economic development. Nor was it clear whether the subsidies implemented by developing country Members, be it LDCs, low-income countries or SVEs, in order to achieve legitimate development objectives, such as regional growth, financing of technological research and development, diversification of production and the development and implementation of environmentally sound production methods, would be considered as non-actionable subsidies. The G90 had proposed that subsidies provided by developing country Members to achieve these legitimate development objectives, such as regional growth, financing of technological research and development, diversification of production and the development and implementation of environmentally sound production methods, be considered as non-actionable subsidies. This flexibility for the weaker WTO Members to use these specific subsidies was important to get out of the situation that these Members were experiencing today. The focus of G90 proposal was to seek export-oriented flexibility rather than an import-oriented one. The proposal introduced a reference to Annex VII of the Agreement on SCM. In doing so, the G90 had the subsidies related to exports in section 3.1.a in mind. The proposal established a link between subsidies and the development of manufacturing capacity for exports. In other words, the capacity being sought was not for the local market, instead it was geared towards the development of production capacity of goods for export. Nor was it the intention to have the flexibility to use these subsidies from the perspective of local content. This would give G90 members the opportunity to develop their means of production as well as to integrate into international trade and participate at least in regional value chains if global value chains were further away. The G90 would assure Members that the intention behind the proposal was not to disintegrate from international trade. On the contrary, G90 members remain fully committed to achieve deeper integration with building much needed production capacity for goods destined for the international market, while improving their economic structures. The ultimate goal was to break the structures of poverty, provide jobs and create opportunities for their people.

104. He invited Members' attention to the fact that the proposal did not intend to restrict imports to increase local production against imports. Most recent figures showed that the trade deficit in G90 economies had steadily increased. According to WTO statistics, from 2010 to 2016, the share of LDCs decreased from 1.1% of world trade to 0.9%. In the same period, the imports went from

1.1% to 1.4% using the same scale. Other developing country Members, without industrial capacity, were experiencing similar situations. According to the WTO Press Release 768 of 7 April 2017, world trade was increasing in volume and had declined in value as a result of fluctuating exchange rates and declining commodity prices. According to studies by the International Chamber of Commerce, G90 exports increased in volume and not in value because of the low rate of transformation of its products which suffered structurally from the problem of production surpluses. Also, the added value remained very low. In the case of Cameroon, according to data from World Development Indicators, since the end of the 1960s, the share of industrial production in Cameroon's GDP had increased slightly from 20% in 1967 to 28% in 2015, while the level of contribution of manufacturing production to GDP had remained almost unchanged, around 10% of GDP. This situation had persisted for the last 50 years. In a comparable country like Zimbabwe, for example, the share of the manufacturing sector declined from around 17% to 12%. As an indication of the level of industrialization, in developing country Members, barely 30% of agricultural production was industrialized, whereas in high-income country Members, this figure rose to 98%. Also, industrialization had a multiplier effect on employment, with the creation of 2.2 jobs in other sectors, each time a job was created in the manufacturing sector.

105. In addition, the G90 did not seek a blank cheque for use of non-actionable subsidies. The proposal needed to be read and considered with an open mind. Developing country Members that were not in need would not ask for the flexibility. Only those developing country Members facing difficulties would utilize the flexibility. This exactly was the meaning of paragraph 6.2 in the proposal. Members needed to note that the candidate developing Members for the use of flexibility would need to demonstrate: that they had failed to develop or diversify their existing industrial capacity in a more open global economy and had experienced stagnation or decline in the share of manufacturing in their gross domestic product; that they were still vulnerable to external trade and financial shocks; that they had suffered from the steady decline in commodity prices; that the share of the manufacturing sector in their GDP had decreased while that of services had not increased significantly; that they had failed to bridge the digital divide with other economies; and that national industries were struggling to keep pace with key technological breakthroughs. The proposal aimed to enable developing country Members fulfilling the above conditions to use subsidies contingent on the use of domestic goods on imported products, in order to add value to their natural resources and to diversify their production and exports. Flexibility to link export subsidies to capacity development was crucial for developing country Members and especially for the weakest. Industrialization and the addition of value were the basis of the drive for negotiations among, for example, African country Members that wanted to create a continental free trade zone. The G90 proposal was not even open-ended. The flexibility being sought was limited in time - eight for developing country Members and ten years for LDCs. This would allow G90 members to correct a structural anomaly that had handicapped their economies.

