RESTRICTED

TN/CTD/M/52/Add.1

9 February 2018

(18-0897)

Committee on Trade and Development
Fifty-Second Special Session

NOTE ON THE RECONVENED MEETINGS OF 12, 19 OCTOBER, 20 AND 23 NOVEMBER 2017

Chairperson: Ambassador Tan Yee Woan (Singapore)

Addendum

RECONVENED SESSION (12 OCTOBER 2017) **1**
RECONVENED SESSION (19 OCTOBER 2017) **13**
RECONVENED SESSION (20 NOVEMBER 2017) **20**
RECONVENED SESSION (23 NOVEMBER 2017) **24**

RECONVENED SESSION (12 OCTOBER 2017)

1. The 52nd Special Session of the Committee on Trade and Development (Special Session) was reconvened on 12 October 2017.

2. The Chairperson presented a report on the bilateral and plurilateral informal consultations she had held from 26 September to 5 October with the proponents, a number of developed Members as well as some non-G90 developing Members. She explained that her objective had been to solicit delegations' views on three points: (i) how the delegations saw the work of the Special Session proceed in the coming weeks and whether they had any suggestions that could help harvest tangible outcomes at the 11th WTO Ministerial Conference (MC11); (ii) what alternative approaches could be explored to ensure meaningful progress in the work of the Special Session; and (iii) whether the delegations sensed or identified any areas of convergence, if they had flexibility for any one or more proposals and, if yes, which proposals.

3. She stated that the proponents wished to have a meaningful outcome on the Agreement-specific Proposals (ASPs) at the MC11, and in order to achieve that goal they expressed their intention to engage substantively with other partners. They realized that differentiation was one of the sticking issues in the negotiations and had made an honest attempt to address the issue in the proposals. They had also said that they were working on the written questions they had received and hoped to provide responses at the meeting today. The proponents believed that the level of engagement and the nature of reactions they would receive at the current meeting from other partners would help shape the course of work and their future strategy. The proponents had also reiterated that all the proposals were equal in terms of importance. However, she sensed that the proponents attached greater priority to the industrialization cluster, i.e., the proposals relating to the Agreement on Trade-Related Investment Measures (TRIMS), GATT Article XVIII Sections A and C and the Agreement on Subsidies and Countervailing Measures (SCM).

4. On their part, while recognizing that the number of proposals had been reduced, the developed Members were unanimous in flagging their continued concerns with the scope of the proposals both in terms of coverage and nature of flexibilities. The proposals seemed to be premised on the belief that WTO rules were bad for development and for the integration of developing Members into the multilateral trading system (MTS). The developed Members held the view that a rules-based WTO was beneficial to all, and helped developing Members in particular to

develop through integrating into the MTS. Therefore, the proposed flexibilities could negatively impact on the integration of the beneficiaries in the MTS. Furthermore, the proposals were open-ended in nature and lacked any meaningful differentiation. They also felt that the proposals had not evolved from 2015. However, they attached high importance to addressing some of the underlying issues and to finding realistic and pragmatic solutions. Almost all of them stated that without taking into account the political reality of differentiation, any outcome on the ASPs was inconceivable. On the alternative approaches, some pointed towards exploring the avenue of waivers, based on real need and fact-based individual cases that could possibly be considered by the Membership subject to procedures and certain conditions. In the developed Members' view, the next step in the work of the Special Session was to receive responses to their questions. Based on their evaluation of the responses from the proponents, the developed partners would have better clarity on the next steps in the special and differential treatment (S&D) work.

5. She went on to state that she had also met with a number of non-G90 developing Members and had heard messages of support from some for the G90 proposals. Others, however, held views that were somewhat similar to those expressed by the developed Members. The latter group of Members stated that though they had, thus far, chosen only to listen to other Members and had not been vocal in meetings, they had a number of concerns with the proposals on the table. They also flagged that in the interest of pragmatism, work should be focused on LDC-specific proposals.

6. Having heard different perspectives from Members covering all geographical regions, she said that it had become clear to her that even within the developing Members, perceptions on the G90 proposals were divided. She added that her consultations with Members did not help her much in drawing a clearer map on the way forward. In fact, nothing concrete had come out of these consultations other than the fact that the proponents persisted that these proposals were essential for their economic growth and industrialization efforts, and the developed Members and some developing Members reiterated that they saw no chances of convergence on the request for such open-ended flexibilities. Some even hinted towards thinking about a work plan in the post-MC11 context. Nonetheless, she believed that the consultations did help her in identifying some common elements in the consultations, such as: the issues that Members were trying to grapple with were highly complex; they could have far-reaching implications for the system; and Members wished to avoid a repeat of the 2015 process, so there was little benefit in going through each proposal again and again. In the context of the work of the Special Session in the coming weeks and perhaps after MC11, a lot would depend on the proponents' responses to the questions posed by other Members. This concluded her report.

7. The Chairperson invited the G90 to present their answers to the questions that had been posed by other Members.

8. In making introductory remarks, the representative of Rwanda stated that the principle of S&D was introduced in the WTO in recognition of the aspirations and socio-economic challenges faced by developing and least developed Members. Least developed countries (LDCs) and many developing countries had serious weaknesses regarding their levels of industrialization and manufacturing production capacity, which was the engine of development and employment creation. Nevertheless, the manufacturing sector had made little progress and had even declined in some LDCs since the 1980s. Quoting the examples of Tanzania and Zambia, he added that the trend of decreasing contribution of manufacturing to gross domestic product (GDP) had also been observed, among others, in Zimbabwe, Nepal, Rwanda, Cameroon, Solomon Islands, etc. Developed country Members had pursued strong industrialization policies in the late 19th and in the 20th centuries and the manufacturing sector had played a key role in broadening the production base and the export basket, as well as in creating jobs and stimulating technological development in those economies. Manufacturing had a positive multiplier effect on employment whereby each job created in the manufacturing sector created 2.2 jobs in other sectors. That had contributed towards sound economic diversification and structural transformation as well.

9. He went on to state that the G90 had brought down the proposals from 88 in 2001 to 25 in 2015 and now to 10 in 2017. The proponents had made every effort to ensure continuation of meaningful work on S&D in line with Paragraph 44 of the Doha Ministerial Declaration and the commitment shown by Ministers in the MC10 Declaration to conclude the Doha Development Agenda (DDA) with development at the centre of WTO work. The proposals sought to address the necessity to create a MTS that served all its Members and was conducive to industrialization. Developed countries had in the past benefitted from the absence of rules, through the utilization of

policy space and closing the policy space through GATT Agreements. This was the very reason why there was a Doha Development Round to address the imbalances inherent in GATT/WTO Agreements. He recalled that specific S&D provisions in the existing Agreements gave legitimate hope to developing country Members and LDCs and that these obligations would be implemented and complied with. The current multilateral rules were constraining their ability to industrialize and their domestic policy space. Denying the legitimate expectations of the G90 and the mandated work in the Special Session was not acceptable.

10. Thereafter the representative of Uganda took the floor and provided answers to the questions posed on proposal no. 1. He stated that they had received seven questions from Australia and the European Union (EU). In tabling the 10 proposals in the Special Session, the G90 had several goals in mind, i.e. to ensure structural transformation, diversification and industrialization of their economies with the view to building the future they wanted for their people, to promote the effective integration of the G90 into the MTS; to ensure that their people had adequate employment opportunities, improved household incomes; and to alleviate high levels of poverty. He added that it was important for Members to recall and fulfil the founding objective inscribed in the Marrakesh Agreement with the view to recognizing the need for positive efforts designed to ensure that developing country Members, and especially the least developed among them, secured a share in the growth in international trade commensurate with the needs of their economic development. One of the cross-cutting questions that was in everyone's mind was what had changed in the proposals tabled in the Special Session. Why table the same proposals that were rejected in the past? The problem was that nothing had changed, neither in the lives of their people, nor in their respective economies. On the contrary, the situation had either remained stagnant or in some cases had worsened. In 1964, Africa’s share in world trade in goods was a staggering 6%. However between 2009 and 2016, Africa's share in world exports had dropped from 3.1% to 2.2% in goods and from 2.4% to 2.0% in services. In 2016, exports of primary commodities accounted for almost 80% in comparison to about 30% for manufactured goods. Viet Nam, a country whose economy declined in the 1960s and in the 1970s due to the war had now overtaken Africa in exports of manufactured goods. In 1995, Africa's export was US$28 billion and Viet Nam's only US$2 billion. Yet, in 2016, Africa’s exports stood at US$92 billion compared to about US$140 billion for Viet Nam. Fifty-four per cent of the population in 46 African countries was still living in poverty. Out of the 420 million youth, one-third was unemployed, another third was vulnerably employed, and only one in six was in wage employment. While 10 to 12 million youth entered the workforce each year, only 3.1 million jobs were created. Africa’s Manufactured Value Added (MVA) accounted for just 1.6% of the global total in 2014 and its growth had lagged far behind that of other regions since 1990.

11. It was also important to recall that at about the same time in 2015, world leaders had also agreed to deliver on SDG 9 on Industry, Innovation and Infrastructure. A number of studies had shown that the main reason why developing countries, especially LDCs, had not been able to participate effectively in the MTS was that they were lagging behind in terms of industrialization, in particular the production of value added and competitive manufactured products. In order to catch up with developed countries, developing countries, in particular LDCs and low-income economies needed the flexibility to use local content requirements in order to direct investments into the productive sectors and catalyse industrialization. LDCs had low levels of industrialization, their exports were concentrated on a few products, and their share in world trade was very low. LDCs accounted for less than 1% of world exports of goods and commercial services, 1.9% of global investment inflows and 1% share of manufacturing value added. They also depended on exports of primary commodities, mainly minerals and fuels, which were subjected to global price fluctuations. Furthermore, LDC status was not self-designated. According to the UN, the classification of LDCs was contingent on a number of key human development indicators including levels of poverty, literacy, infant mortality and economic vulnerability. There were currently 48 countries that met those criteria. The good news was that 16 LDCs were projected to graduate by 2024 and 32 LDCs by 2025. It, therefore, meant that the requests for flexibilities in the tabled proposals were not infinite. Given the fact that LDCs had spent a lot of time and resources negotiating extensions, there was a need to exempt LDCs from TRIMS until they graduated from LDC status. This would create investor certainty and allow LDCs to use the TRIMS flexibility to industrialize and transform their economies.

12. The representative went on to state that industrialized economies had over the years used specific interventions and performance requirements to attract and harness investment towards productive capacities in order to structurally transform and industrialize their economies. In the

context of global value chains (GVCs), the need for policy space was still as relevant as ever, particularly to facilitate upgrading of production networks to participate in GVCs. Developing country Members were significantly constrained in applying policy space to structurally transform and diversify their economies in this area. As for specific examples, the record of questions in the TRIMS Committee against developing country Members on this issue was illustrative: at the most recent TRIMS Committee meeting, out of the nine TRIMS measures re-tabled for continued discussion, eight were imposed by developing country Members and were subject to rigorous scrutiny by industrialized countries. Within the TRIMS Committee, previous attempts to invoke the flexibility in Article 4 had been blocked, notably with respect to various trade balancing measures developing country Members had sought to apply. In addition to rigorous questioning of developing country Members' measures within the TRIMS Committee, the jurisprudence was prolific with respect to challenges against developing country Members' use of TRIMS measures. Between 1996 and 2016, there were 27 recorded TRIMS challenges against developing country Members with only 15 against developed Members. Recent jurisprudence over the last two years, that struck down TRIMS measures invoked by certain developing country Members that would have diversified their economies and assisted development of their domestic industries, illustrated the inherent difficulties and lack of flexibility within the TRIMS Agreement, as well as the fact that developing country Members still required this flexibility. Quoting the Indonesia–Autos case, the representative viewed that the Panel's decision showed how the WTO Agreements could potentially constrain industrial policy. 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 included an allegation relating to local content. This showed that a number of developing country Members still required flexibility to use local content requirements to promote upstream and downstream linkages with the local economy and achieve industrialization and economic transformation.

13. The representative recalled that the Hong Kong Decision allowed LDCs flexibility to maintain these measures until 2020 subject to procedural requirements. The notification date had expired as LDCs did not have the capacity to take advantage of the notification period. Nevertheless, the flexibility beyond 2020 was imperative, as LDCs still required protection and policy space. Regarding differentiation, the representative said that the relevant Articles of the TRIMS Agreement did not differentiate among developing country Members. However, what the proposal sought to do was to ensure that developing country Members and LDCs were distinguished in the degree of benefit that would accrue to them. Most of the developing and least developed country Members were in the process of developing their industrialization policies and strategies. Trade-related investment measures when used in conjunction with other measures, such as local content/performance requirements and technology transfer requirements played a vital role in the industrialisation process. Indeed most developed country Members, while in the early stages of their industrial development, had employed protective industrial, trade and technological measures including local content. The local content requirement could strengthen the backward and forward linkages which could be supportive in achieving the sustainable development goals (SDGs), specifically the SDG 9.

14. The representative of Bangladesh took the floor to answer questions on proposal no. 2. He stated that 11 questions from Australia, the European Union and Japan were received on the proposal on Article XVIII A and C. Those, who were present in the discussions before and during Nairobi, might recall that there had been discussions on the use of Article XVIII A and C and the Special Session also had a briefing from the Secretariat on this issue. Before the establishment of the WTO, some developing country Members had invoked these sections and releases were granted to them. However, after 1995, no developing country Member was allowed to use those sections despite the fact that Article XVIII was designed to allow developing country Members to provide assistance to their industry. From 1995 through July 2002, three developing country Members, Colombia, Bangladesh and Malaysia had sought recourse to Article XVIII:C. In the case of Malaysia and Colombia, despite the fact that both Members argued that their cases should be taken up in the Committee on Trade and Development (CTD), they were heard in the Council for Trade in Goods (CTG). Bangladesh's case was addressed in the Balance-of-Payments (BoP) Committee. Discussions on those requests did not yield positive results. Burdensome consultation procedures made it difficult for developing country Members, especially the Paragraph 4 (a) Members, to seek recourse to those sections.