106. The representative of India took the floor to state that India fully supported the G90 proposal as subsidies played an important role in industrialization and economic development programmes of developing country Members and the LDCs. The proposal in paragraph 6.1 sought to provide clarity on the use of subsidies implemented by developing country Members facing certain constraints described in paragraph 6.2. The objective was to achieve legitimate development goals, such as regional growth, technology, research and development funding, production diversification and development and implementation of environmentally sound methods of production. There was *proviso* that such subsidies must fall under Article 8 of the Agreement. These subsidies would be considered as non-actionable subsidies for a period of eight years for developing country Members facing capacity constraints and ten years for LDC Members. The proposal in paragraph 6.4 created space for developing country Members listed in the Annex 7 of the Agreement on SCM to employ subsides based on local content with a view to adding value to their natural resources and diversifying their production or export base.

107. The representative of the European Union said that subsidies were now at the heart of many difficult issues that Members were discussing in other fora. It would be very important to be clear about the measures that could result from the G90 proposal as the consequence of such a proposal would be a significant exemption for LDCs and developing country Members from the core subsidy disciplines with conditions that could be met quite easily. She asked as to why the proposal was conditioned on Article 8, which had expired. Members needed to reflect carefully on the legal implications of including references to the requirements of an expired provision. She also asked how proponents had reconciled the open list of development goals in the proposal with the

closed list of Article 8, if the latter would be applicable, and how they saw the rest of the requirements of Article 8 applying. She further enquired as to what the reasoning was behind the criteria listed in paragraph 6.2 which defined developing countries as "facing certain constraints", and what was its relevance in defining "developing countries facing capacity constraints" found in other proposals.

108. The representative of Switzerland stated that in her delegation's view granting a major part of the WTO Membership *de facto* unlimited flexibilities regarding subsidies would be counter-intuitive. For example, the scope of the proposal in terms of Members' eligibility was too broad. She echoed the questions raised by the EU regarding Article 8 on actionable subsidies not existing anymore.

109. The representative of Japan echoed the concerns raised by the EU and Switzerland. He asked for clarification as to whether eligible Members would have to demonstrate that they had fulfilled the conditions listed in the proposal at the time of notification. He recalled the Hong Kong Ministerial Decision in 2005 on TRIMs, where no notification was made by LDCs on any TRIMs within the notification period due to the lack of capacity. He thought that when discussing notifications in this context, Members should pay attention to the capacity or lack thereof of developing country Members.

110. The representative of Venezuela said that his delegation considered that all the proposals in the document presented by the G90 represented a good contribution to the discussions on S&D. He wished to intervene especially to support G90 on proposal 6.

111. The representative of Cameroon said that as the delegation of Japan had pointed out, developing country Members had capacity problems, including in terms of notifications. The proposal took into account the provisions of both the TRIMS Agreement and the Agreement on SCM. The intention was that no provision should impede the activation of Article 8 that the G90 had requested, and that only Members that needed the flexibility would use it. They wanted to be able to export products that they did not yet export. Their exports depended on a few tariff lines and wanted to diversify their exports.

112. The representative of China requested that the written questions that had been posed during the discussion at the current meeting be made available to all Members.

113. The Chairperson asked Members to send written questions that they had posed on the proposal to the Secretariat so that these could be circulated to Members. This would facilitate meaningful discussion by Members in future meetings, in particular, it would help proponents to prepare responses to the questions.

114. The meeting was suspended.

RECONVENED SESSION (21 SEPTEMBER 2017)

115. The 52nd Special Session of the Committee on Trade and Development was reconvened on 21 September 2017.

116. At the outset, the Chairperson recalled that at the previous meeting of the Special Session on 14 September 2017, Members had begun a first substantive reading of the proposal in hand. Members had had fruitful exchange of views on the first six proposals. The discussions had allowed the Special Session to have a better understanding of the underlying issues behind each proposal and the concerns that some Members had. She hoped that the remaining proposals would also elicit positive and constructive engagement.

117. While introducing proposal 7 on Agreement on Customs Valuation (CV), the representative of Senegal said that despite efforts made over many years to modernize and strengthen their customs administration, and the technical assistance provided by Members of the WTO and the World Customs Organization, LDCs had continued to experience significant difficulties in implementing certain provisions of the Agreement on CV. The implementation of the Agreement on CV required, in addition to transpositions in national or communitarian positive law, pre- and post-clearance procedures, efficient information systems, databases in particular on values,

institutional reforms, efficient customs administrations and strengthening of technical and human capacities. In addition, the S&D provided to developing country Members in the form of a transitional period for implementation, technical assistance, and reservations did not fully address the specific needs of LDCs and their low level of development. LDCs were increasingly in need of foreign investments, especially internal investments to finance their development with a view to better integrate in international trade and global value chains. In this regard, domestic resource mobilization and the fight against illicit capital flows were a priority. The long-standing concerns of developing country Members and LDCs about significant loss of customs revenue due to under-valuation of imported goods remained current. Beyond the negative impact on public revenue and the ability of LDCs to finance their development, under-valuation also distorted the conditions of competition in local markets. Moreover, the application of alternative customs valuation methods in a strict order was burdensome, expensive and time-consuming for LDCs. It needed up-to-date information on the values of identical and like products, as well as information that was not readily available or required complicated calculations. Applying the computed value also required investigations in exporting countries as well as procedures that LDCs found difficult to implement due to financial and human resource constraints. In addition, strict enforcement of these rules led to delays in customs clearance and assessment, particularly in cases where post-clearance audits were not yet in place or were impossible to conduct. As a result, many developing country Members used the method of last resort for a substantial part of their imports. The main constraints in that regard were the lack of data on values and the unreliability of the information and declaration verification tools, as well as the inadequacy of the risk management systems. In addition, there were administrative and technical constraints and insufficient internal controls and external audits. The proposal on Agreement on CV aimed to enable LDCs to use minimum or reference values on certain tariff lines when faced with constraints to implement the Agreement on CV. The proposal was in line with the S&D provided in paragraph 2 of Annex III of the Agreement on CV, which was invoked and implemented by 38 developing country Members and LDCs until 2007. The proposal on the table aimed at enabling LDC to use minimum values in case of doubt as to the veracity of declared values and in case of difficulties in using alternative methods of valuation. LDCs remained open to discussions and work on the scope of eligible products as well as implementation modalities for the proposal that took into account their needs and constraints in this area. Article 12 of the TFA set the terms and requirements for customs cooperation and exchange of information to ensure proper coordination of controls, while respecting the confidentiality of information. Though constituting an important step in strengthening customs cooperation among WTO Members, the procedures, limitations and discretion left to the Member to whom the request was addressed, could nonetheless prove to be restrictive or unproductive for LDCs. In addition, Article 12 of the TFA did not provide specific provisions for LDCs. In that regard, LDCs had asked that, upon request, mutual assistance or customs cooperation agreements could be signed with developed country Members to enable them to access price data and to make a reliable determination of the veracity or accuracy of the declared values. The proponents invited Members to a constructive discussion with a view to finding a solution that took into account the legitimate interests of LDCs and the concerns of other Members.

118. The representative of the European Union stated that the proposal in paragraph 7.1 seemed to follow from paragraph 7.2, and suggested that the "non-implementation of the transaction value for customs valuation purposes" and the consequent reliance on the remaining secondary methods of customs valuation be replaced in part by the use of minimum or reference values. She sought clarification from the proponents as to whether her understanding was correct. With respect to paragraph 7.2, she asked why there was now an assumption that LDCs did not have the capacity to implement the Agreement on CV. With respect to the new content and language from a previous version of the proposal, she wondered whether the focus was being placed on the ability of an LDC Member to carry out checks and customs controls with respect to imports. In her delegation's view, the choice of terms and phrases including "lack the necessary capacity to establish the truth or accuracy of declared values" seemed to indicate a belief that a customs office must "establish …the accuracy of a declared value". This was not a normal function of a customs office. She asked whether some LDC Members had practical problems that were separate from the actual content including methods, means, processes and procedures, rights and obligations set out in the Agreement on CV. Regarding paragraph 7.3, she asked if the only choices available to some LDCs and developing country Members were to have "price data" or to have bilateral agreements with "provisions and mechanisms to exchange information about values". Finally, she asked how the proponents had examined the possibilities and opportunities offered by the TFA.

119. The representative of Japan opined that his delegation understood the motive of the proposal and appreciated the flexibilities demonstrated by the proponents, including the notion of 10% of the tariff lines. Nevertheless, Japan still had concerns about the introduction of minimum values from a systemic point of view. His delegation was mindful of the risk of abuse of minimum values by the importing customs authorities such as in the form of tremendously high customs duties, even within the range of 10% of total tariff lines.

120. The representative of Switzerland said that her delegation was of the opinion that the global use of minimum values was not necessarily the best way to address the problem off under-invoicing. Switzerland was also reluctant to allow the use of minimum values as these were explicitly prohibited by the Agreement on CV. Her delegation would rather suggest having a targeted risk assessment. Switzerland was also not in a position to commit to the general provision of technical and financial assistance. She asked proponents to elaborate as to whether the technical assistance that had been provided by the WTO in this field over the past 20 years had concretely failed to meet its objectives.