15. The proposal of the G90 intended to bring clarity in the procedures of application of Sections A and C of Article XVIII. The existing text fell short of specifying that where a Member

should notify to invoke those sections. Accordingly, Paragraph 2.4 of the proposal proposed to make notifications to the CTD. Paragraph 2.4 of the proposal also brought clarity in the consultations process and implementation of the outcome through consultations which were in line with the WTO Agreement on Safeguards. It also proposed that any rebalancing measures and the application of substantially equivalent concessions or other obligations were subject to a time delay of five years before they could be introduced or exercised. This was designed to give developing country Members some breathing space before retaliatory measures were taken as the introducing Members would take recourse to those sections for development purpose. He added that Paragraph 4 (a) of Article XVIII defined the coverage of Members which could resort to those sections. By adding the phrase "developing country Member facing constraints" the G90 had tried to focus on the developing country Members which were in actual need.

16. As regards the question relating to Paragraph 20 of Article XVIII, he mentioned that the Decision on Safeguard Action for Development Purposes of 28 November 1979 (L/4897) provided similar language, but did not give Members the leeway to deviate to the extent deemed necessary. Reference to the terms "Member having substantial interest" and "principle supplying interest" could be found in Article XXVIII of GATT 1994 and in the Understanding on Interpretation of Article XXVIII of GATT 1994. He recalled that the present texts, which had been substantially modified by taking into consideration the discussions held in 2015, were proposed in December 2015, just before the 10th WTO Ministerial Conference (MC10), and Members did not have sufficient time to discuss the proposal in detail. The G90 believed that Members were now in a position to discuss the proposal more elaborately. He noted that the adoption of the SDGs at the end of 2015, especially Goal 9, required policy measures for Paragraph 4 (a) Members to meet their structural transformation, industrialization and diversification needs.

17. The representative of Egypt was given the floor to respond to questions on proposal no. 3. He requested more time to coordinate with the rest of the proponents and said that he would present the answers at the next meeting.

18. In responding to questions on proposals no. 4 and no. 5, the representative of South Africa stated that questions presented on the proposals gave the G90 the opportunity, once more, to explain and highlight, in a detailed manner, the challenges inherent in the application of subject S&D provisions in the sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) Agreements. Some of those issues had repeatedly been raised by developing country Members during the work of the SPS and TBT Committees with no solutions provided thus far. The G90 had evaluated those challenges in drafting the current proposals. The questions they had received covered the following issues: re-introduction of proposals discussed in 2015; capacity constraints; adversely affected Members; longer time period for comments and compliance; and capacity building and technical assistance. These issues continued to be relevant to the G90 membership, as they were closely linked to the obligation to provide S&D more generally. They had previously stated that the incorporation of provisions on technical assistance and capacity building in the SPS and the TBT Agreements had been an acknowledgement that there were challenges faced by developing country Members and LDCs in complying with non-tariff measures (NTMs). Furthermore, Members had acknowledged that the S&D provisions in those Agreements provided legally weak and vague commitments, which could not be translated into specific obligations and, therefore, were not enforceable. The TBT Committee had encouraged Members to continue to exchange information on the implementation of Article 12 of the TBT Agreement. In the SPS Committee, developing country Members had indicated that although a substantial amount of technical assistance was provided in the SPS area, in many cases it was not appropriate and did not correspond to their needs. Therefore, developing Members continued to call for the implementation of S&D provisions under Article 9 of the SPS Agreement. On the re-introduction of proposals discussed in 2015, the reason why it has been done so by the G90 was that the underlying concerns had not been considered in a meaningful way in the previous discussions. The revised proposals aimed to find concrete ways to strengthen S&D provisions and to make them more precise, effective and operational, as envisaged by the mandate provided in Paragraph 44 of the Doha Ministerial Declaration.

19. The G90 continued to bear witness that market access for products of export interest to developing country Members was increasingly dependent on the ability to comply with trade regulatory measures. While those measures were legitimate, they continued to fragment trade. A WTO report on challenges facing small economies revealed that as small economies became more specialized in products, they were increasingly exposed to NTMs. In fact, one major developed

Member had just announced that it had to align its regulatory framework to comply with the EU's complex SPS measures, which presented significant barriers. She specifically mentioned that its agricultural producers might have to introduce new handling logistics, which was a costly commitment. Developing country Members and LDCs which lacked the necessary capacity continued to grapple with complex regulatory measures. A technical note prepared by UNCTAD in 2015 showed that developing country Members encountered significant additional costs while adapting their production processes to comply with foreign regulatory measures and standards. This led to *de facto* discrimination against exports of those countries that faced the highest difficulties to comply with the regulations in export markets due to capacity constraints and/or lack of finance. The adverse effect of such measures and standards could be reduced by assisting developing country Members and LDCs to comply. Regarding Members facing capacity constraints and adversely affected, the G90 noted that food safety and agricultural health capacity referred to as SPS management capacity was an important requirement to ensure compliance with SPS measures in exports markets, particularly in developed countries. Most often, capacity constraints in developing country Members and LDCs prevented them from complying with stringent SPS requirements and undertaking the necessary conformity checks. The term referred to in the proposal as "developing country Members facing capacity constraints" was meant to assist Members to examine and determine the extent to which a Member could or could not comply with a regulatory measure. This determination should ensure that exports of a Member, facing capacity constraints were not adversely affected by a measure introduced by a developed Member. The representative referred to the case of The Gambia on pesticide residue testing for horticultural product exports. That case demonstrated the impact of SPS measures on a developing country Member that had experienced capacity constraints. Exports of horticultural products to the EU from The Gambia were relatively small, but they were of great economic importance to a country of the size of The Gambia and were also considered an important element of the country's programme of export development. Although public authorities had implemented the necessary procedures to perform SPS certification, as required by the EU, they had experienced a number of problems in meeting the EU's requirements. Indeed, some consignments of product had been rejected following border inspection. The problems faced by The Gambian authorities were two-fold. Firstly, they found it difficult to obtain reliable information on the EU's SPS requirements for the products that they exported - in particular, the time taken for information to reach the appropriate authorities when the EU's requirements change could delay implementation and, in the meantime, there was a risk that product consignments would be rejected. Secondly, in certain cases, the appropriate testing equipment was not available in The Gambia. This was a particular problem in the case of maximum residue levels for pesticides, which could be beyond the detection capability of the equipment that was available. Thus, in certain cases, tests could be undertaken and certificates issued, but there could be no guarantee that the product complied with the EU's requirements. In other cases involving developing country Member when exports had been stopped, despite the adequate compliance period allowed and the standards board approved as the "competent authority" to issue licenses to export, they were not able to go back to earlier levels of exports. In certain cases, companies were unable to comply with SPS requirements in the time permitted and/or the cost of doing so was prohibitively high.

20. Regarding the longer time period for comments and compliance, the representative said that the limited time period provided had also presented a challenge for developing country Members. In the SPS Committee, over the years, developing country Members had requested that longer periods for comments be allowed in the case of products of special export interest to them. Specifically, they had requested that notification procedures must give them adequate opportunity to identify where they might have potential problems meeting new requirements affecting their exports, so that they could request a phased-in introduction of the proposed measures. Some developing country Members had even requested longer time frames for compliance, as long as 12 months. Even though in the TBT Committee it had been agreed that the normal time for comments on notified technical regulations and conformity assessment procedures should be 60 days, developed country Members were encouraged to provide more than a 60-day comment period in order to deal with the challenges related to transparency and to improve the ability of developing country Members to comment on notifications. During the meeting of the TBT Committee held in June 2017, a developed country Member expressed concern regarding the possibility of having enough time to comment on new regulation. If a developed country Member could request for more time to comment on regulations imposed by developing country Members, the opposite situation was even more true. The representative noted that due to the large number and complexity of SPS and TBT measures, a longer time period for comment was required to allow developing country Members time to review the notifications and to inform various stakeholders at

the national level, including the private sector, and also to provide feedback. Such notifications often required some training and capacity-building initiatives to stakeholders for them to understand the proposed measure and assess the possible implication of the measures. The focus here was not only on the comments but on other considerations such as the capacity to comply with the SPS measure, including technology, human resources and infrastructure needs, with a view to exploring solutions to preserve market access for developing country Members, especially LDCs. Responding to these complex and stringent measures including the determination of the appropriate financial and technical assistance could not be done in 60 days, hence the requirement for a longer time period for comments and compliance.

21. She also added that the G90 proposals allowed Members to determine the extent of the technical and financial assistance to be provided to developing country Members. A 2002 WTO Survey sought to determine the priority needs of 45 developing country Members for technical assistance and capacity building in TBT, with reference to the implementation of the TBT Agreement and found that the responses varied across different priority areas. This showed that the extent of technical and financial assistance could not be pre-defined but had to respond to specific country needs. This would enable even investments in appropriate technology to ensure that developing country Members complied with SPS and TBT measures so as to allow them to effectively participate in GVCs and integrate into the MTS.

22. The representative of Cameroon answered questions on proposal no. 6. He stated that the G90 had received 12 questions from three delegations: Australia, EU and Japan. After considering and analysing the issues and concerns raised, the G90 was able to merge them into seven questions or seven points.

23. Point 1 related to examples showing how WTO agreements limited developing country Members' ability to take measures necessary for development. Before and during the GATT years, developing country Members had a considerably freer hand in the use of industrial subsidies until the Uruguay Round, as a preferred instrument to support structural transformation. Historically, many developed Members had used subsidies to grow, diversify and industrialize targeted sectors, including the revitalization of distressed regions and the restructuring and rationalization of existing industries, as well as providing government support in the form of research and development (R&D) to specific sectors, aerospace being particularly relevant. Furthermore, support contingent on the use of local content (Buy American) and environmental support programmes such as commencing production of more fuel-efficient vehicles had also been employed. The Agreement on Subsidies and Countervailing Measures (SCM) had entailed much tighter constraints on subsidy use, just when developing country Members had sought to industrialize and diversify and grow their economies. The Agreement was originally a Tokyo Round Plurilateral Code, imposed on G90 members to adopt and multilateralize in the Uruguay Round, when they had weak capacity to negotiate. They were not part of the negotiations of that Agreement or any of the Tokyo Round Codes. Recent jurisprudence had also shown that notwithstanding the S&D provisions in Article 27 of the Agreement on SCM, and the Doha 2001 Decision on Implementation-Related Issues and Concerns with regard to subsidies, these had not really assisted developing country Members seeking to industrialize, diversify and structurally transform their economies. Therefore, the flexibility they sought under the SCM Agreement was not any more than had been afforded to and utilized by industrialized Members with first mover advantages in the past.

24. Point 2 pertained to developing countries facing constraints. He said that the intention of the proposal was to recognize that not all developing country Members were facing capacity constraints. Criteria were meant to limit the sought flexibility for those who really needed it - to assist in the concept of distinguishing between developing country Members. The granting Member would examine and determine the extent of capacity constraint on a case-by-case basis, relevant to the specific proposal and Agreements. The notification referred to in Paragraph 6.3 of the proposal required to demonstrate the evidence of the criteria referred to in Paragraph 6.2. Any of the criteria could be demonstrated and they were not cumulative.

25. Point 3 referred to conditioning proposal upon expired Article 8. At the outset, the non-renewal of Article 8 of the Agreement on SCM in 1999 was due to a lack of consensus by all Members. However, the issue of non-actionable subsidies was also considered in 2001 and consensus was reached under Paragraph 10.2 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns. Under that Decision, Ministers took note of the

proposal to treat measures implemented by developing country Members with a view to achieving legitimate development goals, such as regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production as non-actionable subsidies, and agreed that the issue must be addressed. It was only logical to address this proposal now after more than a decade the Doha Implementation-Related Issues Decision had been in place. The proposal was even more relevant now given the declining trade balance, lack of industrialization and diversification of their countries. G90 urged Members to agree to a decision on the matter as reflected in the proposals tabled in 2015 for MC10 and now for MC11.

26. Point 4 related to the legality of inclusion by making reference to the requirements of an expired provision, which has disappeared. It was legally possible to re-craft any WTO provision that Members by consensus deemed useful, either in the same or similar terms to what existed before. Furthermore, the SCM Agreement was currently on the DDA agenda of rules negotiating issues, under Paragraph 28 (of Doha Declaration 2001); with a mandate to "clarify and improve" the Agreement. In fact, in 2004 and 2006, some developed country Members sought to reinsert the perceived expired provision in Article 6.1 (a) in relation to serious prejudice which also expired at the same time as Article 8 of the SCM Agreement. Even now, in October 2017, a current proposal under review in the Negotiating Group on Rules by a developed Member proposed to re-introduce a rebuttable presumption of serious prejudice in the case of non-notification of subsidy programmes.

27. Point 5 pertained to the so-called open list of development goals and closed list of Article 8. The representative read the question as it was formulated: "How do you reconcile the open list of development goals in your proposal with the closed list of Article 8, if the latter would be applicable? And how would you see the rest of the requirements of Article 8 apply?". The representative felt that the question was not clear. He asked if Members were suggesting that they would agree to these proposals if the criteria proposed under Proposal 6 were utilized for the other proposals as well.