121. The representative of Bangladesh introduced proposal 8 on the Enabling Clause. After reading the proposal, he said that the developing country Members needed support from the developed country Members in their efforts to industrialize. He added that many developing country Members had supply-side constraints and were struggling with development of their industries with their limited resources. In order to effectively integrate those Members into the international trade, it was essential to consider their supply-side constraints in designing the Generalized System of Preferences (GSP) schemes offered by the developed Members. Developing Members with limited resources could not fully utilize the benefits offered by the GSP schemes because of non-coverage of products which they were capable of producing. The proponents understood that GSP was an autonomous scheme targeted towards enhancing exports of developing country partners with limited resources. Therefore, the G90 proposal envisaged that while designing the GSP schemes, developed country Members consult with the beneficiary countries in order to take into consideration the export needs of the developing partners including the LDCs. This would make the GSP effective and conducive to industrialization and economic growth of developing countries having limited resources.

122. The representative of the European Union asked if the phrase "shall take into account the needs of developing and least-developed country Members by consulting with them, with a view to ensuring that their products of export interest are accorded meaningful market access" constituted an obligation of result for developed Members. From a legal standpoint, the EU considered that it would be best not to include an obligation of result. Regarding the proposal to annually review the progress made, she asked what exactly should the review focus on, given that the Secretariat had already issued a report on the duty-free and quota-free (DFQF) market access for LDCs, on the basis of the Hong Kong Decision, as revised after Bali. For example, was it correct to understand that the proposal aimed at enlarging the scope of the existing report that the Secretariat prepared for LDCs, thus to cover also DFQF market access for developing country Members?

123. The representative of Japan asked if the use of the term "consulting" in the proposal meant that developed country Members formulating their GSP schemes were expected or obliged to approach affected developing and LDC Members proactively. Such a mechanism, he said, would not be feasible in terms of practical application.

124. The representative of Switzerland said that her country put emphasis on measures to enhance South-South trade as in Switzerland's view that was an important source of growth. In principle, she saw value-added in taking into account developing country and LDC Members' views while formulating schemes under the Enabling Clause, and holding consultations on a strictly voluntary basis. In her delegation's view there was merit in what the proposal suggested but making it obligatory was difficult.

125. The representative of the Solomon Islands said that the countries in the Pacific Region had the highest trade costs that related to the smallness of the countries, their isolation and the fragmentation of the islands. Added to that was the cost of rebuilding their economies after natural disasters that recently had become regular and more destructive. The high trade costs made the region less competitive and unattractive to investments. Prompted by the need to provide jobs for the rapidly rising unemployment, his country was considering several strategies on putting the country on the path to industrialization. Solomon Islands was an LDC that was likely to graduate in

2023, but it would need policy space that the proposals on the table had envisaged even after graduation. Therefore, the Solomon Islands fully supported the G90 proposals.

126. The representative of India stated that the proposal sought to enhance the predictability and reliability of the GSP schemes provided by developed countries. It also sought to provide meaningful market access to products of export interest to developing countries.

127. The representative of Norway said that the proposal seemed to imply that developed Members would be under an obligation to proactively approach developing Members and LDCs for consultations while formulating or amending their GSP schemes. Such an obligation would not be in line with the very nature of those schemes.

128. The representative of Egypt introduced proposal 9 on transfer of technology. He said that technological progress was a key factor in economic development, and that decreasing the technology gap between developed and developing Members would have a positive impact on the international trade. Many developing country Members had demonstrated declines in manufacturing and faced insufficient or a lack of growth that had devastated potential for sustained industrialization, and structural transformation of their economies. As developing and LDC Members continued to struggle with industrialization because many were still technologically far behind, specific measures needed to be taken in the WTO to encourage increased flows of technology to those economies. He added that a number of provisions in the WTO Agreements mentioned the need for effective transfer of technology between developed and developing country Members. However, it was not clear how such a transfer took place in practice. Major aspects of the technology and knowledge deficits in many developing country Members were easily spotted by observing such indicators as the share of GDP devoted to scientific and technological research or the low share of manufacturing and technology products in exports. However, a more comprehensive perspective could be gained by making further assessments on the functioning of national innovation systems. For this, technology and knowledge stocks and flows, as well as the supporting institutional and policy frameworks, had to be brought into the picture.

129. The G90 proposal on transfer of technology contained seven main points which could be summarized in three groups. The first group included paragraphs 9.1 and 9.7. Paragraph 9.1 stressed the importance of transfer of technology not only within the WTO but also did so in relation to SDG 17.6-8 which encouraged international cooperation on access to technology and innovation, including the promotion, development, transfer, dissemination and diffusion of technologies to developing countries. Paragraph 9.7 called upon developed country Members to take into account the objectives and principles contained in Articles 7 and 8 of the TRIPS Agreement. The second group covered paragraphs 9.3, 9.5 and 9.6. These referred to the need to encourage transfer of technology in various modes to developing partners. The proposal aimed at establishing a publicly owned technology inventory, which would make available information concerning technologies patented or funded for at least 50%, either directly or indirectly, by the government or any public body within developed country Members. The proposal sought to enhance the work of the Working Group on Trade and Transfer of Technology (WGTTT) by mandating it to examine the following: restrictive practices adopted by multinational enterprises in the area of transfer of technology and how to prevent such practices; difficulties of developing country Members and LDCs in meeting relevant WTO standards; all the WTO Agreements to identify the constraints that certain provisions could be creating against transfer of technology to developing country Members; the implementation by developed Members of all WTO provisions related to transfer of technology to developing countries; and the design of instruments and incentives that developed Members could grant to enterprises and institutions in order to help disseminate and transfer technology. The third group of the proposal contained two LDC-specific provisions. With regards to Article 66.2 of the TRIPS Agreement, the proposal aimed to allow effective access on fair, reasonable, and non-discriminatory terms to technologies owned or controlled by enterprises and institutions in the territories of developed country Members, in a manner that enabled LDCs to absorb, adapt and improve on the received technologies. It also requested targeted technical assistance to be provided to support LDCs' domestic efforts to enhance their technological base and improve their innovation capacities.

130. The representative of Brazil said that his delegation attached great importance to the principle of S&D for both developing country and LDC Members of the Organization. Special and differential treatment provisions were important tools to level the playing field among Members. Specifically, on technology transfer, Brazil saw merit in revitalizing the WGTTT.

131. The representative of Canada said that her delegation was surprised to see this proposal. In seeking clarification on paragraph 9.2, she said that the second sentence suggested an interpretation of how developed Members must meet the obligations under Article 66.2 of the TRIPS Agreement. This interpretation had not been agreed among Members, nor had it been discussed in the context of the TRIPS Council. It had also not been raised in the context of the annual workshops under Article 66.2. She said that any discussion regarding the interpretation of TRIPS should take place in the TRIPS Council, with relevant experts. Her delegation would also like to ask the proponents to clarify the relationship between paragraph 9.2 and paragraph 9.6. With respect to paragraph 9.3, Canada sought further clarification of the intent of the proposal. Canada noted that TRIPS Article 66.2 required developed country Members to provide incentives to enterprises and institutions in their own territories, while paragraph 9.3 implied a requirement for enterprises and institutions in developing country Members and LDCs to have access to that technology. The representative of Canada asked if that was the intent and whether this paragraph intended to build upon the TRIPS Article 66.2 obligation. She also asked for clarification on the phrase "under the control of developed country Members", asking if this meant technologies owned by a government. Canada noted that a government might have control of a given technology insofar as it had a license to use or exploit that technology, without necessarily owning it. The representative also asked what was meant by "technologies developed with public funding". With respect to paragraph 9.4, she said that request for binding technical assistance was a non-starter for Canada. On paragraph 9.5, her delegation would appreciate clarification on the phrase "technologies patented or funded for at least 50 percent, either directly or indirectly, by the government or any public body within their territory". Was the "50 per cent" intended to refer to funding, e.g. financed by the government and a private entity, or patenting, e.g. patented by the government and a private entity, or both? Finally, with respect to paragraph 9.6, she said that the language of this paragraph presupposed the proposed examination of the WTO Agreements. For example, it drew the conclusion that there were "constraints" against transfer of technology in the WTO Agreements. WTO Members had not reached this conclusion, which would only be possible in the event of an examination or review of WTO Agreements. Canada would also appreciate clarification as to why the proponents had put forward this proposal in the Special Session, rather than directly to the WGTTT.

132. The representative of Hong Kong, China said that her delegation supported the idea that the WGTTT could play a more substantive role in examinations regarding technology transfer. She asked for clarification on the publicly-owned technology inventory and how it would contribute to the transfer of technology to developing Members and LDCs.