28. Point 6 referred to the reference to developing country Members listed in Annex VII of the Agreement on SCM. Annex VII of the SCM Agreement, which included LDCs and listed countries, was the trigger for this element. It was intended to narrow the scope of the application. The G90 recognized that the WTO Secretariat had issued a periodic note reporting the status of the listed countries, plus Honduras (added by rectification decision in 2000), in terms of eligibility if a Member fell below US$1,000 per capita for three consecutive years (see most recent reference G/SCM/110/Add.14). The intention was that the procedure be maintained and applicable to the G90 proposal.

29. Point 7 related to the significance of the insertion of the condition "only when the products concerned are destined to exports" since the scope of the provision referred to import substitution subsidies. Article 3 of the Agreement on SCM referred to two types of prohibited subsidies. While recognizing the importance of subsidies in the economic development of the developing country Members in Paragraph 27.1, the Agreement allowed Annex VII country Members to provide only export subsidies but not subsidies contingent upon the use of domestic over imported goods. Since the G90 proposal was directed towards industrialization, it was proposed to allow Annex VII Members to provide 3.1 (b) type subsidies to the products only when products concerned were destined for export. That would limit the use of 3.1 (b) subsidies and link this type of subsidy with the 3.1 (a) type subsidies to promote industrialization in Annex VII country Members.

30. In concluding his intervention the representative of Cameroon added two points: (i) if subsidies allowed developed country Members to develop, it recognized that these were useful for development; and (ii) if the WTO wanted to be considered as an Organization that supported development, it should allow for pro-development measures to be implemented. He encouraged Members to consider the creativity reflected in this proposal and how the solution proposed by G90 took into consideration the issues of concerned developing country Members without changing existing rules frameworks.

31. The representative of Senegal presented the G90's answers to the questions raised by the EU, Japan and Switzerland on proposal 7 relating to the Agreement on Customs Valuation. He explained that the proposal aimed, on the one hand, to combat under-invoicing, a common practice in many developing country Members and LDCs. On the other hand, it aimed to facilitate

access for LDCs to price databases in order to better monitor the veracity of declared values by economic agents through effective cooperation between LDCs and exporting Member countries. Lifting those constraints faced by LDCs would mobilize more budgetary resources to finance the economic and social needs of LDCs and improve the efficiency of control operations of customs administrations. Alluding to the EU's and Switzerland's questions about the difficulties faced by LDCs in implementing the Agreement on the Implementation of Article 7 of the GATT, and the results of the technical assistance provided for several years, he explained that the application of alternative customs valuation methods in a strict order was burdensome, expensive and time-consuming. It required 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. The application of the computed value also required investigations in exporting country Members. Difficult procedures, financial constraints and limited human resources exacerbated difficulties of the LDCs. He drew the EU's attention to its communication in document G/VAL/W/112 which set out the reasons for the concerns regarding the veracity or accuracy of declared values. The elements stated by the EU included the following: the lack of mutual trust between companies and customs; the lack of experience with regard to regular trade flows; situations that encouraged importers to take risks by making false customs declarations; cases of fraud or attempted fraud leading to a generalization of conclusions concerning the loss of revenue; lack of training of customs officers and inadequate management; conflicts in relations between customs officers and traders; the uncooperative attitude of certain traders and/or non-structured trade: traders did not keep accounts (or did not keep proper accounts); it was not possible to reach them or rely upon them to cooperate in case of controls or post import controls or audit; insufficient knowledge of the Customs Valuation Agreement and its applicability to various trade flows; and the inadequacy of national legislation concerning customs powers. LDC customs administrations were still faced with the shortcomings and problems described by the EU, in spite of all the efforts made and the technical assistance provided. Indeed, technical assistance was not an end in itself. It was a contribution which went hand-in-hand with the human and financial efforts of the beneficiaries to improve a particular situation. Not all LDCs had benefited from technical assistance. In addition, the projects and activities financed in this context were limited in time and resources and did not guarantee results, especially if an exit strategy was not put in place and if there was no long-term provision in the state budget, under the beneficiaries own resources, to ensure that the project's achievements were preserved indefinitely. LDCs had much more serious budgetary constraints, to which under-invoicing largely contributed. He said that Japan, like many Members, recognized the difficulties faced by LDCs, particularly those related to under-invoicing. Nevertheless, it was concerned about the potential negative effects of using minimum values. He said that Japan also shared with Switzerland the systemic concerns regarding the prohibition of minimum values by the Customs Valuation Agreement.

32. The representative recalled that S&D was an exception or derogation from the rules. From this perspective, compliance with the Customs Valuation Agreement should not be an issue. Moreover, the use of minimum values had been allowed under Annex III of the Customs Valuation Agreement. The fact that no LDC had applied the reservation under Paragraph 2 of Annex III since 2007 was not linked to the improvement in LDC capacities, or their need for the use of minimum values, but rather to the conditions established by the Committee on Customs Valuation when granting S&D to requesting Member. What the LDCs asked for in the proposal actually came under the mandate of Paragraph 44 of the Doha Declaration, namely to make S&D provisions effective and operational, and above all to ensure that they addressed the economic and social needs of the LDCs in a meaningful way. He indicated that the G90 members were open to examining the modalities that Japan believed could address their concerns about the potential negative effects of using minimum values, taking into account the needs and constraints of LDCs. He said that in response to the question from the EU on the contribution of the Trade Facilitation Agreement (TFA) to access price data, Article 12 of the TFA was a significant step in strengthening customs cooperation between WTO Members. However, the procedures, limitations and the discretion left to the Member to whom the request for assistance was addressed, could prove burdensome or counterproductive for the LDCs, in that no specific provisions were included to take account of their particular situation. Moreover, under Article 10.5.1 of the TFA, Members no longer had the possibility of requiring the use of pre-shipment inspections in relation to tariff classification and customs valuation. For some Members that had recourse to pre-shipment inspection firms, this meant a transfer of those obligations to the customs administrations. This was the case for certain LDCs which had contracts with pre-shipment inspection firms and were faced with the dual challenge of bringing their TFA commitments into conformity and implementing the procedures of the Customs Valuation Agreement (CVA). Given the limitations related to the provision and

effectiveness of technical assistance, in his view, the TFA could only be able to provide any possibilities in this respect if it enabled those constraints to be properly addressed. It was premature to reach any conclusions at this stage given that the Agreement had only entered into force recently, that LDCs were still far from receiving the support they needed in this framework.

33. The representative of Bangladesh provided a response to the questions on proposal no. 8. He stated that the G90 had received five questions on this proposal from Australia, the EU and Japan. He explained that the proposal was not necessarily an obligation of result. It merely sought that developed country Members gave due consideration to meaningful market access. Paragraph 2(a) of the Enabling Clause, envisaged the establishment of "generalized, non-reciprocal and non-discriminatory preferences beneficial to the developing countries". It was not impractical for developed Members to proactively consider how meaningful market access could be best secured for developing and least developed country Members in designing their generalized system of preferences (GSP) schemes. The G90 sought that developed countries, in formulating their GSP schemes, considered how the export interests of relevant developing and least developed country Members could be ensured, and make the market access under the various GSP schemes meaningful. In this regard, the G90 had some pertinent questions about GSP schemes. First, he asked, if the WTO Members did not consider that the GSP regime was agreed upon by the WTO Members for expanding export opportunities of the developing country Members, especially those which had limited export products. In fact, Paragraph 3(a) of the Enabling Clause maintained that any differential and more favourable treatment provided under this Clause shall be designed to facilitate and promote the trade of developing Members. Second, he wondered whether Members did not think that the G90 proposal would facilitate operationalization of this provision through consultations. Finally, he asked if WTO Members did not consider that there was a responsibility for the GSP granting Members to design their schemes to facilitate and promote the trade of developing country Members.

34. When given the floor to answer the questions on proposal no. 9, the representative of Egypt said that, as had been the case with the proposal no. 3, he would provide G90 response at the next meeting of the Special Session.

35. In responding to the questions posed on proposal no. 10, the representative of Rwanda stated that the G90 had received questions from Australia, Canada and the EU mainly seeking clarification of the term "full restraint", the meaning of "fast track" accession process, and as to what would be the G90's suggestions to discipline accession process. He recalled that 30 LDCs were original WTO Members and the accession of nine LDCs had been approved from amongst 36 LDCs since the establishment of the WTO. But there were still a significant number of LDCs out of the system. Currently, eight LDCs were in the process of accession negotiations with another 13 developing countries in the queue. Because of increasing appetite and demand for a wider market access from the other Members, combined with other constraints associated with LDCs' own limitations of development, human, institutional, infrastructural and regulatory capacities, accession processes for LDCs were becoming more and more onerous and challenging. From the records so far, accession processes on average took nearly 11 years for developing country Members and 13 years for LDCs. To this effect, the 2002 LDC Accession Guidelines, in addition to the 2012 General Council Decision, were intended to further strengthen, streamline and operationalize LDC accession. The Guidelines urged Members to exercise restraint in seeking market access concessions and commitments from acceding LDCs that were beyond their levels of development in order to facilitate their accession. The Guidelines stipulated that Members exercised restraint in seeking market access concessions from acceding LDCs, while the latter were expected to offer reasonable concessions commensurate with their individual development, financial and trade needs. The Guidelines allowed flexibilities to acceding LDCs consistent with their individual development, financial and trade needs as broader fundamental development objectives. They also required LDCs to make a comprehensive binding coverage on both Agriculture and NAMA. The Guidelines set basic principles both for goods and services negotiations. On goods, the principles were comprehensive binding coverage of 50% for Agriculture and 35% for NAMA; tariff negotiations that ensured an appropriate balance between predictability of tariff concessions and the legitimate developmental needs of LDCs to address their specific constraints or difficulties; and establishing benchmarks on average bound rates. On services, the principles were that Members were to respect the provision of special treatment for LDCs contained in Articles IV and XIX of the General Agreement on Trade in Services (GATS). In particular, Members would take into account the serious difficulty of acceding LDCs in undertaking commitments, in view of their special economic situation and their individual development, financial and trade

needs; flexibility for acceding LDCs for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation. In addition, acceding LDCs would not be expected to offer full national treatment, nor were they expected to undertake additional commitments under Article XVIII of the GATS on regulatory issues which might go beyond their institutional, regulatory, and administrative capacities. With these principles, the Guidelines gave flexibilities for acceding LDCs to identify their priority services sectors and sub-sectors and make reasonable offers commensurate with their individual development, financial and trade needs as well as their regulatory and institutional capacities; to be provided with technical assistance, as appropriate, to enhance their regulatory and institutional capacities; to not be required to undertake commitments in services sectors and sub-sectors beyond those that had been committed by existing WTO LDC Members, nor in sectors and sub-sectors that did not correspond to their individual development, financial and trade needs. Accordingly, WTO Members must exercise restraint in seeking commitments in trade in services from acceding LDCs. Though LDCs in accession were willing to take commitments that were consistent with their level of development, human, institutional, infrastructural and regulatory capacities, the size and depth of commitments that acceding LDC countries took indicated the depth of demands and pressures on LDCs for more market access. The commitments were excessive and some commitment terms were even much beyond the level of development and ability of LDCs to meet their obligations in tandem with their developmental ambitions to get their people out of poverty and benefit from the global trading system on balanced terms after accession. Acceding LDC Members were thus still exposed to WTO plus commitments by developed Members.

36. The G90 formally and solemnly condemned these extractions of concessions. It sought respect from Members to the principle of special treatment for LDCs contained in Articles IV and XIX of the GATS. In particular, Members must take into account the serious difficulty of acceding LDCs in undertaking commitments, in view of their special economic situation and their individual development, financial and trade needs. Therefore, the G90 sought to discipline the Guidelines as an LDC Accession Instrument and ensure that LDCs acceded on fair and equal terms, and that their conditions of access to the WTO should not be more onerous than those of founding Members. As per the principles of the Guidelines, Members must show restraint in seeking market access concessions and commitments from acceding LDCs in trade in goods and services that they were not ready to make. Because of their limited technical financial resources capacity, accession should not be a lengthy process and should be exercised in a fast-track approach. With the principles of universalizing the MTS on balanced terms, consistent with the level of development, ambition and developmental needs of LDCs, the G90 hoped that the MC11 outcomes would ensure the principle of not leaving anyone behind in benefiting from the global trading system with full implementation of the Guidelines that set a benchmark for goods and services commitments by disciplining the Guidelines as part of S&D for LDCs accession. The G90 also hoped that Members would re-affirm their commitment to restrain from seeking market access concessions and commitments from acceding LDCs that they were not ready to make because of their level of development capacities and developmental ambition.

37. The representative of European Union thanked the proponents for their detailed responses and took note of the request for clarification on some of her delegation's questions.

38. The representative of Canada thanked the G90 for the hard work undertaken in providing answers to the questions raised.

39. The representative of Australia also joined the delegations of EU and Canada in thanking the G90 for the answers provided.

40. The representative of Japan thanked the proponents for their efforts to prepare and deliver the responses to the questions raised in the previous sessions. He said that as discussed in the Heads of Delegation meeting in September and in the recently held Marrakesh meeting, Members could not take all unresolved issues to MC11 so there should be a moment of truth, at which point the Membership would have to choose some potential issues for deliverables at MC11, and start considering post-MC11 work programmes on the remaining issues. In Marrakesh, some Ministers had shown strong interest in S&D, but it was also evident that the views among the Membership on this matter remained divergent. In this vein, the Director-General had called for the Ministers of the G90 to have a political engagement in this matter, and not to outsource this important task to the Geneva colleagues given the sensitivity of the issue. He thus called for colleagues from the

proponents to have more dialogues with their own capitals, to consider a way forward and how much flexibility could be extended for convergence at MC11 or beyond.