133. The representative of the European Union said that the EU was the biggest provider in technology transfer in the world under Article 66.2 of the TRIPS Agreement. Her delegation thought that Article 66.2 worked well in its current form. Technology transfer referred to the ways in which companies, individuals and organizations acquired technology from third parties. It also took place via training and education which was as important as transfer via buying or licensing intellectual property rights. The acquisition by LDCs of a sound and viable technological base did not depend solely on the provision of physical objects or equipment but also on their absorption capacity which required a certain degree of know-how, management and production skills, access to knowledge sources and adaptation of new technologies to local conditions. Technology transfer was often one component of a more complex project, rather than a stand-alone activity. Most projects that dealt with sectors such as energy, water, agriculture, governance and infrastructure resulted in transfer of know-how and technology. She added that in its efforts to encourage and promote technology transfer, the EU was limited by two factors: first, the vast majority of such technologies were owned by the private sector – which was nowadays the main source of technologies; second, the EU could not force the private sector to transfer its technologies. While the EU was willing to promote consensual technology transfer as much as possible, it was not supportive of a number of mechanisms put in place by certain third countries so as to impose technology transfer, especially on foreign companies. Consequently, it could not support the proposal because it went beyond Article 66.2 of the TRIPS Agreement. The EU was not in a position to support any of these ideas in the proposal, even if they only targeted LDCs. Nevertheless, the representative asked for clarification if there were concerns on the ongoing technology transfer projects the EU and other developed country Members provided to LDCs under Article 66.2 of the TRIPS Agreement. She also asked whether the LDCs would agree that technology transfer from emerging economies to LDCs would also be useful to reflect better the economic power and the growing responsibility of emerging economies towards LDCs. Finally, she

asked if there were initiatives within LDCs that strengthened their absorption capacity with the intention to attract more inward investments to their economies.

134. The representative of India said that his delegation believed that transfer of technology was essential for improving productivity, promoting export growth and attaining the developing aspirations of all Members, especially for the developing country Members and LDCs. Transfer of technology should be seen as an important tool to narrow the technological gap between developing and developed Members, to integrate developing Members into the MTS and to enable them to meet their international obligations.

135. The representative of Japan said that, in line with the comments by the delegate of the EU, Japan was also making many efforts in the area of technical transfer, through channels such as official development assistance (ODA) and public investment for the purposes of increasing productive capacity of developing country Members including LDCs. He added that while his delegation understood the background of the proposal, it reiterated its basic views that the proposal was extremely difficult to consider.

136. The representative of the United States said that the proposed commitments on paragraphs 9.2 to 9.7 were unacceptable to her delegation, as was narrowing the mandate of the WGTTT. She said that some of the reasons for this were that the US could not support any call for technology transfer that was not voluntary and on mutually agreed terms by both parties. The language on the proposal seemed to suggest that governments could and should have effective control over the commercial decisions of non-government entities with respect to the use of their intellectual property rights. Her delegation did not accept that premise and did not support calls for technology transfer that would undermine intellectual property rights. Also, paragraph 9.3 seemed to be an attempt to force right holders to involuntarily transfer their technology if it was developed using public funds. For the reasons stated above, the US could not accept the proposal. Regarding paragraph 9.5, her delegation did not understand the merit of an intellectual property inventory of information concerning technologies and would not consider steps toward it. Finally, on the WGTTT, her delegation was of the view that the Special Session was not a proper forum to debate or attempt to negotiate the mandate of a separate WTO body.

137. The representative of Switzerland said that it was her understanding that paragraph 66.2 of the TRIPS Agreement required incentives be provided for the purpose of promoting and encouraging technology transfer to enable LDCs to create a sound and viable technological base. Switzerland was not in a position to urge enterprises or institutions to transfer their technology if they did not want to do so. Paragraph 9.3 of the proposal could be read as a requirement for mandatory measures to enable access to technologies, which in her view were not desirable and not possible due to the private character of intellectual property and other rights involved. She added that regarding the efforts to enable access to technology in paragraph 9.4, such technical assistance was already being provided through several means. Her delegation did not see the need for any new mechanisms. She asked for clarification regarding the proposal in paragraph 9.5 to make information available concerning technologies patented or funded for at least 50%.

138. The representative of Bangladesh said that he understood that technology was owned by the private sector, but governments could take measures to encourage transfer of technology to developing countries. He said that Article 66.2 was the only mandatory provision in the whole WTO Agreements on S&D. It said that "Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base". That was the obligation that developed country Members had taken in 1995. In 22 years of WTO existence, the G90 had not seen such policy measures from the side of the developed countries that incentivized firms to transfer technology to developing partners. Technology transfer was very important for the industrialization and economic growth of the proponents.