41. He added that it was rather unfortunate that, as of now, S&D was not seen in the list of issues with high potential of deliverables at MC11. Members needed to face this reality and think seriously what they could do in the remaining two months in the lead-up to MC11. Nonetheless, he stated that the comprehensive responses by the G90 were very useful and he highlighted the importance of dialogue with capitals.

42. The representative of Cameroon said that, in Marrakesh, his Minister had clearly stated that his country wanted industrialization, structural transformation and diversification of its economy. His President had also said that Cameroon should become an emerging economy. He questioned the ability of the Director-General to advise on what objectives a Member country could set out for itself in pursuit of development, industrialization, structural transformation and diversification. He did not think that any Member should advise the proponents on what to raise or to take to Buenos Aires.

43. The representative of Uganda asked whether it was the understanding of Japan that the Director-General was suggesting that the work in the Special Session should be shut down so that Ministers in capitals would take up that work. He had not understood the concept of outsourcing *vis-à-vis* Geneva and the capitals and asked for clarification of Japan's understanding of what the Director-General had said.

44. The representative of Mexico said that her delegation understood the needs and challenges faced by some Members in fully integrating into international markets, particularly LDCs. Mexico was open to debating the proposals in more detail, to find a way to avoid possible distorting effects of the sought flexibilities.

45. The representative of Cuba stated that, as a Member of the G90, her delegation supported the statements made by the proponents. She said that her delegation believed that there must be an outcome on development at MC11. She encouraged Members to continue discussions in a constructive and positive way.

46. The representative of Thailand said that his delegation had always been supportive of a rules-based, transparent and predictable MTS. He believed that the issues before the Special Session merited further discussion, particularly proposal 4 on SPS, 5 on TBT and 9 on Transfer of Technology.

47. The representative of the United States stated that as her delegation had already made clear at the July and September meetings of the Special Session, it did not consider the G90 proposals as a basis for work. No amount of tinkering would allow a productive discussion. The discussion in the Special Session last month and today had not changed her delegation's views, in fact, they had reconfirmed its views already expressed at previous meetings. She said that in their consultations with the Chair, some Members had expressed openness to working on those proposals should they apply only to LDCs. The United States was not able to support this approach or to consider weakening WTO rules for any group of Members. The United States firmly believed that the benefits of the global trading system should only accrue to those who participated in it.

48. The representative of Rwanda said that the G90 aimed at achieving an MTS that was beneficial to all by simply respecting mandates to relax some rules for industrialization and structural transformation of those who really needed flexibilities.

49. Responding to Cameroon's question, the representative of Japan said that he was not in a position to explain what the Director-General had tried to convey in his remarks. Nevertheless, his understanding was that the Director-General had spoken broadly of the importance of having some moment of truth before Buenos Aires, so that Members could avoid sending a full set of unresolved issues to MC11 for Ministers to consider. In the assessment he presented to Ministers about S&D, he had said that given the difficult nature of the proposals, it was not good for Ministers to rely totally on the discussions based in Geneva and that some political engagement from Ministers would be required.

50. The representative of Bangladesh asked for clarification from the United States about why the responses given by the G90 had confirmed its view that work could not be continued on the basis of these proposals.

51. The representative of Uganda asked for clarification from the delegation of the United States as to whether it would block consensus if the Special Session managed to arrive at a degree of convergence with the other Members. He asked whether it would be accurate to report that the United States would block consensus to adopt a decision on any of the provisions in the proposals.

52. The representative of the United States said that her delegation had for several years asked the proponents to make a good faith attempt to be constructive by considering a new approach focused on facilitating their full integration into the trading system and which recognized that full implementation of WTO rules was an important foundation for sustainable development. That was not the premise of the proposals. The United States was ready to work with Members that were seeking to promote a more fulsome integration into the global trading system. If Members had been working on implementation for the past couple of decades, this discussion would not be necessary. In response to the question from Uganda, she said that the Special Session was quite away from consensus, so she believed it was an unrealistic scenario and hence the question did not merit a response.

53. The Chairperson announced that the next meeting of the Special Session would be held on 19 October.

54. The meeting was suspended.

RECONVENED SESSION (19 OCTOBER 2017)

55. The 52nd Special Session of the Committee on Trade and Development was reconvened on 19 October 2017.

56. The Chairperson recalled that at the last meeting of the Special Session on 12 October 2017, Members had heard the G90's responses to the questions asked by other Members on eight out of the ten proposals. Also, it was agreed to reconvene in formal mode to hear proponents' responses to the questions on the remaining two proposals. i.e., nos. 3 and 9 that related to GATT Article XVIII B and Transfer of Technology. She said that after having heard these responses, she would suspend the meeting and switch into an informal mode so as to undertake substantive consideration of the proposals that constituted the industrialization cluster i.e., the proposals relating to the Agreement on TRIMS, GATT Article XVIII, Sections A and C, and the Agreement on SCM.

57. The representative of Egypt said that with reference to the proposal on Article XVIII Section B on BoP, the G90 had received around six specific questions from Japan and the EU in addition to two general ones from Australia. The questions and concerns raised, sought clarifications regarding the underlying problems and the challenges facing developing country Members; the rationale for improving Article XVIII:B; the reactions towards related cases within the WTO especially the most recent ones; the issue of deviation from the current measures; the comparison between the current proposal and the one tabled in 2015 with special consideration on Paragraphs 3.2 and 3.3 in the revised proposal; and the issue of differentiation. Paragraph 44 of the Doha Declaration mandated a review of the S&D provisions with a view to strengthening them and making them more effective and operational. The rationale and the reasoning for reintroducing, once again, the proposals in the Special Session was obvious, because despite the fact that the proposals had been on the table for almost 16 years, the concerns of the proponents remained unaddressed. With regard to the problems and challenges behind the proposal and the challenges faced by the G90 members, it was pertinent to point out that many developing country Members and LDCs had demonstrated declines in manufacturing and insufficient or no growth that had devastated their potential for sustained industrialization, structural transformation and follow-on diversification. The end of the commodity price cycle had negatively impacted the current accounts and financial markets. Since the decline in commodity prices in 2014, revenues had not managed to keep up with expenditures. Over the past two years, the aggregate macroeconomic environment of Africa had worsened due to higher debt, higher public deficit and lower savings. BoP resided at the crux of development. BoP crises among developing country

Members stemmed from the basic obstacles that they faced in trying to become industrialized. The causes of such difficulties were often varied and complex. Key factors included weak domestic financial systems; large and persistent fiscal deficits; high levels of external and/or public debt; exchange rates fixed at inappropriate levels; natural disasters; armed conflicts or a sudden and strong increase in the price of key commodities such as food and fuel. Some of those factors could directly affect a country's trade account, reducing exports or increasing imports. Others could reduce the financing available for international transactions. For example, investors could lose confidence in a country's prospects, leading to massive asset sales, or "capital flight." In many cases, diagnoses of, and responses to, crises were complicated by linkages between various sectors of the economy. Imbalances in one sector could quickly spread to other sectors, leading to widespread economic disruption.

58. Regarding the economic rationale behind the current proposal on improving Article XVIII:B, many developing country Members were entering into debt and having to go to the International Monetary Fund (IMF)/World Bank (WB) for a bail out. That was due to low commodity prices and the reversal of capital flows away from developing country Members. On the economic front, instability in capital flows and in relative currency rates continued. According to UNCTAD data, 2015 witnessed a reversal of capital flows in developing country Members, with net outflows of US$656 billion or 2.7% of their GDP. That was a big change from a net inflow of 1.3% of GDP in 2013. Because of those large fluctuations in perceptions and actual flows, many developing country Members remained vulnerable to financial instability. Going through those cycles, the debt of developing country Members had risen from US$2.1 trillion in 2000 to US$6.8 trillion in 2015. Their overall debt jumped by over US$31 trillion with total debt-to-GDP ratios reaching over 120% in many countries and over 200% in some others. More low-income countries had to turn to institutions like the IMF and WB for financial assistance. Regarding the reaction to related cases within the WTO, especially the most recent ones, he explained that since the establishment of the WTO there had been about 104 notifications of BoP restrictions. In recent years, some WTO Members had applied BoP measures in order to address specific economic concerns. On 25 February 2015, Ukraine adopted BoP measures. The representative said that he understood that Ukraine's BoP measures were no longer in force. With respect to the question regarding measures from Nigeria, it illustrated even more obviously the need for flexibility by the G90 members and developing country Members to be able to diversify their economies, industrialize and structurally transform. Ecuador had applied BoP measures in 2009 and again in 2015. In its 2015 notification, Ecuador referred to the highly unfavourable economic climate prevailing in the country and its impact on the BoP as the grounds for imposing a temporary and non-discriminatory tariff surcharge for a period of up to 15 months, in order to regulate the general level of imports and, thereby, resolving Ecuador's critical BoP situation. The imposed surcharges were in response to a sharp drop in oil prices starting in late 2014, which led to deterioration in the country’s BoP. Ecuador's measures had been subject to extensive discussions as part of the consultations process which lasted for six consecutive rounds, with some Members expressing concern as to whether they complied with the relevant requirements of Article XVIII of GATT 1994. Ecuador began to phase those measures out in 2016, but following the earthquake in April of that same year, it had informed the BoP Committee that it intended to delay the phase-out for a year to facilitate recovery from the economic effects of the earthquake. Ecuador informed the WTO's Committee on BoP restrictions on 21 July 2017 that the final phase-out of the surcharges was made effective on 1 June 2017. It was important to emphasize the newly-added pressing challenges that developing country Members currently faced due to climate change and its negative impact on their efforts towards sustainable development. Moreover, the need for BoP measures would remain pertinent due to instabilities in the global monetary system. Based on IMF data, many developing country Members had continuous BoP deficits in the period 2008-2015. Such deficit combined with another deficit in the net of international investment positions within the same period. Furthermore, many developing country Members, and in particular LDCs overall, the BoP had been in deficit since the 1970s. And again, due to onerous procedural requirements, developing country Members, small and vulnerable economies (SVEs) and LDCs had not been able to fully utilize those provisions.

59. On the concerns relating to deviation from the current available measures, the G90 would like to confirm that it was not deviating from the current measures to address BoP concerns. Articles XII and XVIII:B of the GATT 1994 established rules allowing WTO Members to impose restrictive import measures specifically in order to address BoP concerns. Both provisions operated as an exception to Article XI:1 of the GATT, which imposed a general prohibition on quantitative restrictions and other trade restrictions on imports and exports. Article XII could be invoked by all

WTO Members, whereas Article XVIII:B could be invoked only by developing country Members. Article XVIII:B covered measures to safeguard a Member's financial position, and also permitted measures to ensure a level of reserve adequate for the implementation of the Member's programme of economic development. Article XVIII:B authorized measures to forestall the threat of or to stop a serious decline in its monetary reserves and to achieve a reasonable rate of increase in its inadequate monetary reserves. In terms of procedural requirements, measures taken under Articles XII and XVIII:B must be taken in accordance with the procedures laid out in the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994. Pursuant to the Understanding, Members must give preference to measures that had the least restrictive effect on trade. In addition, measures taken for BoP purposes could only be applied to control the general level of imports and could not exceed what was necessary to address the BoP situation. In effect, this meant that BoP measures should not be used to provide protection to specific sectors. Members could exclude from the scope of BoP measures certain "essential products". In the case of developing country Members, under Article XVIII, that meant products which were more essential in the light of the Member's policy for economic development, provided that the restrictions were applied, so as to avoid unnecessary damage to the commercial or economic interests of any other Member. BoP measures had to be progressively relaxed as the BoP situation improved. The Committee on BoP had to carry out consultations in order to review BoP measures. Members imposing BoP measures had to notify the General Council and the BoP Committee.

60. On the specific questions related to the current proposal and the one tabled in 2015, with special considerations on Paragraphs 3.2 and 3.3 of the revised proposal, the reasoning for reintroducing a proposal which had been rejected back in 2015, was that rejection had been clearly motivated by disinterest on the part of developed Members in the proposals in the first place. The adoption of the SDGs was also a determining event at the end of 2015, which had helped the G90 members to closely examine their structural transformation, industrialization and diversification needs and the policy measures required to realize them. With respect to Article 3.3 of the proposal, in the 2001 Doha Ministerial Declaration on Implementation-Related Issues and Concerns, Ministers reaffirmed that it was an S&D provision for developing country Members and that recourse to it should be less onerous than to Article XII of the GATT 1994. With regard to Paragraph 3.2, concerns had been raised that it could be very difficult to achieve consensus in the Committee. The G90 was not adding further discretion to the assessment of adequacy by stipulating what the Committee should consider in assessing adequacy of monetary reserves for a developing country Member referred to in Paragraph 4(a) of Article XVIII. That provision was designed to ensure that the unique challenges facing developing country Members, including commodity price volatility and volatile financial capital flows, were taken into account. In particular, it served to clarify that short-term financial flows should not be included in determining the adequacy of a developing country Member's external financial position. The representative recalled that that was an outstanding implementation issue, notably Annex C of the Cancún 28 S&D provisions. He reminded Members that one of the positive findings of the India-Autos Panel had been that GATT Article XVIII:B allowed the use of BoP provisions for development purposes. The G90 was of the view that consideration of the issues described in Paragraph 3.2 of the proposal would facilitate the decision-making process with regard to application of Article XVIII:B.

61. Another concern had been raised about the issue of differentiation. Article XVIII:B clearly dealt with the issue, as it had to be utilized by developing country Members in the early stages of development and with a low standard of living. To conclude, he highlighted that Article XVIII:B of GATT 1994 established rules allowing WTO Members to impose restrictive import measures specifically in order to address BoP concerns. He also said that the main objectives of the G90 proposal were to simplify the procedures for invoking BoP measures to achieve the objectives of the Article. With regard to the concerns about the WTO consistency and the importance of avoiding excessive use of those provisions, he clarified that the proposal respected the WTO-related provisions and did not aim to change them. The proposal only sought to allow developing country Members to use their right, which all Members had agreed upon. The G90 proposed better guidelines for determining the adequacy of Members' reserves within the context of developing country Members' economic development programmes. It also proposed the suspension of the right to retaliate against such Members that used that Article.