139. The representative of Benin presented proposal 10 on LDC accession. He said that despite the 2002 Guidelines on LDC Accessions and the 2012 General Council Decision revising these Guidelines, challenges remained regarding the levels of commitments that each of the countries in this category should make, and the exorbitant level of obligations that some WTO Members were seeking to impose on them. He mentioned two factors explaining the lack of effectiveness of the Guidelines on the Accessions of the LDCs. First, the average duration of the LDC accession

process, which was 12 years and 6 months, well above the overall average. Moreover, after the first two accessions, namely those of Nepal and Cambodia in 2004, two years after the adoption of these Guidelines, it took another eight years, in 2012, for the next two accessions of LDCs, Samoa and Vanuatu. Other LDCs had been waiting since October 1994. The representative explained that the other factor for the lack of effectiveness of the Guidelines on LDC Accessions was the almost excessive demands of some developed Members which had substantial interests in negotiations. He wondered what should be the price to pay for accession? He also asked if acceding countries should be required to have lower levels of tariffs than the ceilings agreed in previous negotiations, including those in the Uruguay Round. In this regard, the Guidelines mentioned reasonable concessions, which was where vagueness had often led to abuse. He said that the S&D proposal for the LDC accessions was being tabled in order to correct this non-effectiveness of the Guidelines, and to help remove the enormous and multiple constraints on the acceding countries that belonged to the lowest category of Members of the WTO. Therefore, the G90 requested that WTO Members refrain from demanding concessions and commitments that went beyond the level of development and regulatory capacity of developing countries in general and LDCs in particular, by fully implementing the benchmarks set, with a view to an average tariff binding on goods and improved market access for services, as set out in the 2012 General Council Decision.

140. The representative of Canada said that her delegation was supportive of universal membership at the WTO and had participated in each and every accession process, including through bilateral negotiations with acceding governments. With respect to the accessions of LDCs, Canada had always adopted a pragmatic and flexible approach to market access for goods and services. The G90 proposal came as a surprise to Canada, as issues with the Guidelines had never been raised in recent years. Canada noted that accession to the WTO was fundamentally a process of domestic reform. Ultimately, the ability to expedite the process rested with the acceding government. The representative asked whether the proponents were seeking to renegotiate the LDC Accession Guidelines and what specific problems had been encountered to prompt this proposal. She also requested further elaboration of the term "full restraint" in paragraph 10.2. Finally, she asked as to how proponents defined "fast-track" accession procedure and what practical steps they saw Members taking that would lead to the implementation of a "disciplined" fast-track procedure.

141. The representative of Australia said that his delegation also supported universal membership in this Organization. He viewed accession as a process of comprehensive overhaul of domestic trade reforms. Like Canada, Australia also sought clarification on the term "full restraint" and on disciplining "fast-tracking" accession procedure.

142. The representative of Nepal stated that S&D provisions were an integral part of the WTO Agreements and were designed to create a level playing field and provide policy space for the less privileged Members, including LDCs, to facilitate their integration into the MTS. In line with paragraph 44 of the Doha Ministerial Declaration and respecting paragraph 32 of the Nairobi Ministerial Declaration, the LDC Group, together with the ACP and African Groups, had examined and prioritized ten S&D proposals with the aim of supporting industrialization, structural transformation and diversification in the less privileged Member countries. Several developing country Members and all LDCs had experienced a premature decline in their share of manufacturing in their GDP. There was also a renewed interest in industrialization as clearly mentioned in SDG-9. She added that industrialization had a positive multiplier effect on inclusive and sustainable development and was the principal driver of employment creation, export promotion and overall economic development. Her delegation requested developed Members to show more flexibility, open-mindedness and be supportive of the S&D proposals in hand as these would not only help them in overcoming marginalization of the most vulnerable Members, but also would support them in meeting their commitments.

143. The representative of Switzerland said that her delegation was also supportive of a comprehensive WTO Membership and would continue supporting LDC accession. Since the founding of the WTO, nine countries had acceded as LDCs, while the total accessions in that period were 36, which meant that a quarter of the accessions were LDCs. More than half of these LDC accessions had been completed in the last five years, since 2012, the year of the General Council Decision regarding LDC Accessions. She asked the proponents to elaborate how the current proposal would add value to what Members already had in Guidelines on LDC Accession and which aspects they specifically expected to further improve as a result of the proposal.

144. The representative of the European Union said that her delegation was always supportive of LDC accessions to the WTO. She added that she was puzzled by the proposal since it was her understanding that the guidelines were working well as shown by the accessions of Afghanistan and Liberia and other accession processes appeared to be progressing smoothly. She asked for clarification of the meaning of "fast-track" accession procedure, and what would be the proponents' suggestions to "discipline" it.

145. The representative of the United States said that her delegation would not consider changes to the LDC Accession Guidelines of 2012, nor would it support creation of any other authority related to the WTO accession process. In her delegation's view, the intent of the proposal was to turn the accession process into a political one. The impact of this would be that acceding LDCs would be denied the opportunity to use the accession process to reform their trade regimes and to make commitments that attracted investment and trade. She added that the proposal also implied that the 2012 LDC Accession Guidelines were not working. Her delegation did not agree with this perception. In the five years, since the guidelines were agreed by consensus, five LDCs had joined the WTO, compared to just four in the ten years prior to 2012. Currently, another three LDCs were enthusiastically engaged and making progress and several more were showing strong interest.