62. Explaining the questions raised on proposal 9, related to transfer of technology, the representative of Egypt stated that the G90 had received around seven written questions on the proposal from Members, including the EU and Canada. The questions sought clarifications about

the rationale for introducing the new proposal and how existing WTO Agreements were limiting developing country Members' abilities to take measures necessary for development. There were also concerns about the correlation between TRIPS Article 66.2 and the proposed Paragraph 9.3 in the proposal. Some other questions related to the meaning of the phrase "under the control of developed country Members" and whether that meant technologies owned by a government. Clarification had also been sought about the phrase "technologies developed with public funding" and specific questions were raised to understand better the concerns of LDCs with regard to the current practices and initiatives related to transfer of technology. The representative said that the aim of the G90 proposals was to address the industrialization, structural transformation and diversification needs of the proponents. The proposal on transfer of technology complemented the rest of the proposals tabled by them. In his view, there could not be meaningful productivity without adequate technology. Technological progress was a key factor in economic development and decreasing the technology gap between developed and developing country Members would have a positive impact on enhancing proponents' participation in international trade. Many developing country Members had had declines in manufacturing and insufficient or no growth that had devastated their potential for sustained industrialization and structural transformation of their economies. As developing country Members and LDCs continued to struggle with industrialization, specific measures needed to be taken within the WTO to encourage flows of technology to complement their efforts.

63. On the question of how existing WTO Agreements limited developing country Members' abilities to take the measures necessary for development, the representative explained that a number of provisions in the WTO Agreements mentioned the need for transfer of technology from developed to developing country Members. However, it was not clear how such transfers should take place in practice. Major aspects of the technology and knowledge deficits in many developing country Members were easily spotted by observing indicators such as the share of GDP devoted to scientific and technological research or the share of manufacturing and technology products in exports. Nevertheless, a more comprehensive perspective could be gained by making further assessments. For that, technology and knowledge stocks and flows, as well as supporting institutional and policy frameworks, needed to be brought into picture. There were clear barriers to technology flows to developing country Members. He explained that technology transfer was a four-stage process consisting of acquisition, learning, adaptation and diffusion. Market failures could act as barriers to technology acquisition and diffusion of technology. Some forms of market failure could be particularly important barriers to technology transfers for developing country Members. The process of technology transfer to developing country Members could also encounter major obstacles in the phases of learning and adaptation. In that context, there were two types of barriers to technology transfer to developing country Members: (i) firm-level problems that derived from the specific characteristics of a firm; and (ii) systemic problems that derived from the environment in which firms operated. At the firm level, possible barriers to technology transfers included insufficient knowledge about all ranges of technological alternatives; inability to identify the technology that best suited its needs; limited access to finances; inadequate workforce skills and mechanisms for their upgrading; slower pace of technological development in downstream or upstream firms that inhibited the upgrading of technology; and organizational rigidities within firms. At the systemic level, barriers to technology transfers included: lack of access to information on new technologies and innovations; market distortions, including barriers to trade; lack of education and skills; ineffective institutions for carrying out R&D; insufficient or weak linkages between businesses, universities and research institutions resulting in little knowledge about the needs of the industry; inadequate development of the financial and insurance markets; lack of resources, knowledge and capabilities within policy institutions; and other regulatory constraints.

64. On the concerns pertaining to the correlation between the proposed provisions 9.2, for LDCs only, and 9.3, for developing country Members in general with TRIPS Article 66.2, the representative said that the proposal benefited from the existing related discussions on trade and technology transfer within the WTO. The proposed provisions 9.2 and 9.3 dealt with the fundamentals like the enabling environment and the role of home country measures. He further clarified that Members had discussed the vital role of domestic policy and framework in the generation, transfer and diffusion of technology. There was a recognition that development of human capital, infrastructure, legal framework, macroeconomic conditions and the level of skill of workers and the domestic education system were key elements in creating a suitable enabling environment for the flow and diffusion of technology. A number of presentations in the Working Group on Trade and Transfer of Technology (WGTTT) and elsewhere in the WTO, had also emphasized the role of absorptive capacity in deriving economic gains from technology transfer.

Underlying the importance of partnership in technology transfer, and for that to be a win-win situation, the evolving discussions had seemed to recognize that both home and host countries measures were important factors in facilitating transfer of technology. Members shared the understanding that transfer of technology was a two-way process, but had somewhat different views on the relative importance of home and host country measures. From the developing country Members' perspective, the G90 continued to hold the view that home country measures, including financing for transfer of technology, incentives to stimulate foreign direct investment (FDI) with a technology transfer component, incentives for small and medium enterprises seeking partners in developing country Members, simplification of rules of origin and the establishment of a database to ensure the flow of all relevant information on technology were much more important in facilitating technology transfer.

65. With regard to requests for clarification of the concerns of LDCs, the representative stated that technology transfer initiatives to developing country Members, in particular LDCs, had not been operationalized. For instance, in the TRIPS Council, with regard to actions taken or contemplated under Article 66.2, some Members had said that the programmes reported by some developed Members, wherein they were providing technology transfer under Article 66.2, were not necessarily specifically tailored towards LDCs. Indeed, the EU had reported that those programmes were not necessarily targeted to LDCs but often had a regional scope which included a variety of countries. Furthermore, many of the programmes and policies reported were not technical in nature and did not include a technology transfer component. On the more general question that sought further clarification on the proposal, the related paragraph in the proposal had requested targeted technical assistance to be provided to support LDCs' domestic efforts to enhance their technological base and improve their innovation capacities. Regarding the terms "publicly owned technology or publicly funded research", the representative explained that historically, governments had played a key role in supporting R&D through national laboratories, universities, and through international collaborative ventures. Many governments emphasized the contribution that public support to R&D could make to economic competitiveness and the importance of commercializing publicly funded R&D. Country case studies indicated that public funding remained a major source for R&D activities. Public funding of R&D, according to the UNCTAD, UNEP and UNDESA, usually took two forms: general support to national R&D institutions and laboratories, and direct funding of specific projects according to set government priorities. One example of publicly funded research being made available to the public was the mandatory Public Access Policy of the US National Institutes of Health (NIH) which required all researchers funded by the NIH to make available their publications through the National Library of Medicine no later than 12 months after the official date of publication, thus improving the sharing of scientific findings, the pace of medical advances, and the rate of return on benefits to the taxpayer. A similar concept could also be envisaged to address prompt availability of publicly funded technologies to developing country Members.

66. On the concerns related to the mandate and working of the WGTTT, the proposal sought to enhance and revitalize the work of the WGTTT by mandating the Group to examine certain issues. The Group, established by the Ministers in Doha in 2001, was mandated to examine the relationship between trade and the transfer of technology from developed to developing country Members, and identify ways to increase the flows of technology to developing country Members. He concluded the statement by stating that after about 16 years, the Working Group still remained far from fulfilling the Ministerial mandate.

67. The Chairperson asked whether the proponents were ready to provide answers or clarifications on the remaining aspects of proposal 6 relating to subsidies which had remained unanswered at the last meeting.

68. The representative of Rwanda stated that it was a request for clarification from the G90's focal point to the EU with regard to their its question on the open list of development goals and the close list of Article 8, and how to reconcile both lists. Therefore, it was the EU which was supposed to provide clarification to the question it had raised.

69. The representative of the European Union said that indeed there had been a question from the G90's focal point asking her delegation to clarify its question regarding the open list of development goals and the close list of Article 8. The question was how to reconcile both lists and whether the latter would be applicable. Also, how would the G90 see the rest of the requirements of Article 8 apply. Comparing the list of non-actionable subsidies in Article 8 with the proposal, the

proposal mentioned product diversification and contained the word "including" so it did not seem to be a closed list, whereas Article 8 was a closed list, and had very specific requirements listed.

70. The representative of Bangladesh said that in the G90's view, Article 8.1 regarding non-actionable subsidies covered many things. The G90 understood that its proposal was more closed than the one in Article 8.1.

71. The representative of Rwanda said that the G90 would consider the clarifications by the EU and come back with a response.

72. At this stage the Chairperson switched the meeting into an informal mode. Later, at the delegation of Canada's request, the meeting was again switched back to formal mode.

73. The representative of Canada took the floor to state that there were many paths to development. Economic circumstances were not what they were 200 years ago or 100 years ago or in 2001 or even 2009. Because certain policy tools were employed in the past, did not mean that there was no better way to develop or that they would yield positive results today. Her delegation did not think a discussion of history was appropriate for the Special Session. She had heard the proponents indicate that performance requirements, infant industry protection and WTO-inconsistent subsidies were needed to foster development. Her delegation's view was that they created inefficiencies in domestic markets and distorted international trade, to the long-term detriment of all. With such fundamental differences, it was difficult to see how Members could bridge the gaps and find consensus on the proposals. Her delegation also questioned the usefulness of a proposal-by-proposal review in informal mode. Nonetheless, Canada remained open to whatever approach was agreed among Members and assured its participation. The representative encouraged the proponents to consider what other policy tools could be used to achieve their development goals, ones which were sustainable in the long run, transparent and predictable, available only for Members that required them, and that supported the continued integration of developing country Members and the LDCs into the MTS. In that respect, her delegation would continue to encourage a discussion of the specific problems being faced rather than a one-size-fits-all-approach and would welcome an exchange of views on what policy tools might be useful in addressing those challenges, within or outside the WTO.

74. The representative of Japan reiterated his country's basic position that S&D should be considered in exceptional cases for those developing country Members that really needed it and only to the extent necessary. He noted and appreciated the efforts of the proponents to present concrete cases in explaining some of the proposals or in the responses to the questions. However, it was, unfortunately not the case for all the proposals. He had seen some statistical figures indicating low market shares and stagnation of African countries and LDCs. The representative understood that those Members continued to face a challenging environment, and that industrialization and structural transformation and diversification were urgently needed, but those aggregate figures did not necessarily show direct causal links with the need to introduce some ASPs. In his view, counting the cases where alleged non-conforming measures were tabled in the Committees concerned, and counting the relevant dispute settlement cases, was not a productive approach. Those were the cases where those alleged non-conforming measures were not notified and no practical effort to maintain the consistency of those measures with the WTO Agreement was made by the Member concerned. It did not prove that the WTO Agreement should accommodate those measures by providing for flexibility. In fact, the opposite was true. Members should also bear in mind that those alleged non-conforming measures could well involve serious systemic concerns as well as real commercial risks, which in some cases would also negatively affect other developing country Members, including G90 members. The representative then spoke about the need for efficient review mechanisms. He said that as stated previously, his delegation was not in a position to agree on a blank cheque which allowed automatic and unlimited deviations from the existing WTO rules. Therefore, for any proposal, Japan would need to see efficient review mechanisms to scrutinize and approve any requests for deviation on a case-by-case basis in advance of the introduction of the measures concerned. The representative considered that deepening the discussion on review mechanisms was also helpful to address some outstanding questions such as differentiation and open-or-close criteria. Lastly, he repeated his call for the Membership to consider other possible solutions to address the real challenges and difficulties which developing country Members and LDCs were facing, including a better and more efficient use of waivers. He understood that there would be a question of how much commonality or differences existed between the utilization of waivers and adding some procedural clarity to the

existing S&D provisions. Japan was open to those sort of questions and looked forward to an informal debate with the proponents within the remaining time available from now on to MC11.

75. The representative of the European Union said that her delegation had on many occasions expressed its readiness to engage constructively on development issues, in particular those concerning LDCs, on the basis of analysis that clearly explained where specific problems lay and justified specific courses of action. In that 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. She recalled the EU's position that deviating from existing commitments and rules should be considered an exception, not the rule; that fundamental WTO principles like most-favoured nation (MFN) and National Treatment could not be undermined or weakened; and most importantly, the different levels of industrial, trade and developmental situations of WTO Members would have to be duly reflected in any proposal. She stressed that without meaningful differentiation and prioritization of the needs of the LDCs, any process of defining S&D would not go very far. The EU's reaction to the proposals remained one of disappointment. Specifically, on the proposals in the industrialization cluster, she said that they went against all of the three principles just mentioned, not the least that of meaningful differentiation, and a prioritization of the needs of the LDCs. The EU would like to hear from the proponents how they planned to take into account its concerns about the process and what they saw as the outcome of that process, in light of the numerous and fundamental concerns expressed in the proposals under discussion. The representative underlined that her delegation by no means trivialized the development challenges that some developing country Members and especially LDCs faced in being competitive and in integrating into global trade. The EU fundamentally believed that WTO rules and the MTS were the best insurance to achieve a level-playing field. It had also repeatedly stressed that it would like to see the needs of LDCs addressed as a priority, which had not been the case in the process followed in the Special Session. In fact, the EU's view was that many of those proposals, certainly the ones in the industrialization cluster, had the potential to be explicitly detrimental to the LDCs. The representative said that if the process were to start afresh, her delegation would call upon the proponents to explain beyond quoting statistics, which it did not question, and beyond the generalities, what were the specific difficulties they were experiencing and ask them to make their case about the challenges that they aimed to resolve concretely.

76. The representative of Australia said that he echoed the views expressed by the EU on differentiation. In their response to questions on proposal 1, proponents had noted that TRIMS did not differentiate between developing country Members. The representative commented that, without prejudice to Australia's position on that proposal, if proponents were seeking amendments to existing WTO rules, and in particular amendments which provided additional flexibilities, the question of differentiation between developing country Members would be very important. On proposal 6, he stated that from Australia's point of view, historical debates were least useful. He requested that proponents needed to point to specific policy measures, policy statements, policy frameworks, laws or regulations that their governments had in place or were proposing to have in place but were prevented from doing so by the WTO rules.

77. The representative of Korea said that as he had stated in the meetings in July and September, S&D should contribute to integrating developing country Members, in particular LDCs, into the MTS. He believed that any deviation from multilateral trade rules for S&D purposes should be strictly limited to the extent necessary, both in substance and coverage, and by definition it should be temporary. He understood the G90 argument for industrialization, which would play an important role in the G90's development efforts and to integrate into the MTS. However, he was not convinced that the proposals on the table would serve industrialization objectives or the multilateral trade, because the impact of those measures on the trading system itself was unknown. The issue grew more complicated if the growing trend of South-South trade was taken into consideration. After the discussions and the responses from the G90, his view was that wide and deep gaps remained and time was ticking away. Therefore, Members should start thinking of a scenario where no agreement was possible and what could they do in future.

78. Responding to some Members' concerns about deviation from the WTO rules, the representative of Bangladesh said that there were only two proposals which sought exemptions, and one of them only partially. The G90 had thought that discussing proposal-by-proposal would bring more clarity. His delegation agreed that history was not important, and that it was better to discuss specific problems and come up with solutions. However, there had been repeated references to different development paths and that was when references to history were drawn in

the discussion. He believed that it would be better if Members did not get into discussing different paths. Instead, Members needed to focus on the proposals and how to reach an agreement on them. With regard to the suggestion on country-specific waivers, the representative of Bangladesh recalled that the Doha Declaration established a mandate to review S&D provisions with a view to strengthening them and making them more precise, effective and operational. Also, Paragraph 31 of the Nairobi Declaration called for Members to work on the remaining DDA issues, including development. Therefore, in his view, the proponents' demands as envisaged in the tabled proposals were within the mandate. Members could discuss whether the proposals could or could not contribute to make the provisions effective and operational. That was the reason why the proponents thought that it was important to continue a proposal-by-proposal discussion. He did not think that the proposals were asking for a deviation from the MFN principle, but if there were concerns about the proposals containing any element that did, proponents were ready and open to correct it, because they did not want to deviate from the fundamental principles of the WTO. Regarding the concerns about the inconsistencies of the proposal 6 with the Agreement on SCM, the G90 thought that the proposal was consistent, based on Article 27.1, which acknowledged that subsidies might contribute to the development of developing country Members.

79. The representative of Senegal said that he had concerns about suggestions that had been made regarding other policies that could help to reach the goals that the G90 sought. In his view, the Special Session was not the forum to discuss those options. Members were discussing the tabled proposals made by the G90 under a clear mandate to make S&D provisions more precise, effective and operational. Those proposals fell within that framework and contributed to reach wider general policy goals. Therefore, although it might be true that there could be other policy options to accomplish the proponents' objectives, they could possibly play a complementary role to what was proposed in the tabled proposals while remaining within the Ministerial mandate. On the comments that S&D should be exceptional and temporary, he believed that those conditions were already reflected in the proposals. The G90 did not wish to disintegrate from the MTS but rather to alleviate certain barriers that could prevent the G90's economies from achieving their development goals.

80. The representative of Rwanda said that the proposals under the industrialization cluster were extremely important. Issues such as local content requirements, subsidies, and infant industry protection were not part of history. They were the present and the future, particularly for economies that were still in the early stages of development. Korea was the best example. Along with Japan, their historical development exemplified exactly how those policies were critical. That was why the G90 was very surprised to hear comments from Korea, as a developing country Member that had benefitted fully from policy space before GATT closed that space through Article XVIII:A and C without any implementable infant industry protection. What the G90 asked was a relaxation of those stringent GATT/WTO rules to create a conducive environment for industrialization and structural transformation. Regarding comments about how the proposals in the industrialization cluster would be detrimental to LDCs, empirical evidence showed that those policies were developmental. Therefore, the G90 called for moving from ideological rhetorics to pragmatic debate.

81. The Special Session took note of the statements.

82. The meeting was suspended.

RECONVENED SESSION (20 NOVEMBER 2017)

83. The 52nd Special Session of the Committee on Trade and Development was reconvened on 20 November 2017.

84. The representative of the European Union took the floor to state that on many occasions in the past, her delegation had expressed its readiness to engage constructively on development issues, in particular those concerning LDCs, on the basis of analysis that clearly explained where specific problems lay and justified specific courses of action. In this 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. The EU's examination of the recently tabled S&D proposals was guided by the following principles namely: (i) deviation from existing commitments and rules must be considered as an exception – not the rule; (ii) fundamental principles of the WTO-like MFN and National Treatment must not be undermined or weakened; and (iii) most

importantly, the different levels of industrial, trade and developmental situation of WTO Members would have to be duly reflected in any S&D that is agreed by Members. From the very start the EU had expressed disappointment with the G90 proposals and had been honestly trying to explain in more detail the reasoning and context behind the EU's concerns and objections to the particular proposals.

85. She went on to state that the discussions in the Special Session had been interesting, engaging and useful, though not successful in terms of advancing towards a consensus. The reason why much progress could be made and why there were lean chances of an outcome on the proposals included: (i) differences of view on the fundamentals; (ii) no convergence on the substance of the proposals; (iii) many of the EU questions had not been addressed or addressed satisfactorily; and (iv) difficulty of even discussing flexibilities beyond the LDCs in the absence of a meaningful way of making distinctions between Members that would benefit from them. While some Members had spent time and effort in discussing the proposals and explaining difficulties with the proposals and the underlying assumptions that characterized them, the vast majority of Members, despite the informal mode, had not taken the floor on the proposals. In EU's mind, this lack of engagement was a signal that the Special Session's discussions on the basis of the tabled ASPs had reached its limits. It was also manifest that no progress could be expected in the short run-up to the Ministerial at Buenos Aires and any further readings of the proposals would at best be a repetition, and at worst a degeneration of the emerging dialogue on an issue the importance of which the EU had never denied. Without prejudice to future work on this important topic, the EU suggested that the Chair report to the Trade Negotiating Committee (TNC) that, despite serious engagement, proposals remained extremely unripe, the differences wide and deep, to the extent that no outcome on the basis of the specific proposals would be possible for MC11. This did, by no means, signal that the EU would not continue engaging on the topic of development in a constructive manner. However, the EU did not consider it constructive to continue to harp on the proposals in the charged pre-MC period.

86. The representative of Rwanda, speaking on behalf of G90, stated that the current WTO rules denied developing country Members and the LDCs the same policies that some of the more fortunate Members were allowed to use in the past. The G90 firmly believed that concretizing the mandate in Paragraph 44 of the Doha Declaration to operationalize the henceforth ineffective and imprecise S&D provisions was extremely important for the credibility of the Organization. While this should be the case with the existing WTO provisions, it must also be true for any future disciplines that the Members might agree. The underlying objective of the ten S&D proposals was to foster industrialization, facilitate structural transformation and promote diversification in the economies which were at the lower rung of the development ladder. It was disappointing that despite hard work and the able leadership provided by the Chair, Members have failed to converge on the proposals. Regrettably, there had been scant engagement on some of the proposals including on the ones included in the industrialization cluster. This manifested lack of political will from the developed partners to engage on issues of fundamental interest to the less developed Members of the Organization. In the G90's view, the perceptions and differences on the proposals were purely ideological. The discussion on the G90 proposal should continue to ensure that Members could forge a way that would enable the Ministers at Buenos Aires to meaningfully engage. The issues were important enough to be brought to the attention of Ministers at MC11.

87. The representative of China stated that the past few weeks had witnessed a frank and open discussion on the proposals where questions had been asked and detailed explanations had been provided. Clearly progress had been made in developing a better understanding of the concerns on both sides. It was, therefore, important that the work in the Special Session continue in a positive spirit with the objective of securing an outcome at Buenos Aires.

88. The representative of Japan found that the second reading of the proposals had been useful in learning more on the viewpoints of the proponents and in better understanding the underlying difficulties faced by them. Japan had tried to articulate its concerns and difficulties and contributed to the debate in a constructive manner. Having said that, and in sharing the concerns expressed by some previous speakers, he believed that the second reading had, in fact, further revealed the wide divergences that existed among the Membership. With this backdrop, his delegation had no reason to be optimistic about how much convergence Members could forge on the proposals in the lead up to MC11 and even beyond. While taking note of the proponents' insistence for continuing the discussions on the proposal, he said that while Japan remained open to any course the Membership would wish to pursue, his delegation would wish that the following be borne in mind

before Members chose to continue engaging in this process. First, it should be further articulated how those proposals would serve to address the current challenges and difficulties facing developing country Members including LDCs. In that connection, in many areas sufficient specific cases needed to be provided to justify the modification and adjustment of the existing rules in conformity with the idea of "needs should come first". Second, more focused and precise responses to the questions from some Members, including Japan, would be needed as not all questions were fully covered in the responses by the proponents during the first and even second readings. If Members were to enter into the text-based third reading, then it would be only possible to have a meaningful discussion if the proponents were to table revised proposals duly reflecting the discussion Members had had during the previous readings.

89. The representative of United States stated that the three questions asked by the Chairperson, in fact, pointed towards the necessity for the Membership to make a realistic assessment of the discussion on the tabled proposals. It is an undeniable fact that the discussions on the ten proposals had not, and would not, yield a consensus. The United States had listened carefully throughout both readings of the proposals. Members' positions were clear, and these had been so for a long time. In the spirit of transparency, she wanted to make it clear that the United States delegation did neither intend to send those proposals, or any variation of them, to its Minister for work at MC11, nor could her delegation consider negotiations on them at MC11. The differences on those proposals remained extremely sharp and it only reconfirmed the United States view that they were not a good basis for work. Incidentally, this was the United States' message two years ago in the run-up to MC10, when Members were discussing essentially the same proposals that were on the table now. The United States' disagreement, however, was much more profound than just the content of the proposals. Her delegation was unable to overcome the deep differences in philosophical outlook on "trade and development" in general, and S&D in particular. The United States held a firm conviction that the trade rules developed in the system, over the decades, were inherently positive building blocks for development, and that S&D provisions were intended to be applied narrowly in order to facilitate the ability of developing country Members to integrate into that framework of rules. However, the vision put forward by the G90 appeared to contend that the framework of rules was onerous and unfair, and conceived of S&D as a means for developing country Members to effectively disconnect from the rules indefinitely. Her delegation believed that Members could spend 12 hours a day in the Special Session from now until MC11 and well beyond, but they would not overcome the profound gaps in understanding. Pretending that the differences could be overcome if Members just continue to politely engage in the Special Session would only result in a further deepening of the differences on the proposals. That was a scenario that the Members should avoid. Therefore, the step that remained before Members, particularly the proponents, was to acknowledge that convergence on any of the proposals was impossible – prior to MC11, at MC11, and after MC11.

90. The representative of Canada took the floor and stated that today was an opportune time to have an honest and frank assessment of future prospects for the work of this negotiating group, both in the short and longer term. While acknowledging the hard work that the proponents had put into responding to the questions submitted, she hoped that this was a useful process for everyone, both in terms of clarifying the concerns expressed, as well as identifying specific challenges being faced by Members of the G90. She recalled that the Chairperson had put three questions to Members at the last informal open-ended meeting of the Special Session – what to do with the time remaining before MC11, what should be put to Ministers, and how to prepare ourselves for Buenos Aires – but before turning to those, she thought that Members needed to first ask ourselves the following: (i) did Members see prospects for reaching consensus on the proposals for MC11?; and (ii) did Members see prospects for reaching consensus on the proposals after Buenos Aires?

91. In Canada's view the answers to both the questions, unfortunately though, were not in the positive. As flagged by Canada, time and again – in 2015 and again this year - substantive concerns with these proposals remained. In essence the proposals would mean that basic prohibitions, including on local content requirements, trade-distorting subsidies, and reference prices, would not apply to developing country Members and the LDCs. That would undermine certainty by watering-down existing commitments on advance notice, consultations, and compensation. They had the potential to reinterpret WTO Agreements, to limit Members' ability to protect the health and safety of their people, and to impinge upon governments' budgetary and legislative processes. From Canada's perspective, S&D should assist developing country Members integrate into the MTS, be based on identified needs, and be tailored to a Member's level of

development. Canada had fundamental concerns with the substance of the proposals and what those could entail for the system. Those were points that Canada had stressed over and over and should come as no surprise. Perhaps more important, however, was Canada's deep concern about the message that the proposals would send to the world at a time when globalization and trade were facing increasing scrutiny. They sent the message that trade rules were bad for development. That was something that Canada did not believe and hence could not support. Canada, together with other Members, remained committed to upholding the MTS, in the face of a backlash against globalization. Canada was committed to keeping markets open and fighting protectionism. Her country's approach in the Special Session's work was consistent with this commitment. At the same time, Canada – and many other Members were redoubling their efforts to make trade policy more inclusive, both at home and abroad with their trading partners. It recognized that the gains from trade had not been shared equally or widely enough and that governments could and should do more to help their people reap the benefits. But those efforts should not include weakening the rules-based MTS. Members benefited from the stability and predictability of the system, as long as they followed the rules. And smaller economies, with less of a voice on the international stage, benefited the most. She reiterated that Canada did not see prospects for consensus on the proposals on the table for Buenos Aires or beyond. The proposals were not worth revisiting again and again and hence Canada would be disappointed to see them reappear in 20 months' time, at which point the proponents could be assured that its position would remain the same.