146. The representative of Japan said that his delegation strongly supported the universalization of WTO Membership. Japan also considered the accession process to be a useful incentive for acceding LDCs to proceed to domestic reform processes. Any attempt to depart from the objective of that process would be very difficult for his delegation to consider. He asked what improvements could be achieved in the existing guidelines as a result of the proposal on the table. He also sought clarification as to whether the proposal was about the guidelines themselves or about lack of implementation of those guidelines. Finally, he asked for further elaboration of the meaning and implications of the term "fast-track".

147. The representative of Venezuela said that his delegation supported all necessary measures to facilitate LDC accession to the WTO.

148. The representative of Norway said that the principles found in the 2002 LDCs Accession Guidelines and the General Council Decision of 2012 sought to address the special situation of LDCs. He asked proponents to explain in more detail why they did not regard the mentioned flexibilities as sufficient to accommodate the needs of LDCs in the accession process.

149. The representative of China said that her delegation had been supportive of LDC accession to the WTO and always actively followed the 2002 Guidelines and the 2012 Decision during accession negotiations with them. China spent 15 years in its acceding negotiations and there were difficult times in the process. Considering the constraints faced by LDCs, China was in favour of further clarifying the efforts Members could make to facilitate LDC accessions.

150. With no further interest among Members to take the floor, the Chairperson said that the Special Session had now concluded a first reading of all the ten ASPs. She recalled that at the 14 September 2017 meeting it had been agreed that questions posed on the proposal be conveyed in writing to all Members through the Secretariat. As of this date, the Secretariat had received questions submitted in writing by Japan, Switzerland and the EU. She urged other delegations that wished to do so to send their questions to the Secretariat as soon as possible. She asked proponents whether they were ready to answer any of the questions.

151. The representative of Rwanda said that the G90 would consider the questions and come back with comprehensive responses at the next meeting.

152. The representative of the European Union asked for the presentations by the proponents to be circulated as well.

153. The representative of Rwanda said that the proponents would compile their presentations for circulation to all Members.

154. The Chairperson asked Members if they had any views on next steps in the Special Session's work in the run-up to Buenos Aires. She informed Members that conference and interpretation services for 29 September, 12 October, 19 October, 9 November, 16 November and 23 November

had been reserved. She asked whether the Special Session should meet again the following week on 29 September and if so, what should be discussed. She said that Members had heard each other, and were aware that the differences on the ten ASPs were deep and wide, across the full spectrum of issues. She added that time was short and the resources of delegations, especially the smaller ones, were stretched across competing and increasing demands as MC11 drew nearer.

155. The representative of Canada asked whether there would be anything to discuss the following week and whether the proponents would be ready with answers by then. If that was the case, Canada would be ready to participate. She suggested the Chairperson could also conduct informal consultations with proponents and other Members.

156. The representative of Japan said that if the proponents were ready to respond, his delegation would be available at any time. Regarding further steps, he did not have a clear idea, but agreed with Canada's proposal for informal consultations.

157. The representative of Switzerland said that her delegation was ready and available for further discussions as soon as answers to the questions were provided by the proponents.

158. The representative of Rwanda said that the G90 attached great importance to S&D. The G90 had presented a very short list of proposals which intended to respond to two imperatives: reduce the number of issues to be negotiated and align with their national and regional objectives, notably industrialization, diversification and structural transformation. He said that trade rules and trade policies impacted on development and industrialization as demonstrated throughout the history of economic development. The G90 was only asking for what the developed country Members had used in their development process. The Group was asking developed Members "not to kick the ladder" from underneath the less developed and weaker Members of the Organization. The G90 was determined to pursue these discussions regardless of the current lack of engagement by partners. The G90 proposed to continue in this format along the schedule suggested by the Chairperson, but to be better prepared, the suggestion was that the next meeting be held on 12 October 2017. The G90 would continue to reach out to Members to further understand their concerns and clarify the proponents' objectives to facilitate convergence with a view to delivering an outcome in Buenos Aires.

159. The Chairperson said that she shared the view for her to engage in informal consultations with key Members and also appreciated that Members would actively pursue consultations on these important yet difficult issues among themselves. She noted the request from the delegation of Rwanda to continue discussions in the current format. She strongly believed that the Special Session should work towards having some deliverables for MC11. This would entail some laborious work in the weeks to come. She announced that the next meeting of the Special Session would be held on 12 October 2017, when she would report on her informal consultations that she would hold with key Members in the meantime. She also hoped that the proponents would respond to the questions posed by Members.

160. The meeting was suspended.