92. She went on to state that Canada firmly believed that a new approach was needed to discuss trade and development in the WTO and encouraged the proponents to consider alternative ways of achieving their policy objectives. In saying so, Canada had not and was not questioning the mandate of this group, nor was she suggesting that there were no problems that need to be addressed. Rather, she believed that a new conversation was needed. To move forward, Members would have to first tackle fundamentally different perspectives on the relationship between trade rules and development. Members also needed to have a frank discussion on individual needs commensurate with their levels of development, without which the discussions in the Special Session would continue to encounter difficulties when discussing S&D. Finally, turning to the Chairperson’s questions on next steps, she was skeptical that there was anything that could be accomplished between now and MC11. She did not see prospects for consensus on the G90’s proposal for MC11 or after MC11. Any prospect for progress rested on the proponents' willingness to consider new approaches, which would recognize the need to address the fundamental differences in positions. That required the proponents to shift focus and leave the tabled and similar proposals behind. If proponents were willing to consider this approach, Members could begin to see a path forward. Any Member had the prerogative to submit a proposal to the Ministerial Conference – this was an important principle that her country respected. However, Canada would caution the proponents to think carefully and holistically about the potential consequences of putting forward proposals that were unacceptable to the Membership and their systemic implications to the rules-based MTS.

93. The representative of Chinese Taipei stated that it was obvious that wide unbridgeable gaps remained despite hard work by Members. It would be wise if Members utilized the remaining time from now on to MC11 in discussing post-MC11 work plan on S&D.

94. The representative of Rwanda stated that the centrality of development had repeatedly been reiterated by the Ministers at various WTO Ministerial Conferences. Development was the only *raison d'etre* for developing countries and the LDCs membership of this Organization and it must not be denied to them. The proposals must be transmitted to the Ministers to engage and pronounce a political decision on them at MC11.

95. The representative of Korea stated that there were still big gaps in positions and his delegation did not see any prospects for an outcome at MC11. It would be realistic and pragmatic for Members to start identifying broad principles that could lead discussions on the S&D after MC11 avoiding similar discussions they had had during the past two years. S&D remained an important tool for helping developing country Members and the LDCs to facilitate their integration into the MTS. It was also very clear from the discussion on the issue that any S&D treatment must be limited in coverage and content i.e., to those who really needed it and to the extent necessary. However, it was necessary that Members engaged with an open mind recognizing difficulties developing country Members, especially LDC Members, were faced with. Having said that, he viewed that the discussions on the proposals were unlikely to bear any fruit. It might help if the proponents revised the proposals in light of the discussion to date.

96. The representative of India stated that his delegation joined Bangladesh, EU, China and others in thanking the Chairperson for her tireless efforts. The S&D provisions were an integral part of the MTS, and were meant to enable developing country Members and the LDCs to meaningfully integrate into the MTS so as to derive maximum economic benefits. Given the concerns expressed by Members regarding the effectiveness and operation of S&D provisions, Ministers at Doha had given 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, it had not been possible to secure tangible progress with regard to the Ministerial mandate. In that context, India believed that the G90 proposals provided a useful input and basis to advance work in this important area. These would enable developing country Members and the LDCs in promoting much needed industrialization, structural transformation and diversification of their economies for raising the standard of living of their population and integration into the MTS. For India, substantial progress and outcome on "development aspects" of the Doha Work Programme was essential. Therefore, Members needed to continue and intensify work in this area in the run-up to the forthcoming Ministerial.

97. The representative of Swaziland took the floor to support Rwanda and insisted that the G90 would not let go of the proposals both in Geneva and at MC11.

98. The representative of South Africa supported the stance taken by Rwanda and others in having Ministerial engagement on the proposal at MC11. In expressing her disappointment at what she perceived as a lack of meaningful engagement on issues of interest for the weaker Members, she reiterated that the G90 proposals must form part of Ministerial agenda at Buenos Aires.

99. The representative of Canada took the floor to state that S&D was a core principle of the WTO rules. The difference among Members was on the perception on how development could be pursued and the approach that had been suggested in the G90 proposals. That was exactly why Canada had proposed discussion on alternative approaches.

100. In wrapping up the meeting, the Chairperson stated that it had been an interesting exchange of views on the questions that she had posed to Members at the last informal meeting of the Special Session. The discussion had provided her enough food for thought. She indicated her intention to continue her consultation with Members to have better clarity on how to proceed.

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

102. The meeting was suspended.

RECONVENED SESSION (23 NOVEMBER 2017)

103. The 52nd Special Session of the Committee on Trade and Development was reconvened on 23 November 2017.

104. Speaking on behalf of the G-90, Rwanda took the floor and stated that, at the outset, the G90 wished to extend its deep gratitude to the Chairperson, for facilitating a critical process on an issue that was most fundamental for the majority of WTO Members. In 2001, in Doha, Ministers agreed, under Paragraph 44 of the Doha Declaration, to review all S&D provisions contained in all GATT agreements "with a view to strengthening them and making them more precise, effective and operational". In 2002, out of around 148 S&D provisions, 88 S&D proposals were identified by the African Group, the LDCs and other developing country Members for the review mandated by Ministers. In the lead up for WTO Ministerial Conference held in Cancún in 2003, 28 proposals were agreed in principle (though the proposals had very little economic value for the proponents' economies) and were transmitted to Ministers for adoption. The failure of the Cancún Ministerial Conference resulted in the non-adoption of the 28 proposals. In 2005, during the Hong Kong Ministerial Conference, five S&D provisions were adopted for LDCs. To date, this had been the only harvest – five out of the 88 S&D proposals - on this issue.

105. In 2014, the G90 decided to undertake an intensive review of the 88 S&D proposals, including the 28 proposals transmitted to the Cancún Ministerial Conference. In 2015, the G90 narrowed those to a total of 25 ASPs. Unfortunately, despite some intensive work in the

Special Session in the run up to Nairobi, Members failed to agree on any of those proposals. However, Ministers pronounced themselves in favour of development under Paragraph 32 of the Nairobi Declaration; Ministers emphasized that: "This work shall maintain development at its center and we reaffirm that provisions for special and differential treatment shall remain integral…". Encouraged by this strong commitment to development by Ministers, and in responding to partners' request for pragmatism and realism, the G90 revisited the S&D proposals in 2017. This fresh review of the S&D regime resulted in narrowing down the number to only ten ASPs. As explained in the G90 submission, and in a number of meetings and consultations, the rationale behind selecting the ten proposals was to foster industrialization, structural transformation and economic diversification. The proposals were selected in line with the national and regional development objectives of the G90 members, as well as in line with the current international development discourse, i.e. SDG 9 aiming at building infrastructure for inclusive industrialization.

106. Regrettably, despite the strong commitment to development as clearly expressed by Ministers in the Nairobi Declaration, and all Ministerial Declarations before that, some Members continued to question and undermine the relevance and legitimacy of issues of crucial interest to developing country Members and the LDCs, despite them having benefitted from a system that supported their development and industrial processes. There had been a total disconnect between: the clear commitment to development by Ministers; who the WTO was intended to serve; what the WTO intended to promote; and its stiff rejection by some Members. A concerning observation was the lack of consistency by some Members displaying this stiff rejection to the G90 submission and discussions. Some of those Members actually were proponents of issues that had mandates that even predated the DDA. The arguments and critiques made by some of those Members in the discussion on G90 proposals remained untenable and actually confusing. A blanket rejection of proposals was unacceptable. The question the G90 wanted to ask was if this emphatic outright rejection applied horizontally to all issues, and not only to the core development-related work of the WTO. The G90 would request that whatever treatment that would be accorded to all other proposals on all other issues for MC11, the same treatment should also be accorded to the G90 proposal. The G90 was firm in its view that the Chairperson should recommend transmission of the S&D proposals on the table to the Ministers for their deliberation and action at MC11.

107. In supporting Rwanda's statement, the representative of Nigeria stated that since the Geneva experts have failed to converge on the proposals, it was only appropriate that political guidance be sought from Ministers at Buenos Aires on a structural engagement on the package for concrete deliverable. He also reiteration on parallelism in treatment among all issues being considered for MC11.

108. The representative of Venezuela took the floor to support Rwanda and Nigeria.

109. The representative of Bangladesh thanked the Chairperson for her commitment and hard work. He also thanked the Members that had participated in the discussions by posing questions, seeking clarification and expressing their concerns on the G90 proposals. He stated that before starting work on S&D last year, the proponents had carefully gone through the Nairobi Ministerial Declaration, Paragraphs 31 and 32 of which showed strong commitment to advance the work on development i.e. on the S&D proposals. That strong commitment by the Ministers had tempted the G90 to put forward ten ASPs. He recalled that in the run-up to and during MC10, Members had worked hard to have an outcome on S&D. However, due to divergences on some aspects Members could not achieve the desired objective. In 2017, the G90 had honestly tried to formulate proposals with a view to accommodate the concerns raised by other Members in the past discussions. The idea was to raise the comfort level of trading partners through a realistic and fact-based approach in addressing the challenges of those developing country Members, which were in actual need. It was disappointing to note that even that good faith effort had not found favour with some of the Members. He went on to reiterate an appeal, on behalf of the G90, that Members demonstrate political will and accommodate as well as continue the exercise so that an outcome on the long-standing issues could be found.

110. The representative of Egypt stated that his delegation fully supported the statement made by Rwanda on behalf of the G90. Special and differential treatment for developing country Members and the LDCs was one of the fundamental principles of the WTO and it represented an integral part of the MTS. In recalling Paragraph 44 of the Doha Declaration, he stated that it had given Members a clear mandate to review all S&D provisions with a view to strengthening them and making them more effective. The only way the S&D provisions could be effective was that

these must help developing country Members facing constraints, as well as LDCs, achieve the legitimate goals of industrialization, structural transformation and diversification of their economies. Egypt firmly believed that achieving those goals would result in more integration for the developing country Members and the LDCs into the MTS. His delegation hoped to see a positive outcome on S&D at MC11.

111. The representative of Jamaica stated that Members could not be expected to commit in the face of challenges and beyond their capacity. Members needed to seriously reflect and positively respond to a call for much needed policy space and appropriate flexibilities that would garner industrialization, structural transformation and diversification. Policy space was a systemic issue and posed a conceptual challenge to the MTS.

112. The representative of South Africa supported the statement delivered by Rwanda on behalf of the G90. She stated that the argument and the rationale for S&D in the multilateral rules could be traced back to the earlier years of the GATT/WTO. The continued structural imbalances in the WTO Agreements justified S&D for the less developed Members of the system. Throughout various Rounds of trade negotiations, developing country Members had continued to raise concerns and identified special challenges that they faced in the implementation of WTO Agreements. Those trade concerns had not been effectively addressed because the S&D provisions contained in the WTO Agreements involved complex procedures, couched in best endeavour language that was not legally binding and did not confer tangible benefits to developing country Members. The current S&D provisions in the WTO disciplines failed to provide adequate flexibility and predictability that developing country Members needed in order to promote trade and development in their economies. Rightfully so, the developing country Members had never failed in pointing to the much doubted value of the language that characterize those provisions, as these hardly afforded enough policy space to pursue development goals. In the past few weeks, during which Members had been discussing the G90 revised proposals, the proponents had not sensed any willingness to engage in a meaningful way to discuss these issues from their trading partners. In spite of some fairly comprehensive responses to questions, including experience-sharing and real examples of the of challenges faced by developing country Members, some Members had gone back to ask the same questions they had posed at the beginning of the process. The G90 had made an honest effort in responding to the concerns raised by the other side. Regrettably the detailed explanations on each of the tabled proposals were not considered worthy of consideration. The G90 firmly believed that the WTO rules should be development friendly and should play a pivotal role in promoting the industrial and economic development of developing country Members and the LDCs. Towards that end, it was imperative that the S&D provisions across all WTO Agreements were strengthened and made more precise, effective and operational as mandated in Paragraph 44 of the Doha Ministerial Decision. That also served to fulfil the agreement reached in the Preamble of the Marrakesh Agreement that Members must make positive efforts to ensure that developing country Members, and especially the LDCs among them, secure a share in the growth in international trade commensurate with the needs of their economic development. It was also important to note, as the G90 had consistently mentioned, that developed country Members had used different kinds of S&D in their development journey, and many still continued to use trade and tariff policies in some form in their agriculture and non-agriculture sensitive sectors. This was shown by the large bound aggregate measure of support, remaining tariff peaks and escalation in the areas of interest to them. It was only fair that meaningful S&D be accorded to developing country Members and the LDCs that allow pursuit of policies for much needed diversification, industrialization and structural transformation of their economies. Lastly, in South Africa's view, S&D was a key development issue that deserved Ministerial intervention at MC11 as the experts in Geneva had failed to deliver.

113. The representative of Senegal stated that his delegation associated itself with the statement made by Rwanda and others in support of G90 stance. He also thanked the Chairperson for her honest report and tireless efforts in guiding the negotiations in this difficult area. He shared Members' assessment of the situation with respect to the divergences on the S&D proposals and also took note of the Members' skepticism for a result in Buenos Aires. In expressing his delegation's disappointment at the lack of political will and hence progress in forging a consensus on the proposals, he stated that under the circumstances any potential revision of the proposals was unlikely to result in an outcome at MC11. Unless developed country Members demonstrated much needed political will to find solutions to the underlying concerns in the tabled proposals, there were little chances of any progress. Development and S&D were important and must remain at the heart of the work of WTO multilateral trade rules, must foster industrialization process, structural transformation and diversification of the developing country Members, in particular the

LDCs' economies. Senegal asked that if certain issues, as divergent as the S&D proposals, were brought to the attention of Ministers in Buenos Aires, then the S&D proposals must also be put before the Ministers.

114. The representative of Ecuador thanked the Chairperson for her tireless efforts. The representative thanked the G90 for its efforts in taking the negotiations on S&D forward. The ultimate goal of the WTO at the time of its creation was not free trade *per se*. Instead the objective was that all Members could access the benefits of the MTS and reach a level of development commensurate with their needs. From that point of view, the principle of S&D was established by Members' recognition that developing country Members might deviate from the WTO rules to achieve those objectives. Since then, S&D had remained an integral part of the MTS. It was one of the basic principles that gave meaning and purpose to the participation of developing country Members in the Organization. Today, unfortunately for some Members, the S&D had lost its meaning, while the needs and limitations of the developing country continued to affect their ability to better integrate into and benefit from the MTS. As indicated by several delegates who have spoken today, most of the S&D provisions of the WTO Agreements were embodied in best endeavour language and, therefore, were not binding and did not confer tangible benefits to the intended beneficiaries. That was why the work of this Committee was fundamental and should crystallize the legitimate aspirations of the developing country Members by meaningfully strengthening S&D provisions. The delegation of Ecuador was deeply disappointed by the inflexibility shown by developed country Members in resolving fundamental issues of concern to developing country Members and the LDCs. Ecuador fully supported that the G90 proposals be presented to the Ministers in Buenos Aires, with a view to overcoming the blockages that had impeded any meaningful progress in the S&D negotiations. Ministers could also provide political guidance on a future course of action in line with Paragraph 44 of the Doha Declaration.

115. The representative of Nepal stated that the LDCs, including Nepal, were staunch supporters of the rules–based, fair and inclusive global system. However, the LDCs had been facing considerable challenges in their efforts to integrate into the MTS. The LDCs accounted for 12% of the global population, yet, their share in global GDP and export trade was less than 2% and 1% (at present only 0.90), respectively. This was in contrast to the Istanbul Programme of Action (IPoA) targets supported by SDGs that hoped to double the export of LDCs by 2020. She recalled the fundamental objective of the WTO mentioned in the Marrakesh Agreement and the spirit of Paragraph 44 of the Doha Declaration, Paragraphs 35 to 38 of the Hong Kong Ministerial Declaration and Annex F, as well as LDC-specific Decisions in the Bali and Nairobi Ministerial Declarations. She invited Members to make an honest assessment, in light of those Ministerial reiterations, as to whether the LDCs were integrated or further marginalized in the global trading system. The Marrakesh Agreement establishing the WTO aimed at raising standards of living, ensuring employment, increasing income and achieving sustainable development. Similarly, Paragraph 44 of Doha Ministerial Declaration clearly mandated a review of S&D provisions with a view to strengthening them and making them more precise, effective and operational. The studies revealed that the industrialization had a multiplier, positive effect on the inclusive and sustainable economic development, that is, every one job in manufacturing created 2.2 jobs in other sectors. Accordingly, the manufacturing was regarded as the principal driver of employment creation, export promotion and overall economic development. She went on to request developed partners to support LDCs in their efforts for promoting industrialization, product diversification and structural transformation, addressing as well as other supply-side constraints by agreeing to the G90 proposals which would ensure necessary policy space and flexibility to the LDCs. The S&D proposal aimed to help LDCs in overcoming the marginalization challenges and would facilitate a smooth path to achieving shared global targets, explicitly mentioned in the IPoA and SDG 9.

116. The representative of Korea started off by thanking the Chairperson and the proponents for their efforts in advancing the discussions in the Committee. Unfortunately, the discussions showed that, even though all Members shared the same objective, there remained big gaps in Members' positions and, in particular, in their perceptions on the nexus between trade and development. That hinted towards the difficulties that Members faced in proceeding ahead and making progress on the issues under discussion. Under the circumstances, it was a moment of truth for the Membership which needed to reflect on identifying alternative ways which could support economic growth and development efforts at the same time without prejudicing the core values of the rules-based trading system. Korea did not support the view that the G90 proposals could be forwarded to the Ministers at Buenos Aires.

117. The representative of Burkina Faso invited Members to engage decisively in order to find solutions to the different sticking points in the discussion. There were many countries in the G90 that needed the proposed measures to complement their own efforts to improve the standards of living of their people and to advance towards graduation.

118. The representative of Cameroon said that experts in Geneva had shown that they were not capable of getting the job done. When Members had been close to reaching an agreement in 2003, the Ministerial Conference in Cancún had failed and, therefore, the 28 proposals that had been agreed in principle could not get Ministers' endorsement. Afterwards, the G90 had examined the content of those proposals and had realized that they did not have real economic value. In 2013, all that Members had accomplished was a Monitoring Mechanism that did not monitor anything because it was inadequate. He said that in the same room where they were sitting today, very strange discussions had taken place because Members wanted to use a meaningless and inactive instrument that served no purpose. Those who seemingly opposed the very premise and rationale of S&D today had, at that time, and continued to do so, held the view that only the Monitoring Mechanism would solve all development problems. Furthermore in 2013, the ACP Group and the African Group had also suggested, on behalf of the G90, to re-examine the 28 proposals with a take it or leave it approach. They only received an answer in the negative from the developed partners as they demonstrated total inflexibility and lack of insensitivity to the challenges faced by the G90. Again in 2015, on its part, the G90 undertook a fresh review of the 88 S&D proposals and tabled a revised and reduced set of 25 proposals. The subsequent process was very frustrating and disappointing for the G90, as it showed how difficult it was to reach consensus in the area of development. More recently, in 2016, the G90 undertook another review of the proposals based on the views previously expressed by Members and the lessons learnt in the discussions on the proposals. That resulted in the tabling of the ten revised S&D proposals in July 2017, which currently were the focus of discussion in the Special Session. Even the revised proposals had not attracted much engagement from the other side; instead they received new levels of resistance and obstruction from the developed partners. It appeared that no dialogue was possible and positions remained dogmatically opposed. It was now clear that the negotiation pillar of the WTO was no longer relevant. The conclusions and arguments expressed by some delegations revealed that Geneva-based experts had only exposed their limitations in the negotiations. It was no longer possible to discuss development issues in the WTO, an Organization where developing country Members constituted a majority. Given the level of obstructionism, the representative wondered as to what was left to do. He reiterated that Ministers should be consulted and that they should decide what was meant by development, and what was the meaning of their messages in each Ministerial Conference. He added that in future, Members would have to think about their negotiating and implementation capacities. He wondered whether a developing country Member that pledged to open its borders to e-commerce knew what that entailed and that it did not have the capacity to implement the obligations it was contracting.

119. The representative of Pakistan thanked the Chairperson for her leadership and resolute commitment in undertaking the work of the Committee which was engaged in tackling one of the most fundamental issues in the debate on international trade. For his delegation, the issue of development was absolutely inseparable from trade and must not be excluded at any cost from the debate at Buenos Aires or even beyond MC11. A large number of Members in the Organization were developing and LDC Members with their own peculiar challenges, but largely seeking the same end – that of inclusive economic prosperity for their people. In that respect, Pakistan felt that developing country Members must be heard, their opinions valued and their concerns addressed. If Members were to strengthen the MTS, then it was important not to isolate the issues that represented one of the very basic principles of the system. He suggested that Members intensify efforts and continue to discuss the issues at length, here at Geneva, at MC11 and, if need be, beyond MC11. He reiterated that trade issues should not go forward without development.

120. The representative of Uganda stated that in the G90's view, the failure to achieve an outcome on this file was due to many challenges including the lack of political will and reluctance of Members to deliver on this mandate. He agreed with the suggestion that the only way forward now was to bring the issue to the attention of Ministers as the issue was no longer technical in nature and had to be dealt with by Ministers at a political level. The G90 was convinced that its submission was in fulfilment of the objective enshrined in the Marrakesh Agreement which recognized the need to continue making positive efforts designed to ensure that developing country Members and LDCs secured a share in the growth of international trade commensurate with the needs of their economic development. The G90 was further emboldened by Paragraph 5

of the Nairobi Ministerial Declaration, in which Ministers pledged to ensure inclusive prosperity and welfare for all Members and to respond to the specific development needs of developing country Members, in particular LDCs. Nevertheless, the G90 had now come to learn that in this Organization, Members' commitments meant nothing. Ministerial pronouncements and mandates were a lot of hot air. This posed systemic concerns for the G90 and for posterity. The representative wondered whether it was still useful to talk about development being at the centre of this Organization. It was also important to reflect on the fact that if this Organization did not respond to the specific needs and concerns of the majority of its Members, what was the use of this Organization and its Membership? He said that the rules as currently crafted did not work for the G90. They needed to industrialize. They could not become post-industrial societies without having been industrialized first. The WTO rules must not be viewed as an instrument that was anti-development. The world was already facing many challenges, including high levels of unemployment, low household incomes, poverty, disease, immigration, among others. The world was trying to find solutions to these and many more but with limited success. Part of the reason for this failure was the inability to address the root cause as opposed to the symptoms of the problems and granting palliative care. The question had been what could be the role of the WTO in all of this? How could Members use trade policy instruments to provide employment, increase household incomes, and promote backward and forward linkages between agriculture, industry and manufacturing. There had already been cries elsewhere about anti-globalization, including attacks on this very institution because of its inability to be responsive to Members' needs. It was not enough to ask Members to support the system if they could not derive immediate benefits out of it.

121. He also wondered how elected leaders would inform their electorates that they could not intervene in certain sectors of the economy because of the constraints of the commitments that had been undertaken many years ago. Did Members want their people to call a time-out on further rule-making? For more than 16 years, Members had rejected the instructions of Ministers found in Paragraph 44 of the Doha Ministerial Declaration to review all S&D provisions with a view to strengthening them and making them more precise, effective and operational. And yet, they continued to seek new rules to further constrain the policy space of developing country Members, especially LDCs. It had been suggested that what the G90 was asking for would be negative for its economies and would not help them integrate into the MTS. He wondered how was it that when rich countries used these measures they helped them prosper and improve the lives of their people. They had used these measures, to protect their infant industries of wool, cotton, leather and clothing. The G90 had been accused of tampering with the state of free trade championed by this Organization. In the G90's view, the notion of free trade could not be cherry-picked. There could be no talk of free trade when agriculture was highly protected with billions of US dollars in domestic support. However the G90's request for a time-limited relief under the Agreement on SCM was rejected. It did not make sense. It was important for Members to reflect deeply on the kind of message they intended to send to the world. In Bali, they had failed to deliver on development. In Nairobi they had failed. Was it the intention to do the same in Buenos Aires? It would have implications that would transcend this Special Session. The question would be why should developing country Members engage in a process that would write away their policy space and limit their right to regulate, and by extension stifle their development? What substantial message did Members intend to send about development and about the future multilateral rule making? What message did Members intend to send about fairness and justice and inclusiveness? The ultimate aim of the WTO Agreements was not to promote freer trade just for the sake of it, but rather to support economic development by improving market access conditions and terms of trade in a manner that would steadily raise the living standards of Members and eradicate poverty. The G90 looked forward to tabling its proposals before Ministers for their consideration in Buenos Aires. He said that for the avoidance of doubt there should be no discriminatory treatment accorded to their submission.

122. The representative of Bangladesh said that the intervention of Korea had prompted him to intervene again. Korea had proposed to have a discussion on trade and development. He wanted to ask two questions. First, did the delegates not think that there had been enough discussions on trade and development before launching of the DDA? There had been long sessions which discussed what was meant by trade and development. At that moment, the proponents of the Round had told Members that development meant addressing implementation challenges faced by developing country Members and addressing the ineffectiveness, imprecision and non-operationalization of S&D in the WTO Agreements. In his view, it was not necessary to have that debate again. He asked Members whether the assessment by his delegation was correct. It

was important to send the proposals to Ministers, because it was the Ministers who had made a strong commitment under Paragraph 44 of the Doha Ministerial Declaration and had repeated the same at subsequent Ministerials.

123. The representative of Benin said that his delegation wished to underline that it was not necessary to prove the relevance of the link between trade and development. The founding texts of the WTO and successive Ministerial Declarations had reaffirmed it. Members were at a crossroad. The G90 was disappointed about the fact that Members were not ready to overcome their differences based on stereotyped positions, and had refused to negotiate at a technical level. The differences were not based on substance or technical aspects, but were rather ideological. That was why it would be more useful to refer the proposals to Ministers, who had given a clear and precise mandate under Paragraph 44 of the Doha Ministerial Declaration. The representative said that his delegation called on the experts to draw some lessons from the process that they had followed and to make a factual and accurate report to their Ministers. Experts should clearly tell their Ministers that Members had refused to discuss the substance of the proposals and that they had not been willing to understand, despite the concrete examples that the G90 had provided to illustrate the relevance and need of the adoption of their proposals.

124. The representative of Zimbabwe said that the mandate of the Doha Declaration was very clear and yet Members had gone through a rigorous exercise and faced frustration as a result of disengagement and lack of acknowledgement of the challenges faced by developing country Members and the LDCs. That was in spite of the efforts of the G90 to demonstrate the need for these proposals for industrialization, diversification and structural transformation of its economies. For her delegation it was difficult to imagine development in the WTO without fulfilling the mandate of Paragraph 44 of the Doha Declaration. Towards that end, she was of the view that Ministers at MC11 should consider the proposals. Special and differential treatment was central in the WTO and experts could not report to Ministers that they had failed to implement the mandate on one of the key principles of the WTO. That would erode the credibility of this Organization.

125. The representative of Nigeria said that he would like to reference and add Paragraph 5 and Paragraph 32 of the Nairobi Declaration to his previous statement for the record. Regarding the process and the next steps, he had heard that this would be the last meeting of the Special Session. He said that the process of drafting part one of the Preamble of the Ministerial Declaration for MC11 had ended the day before, but the continuation of work was not over in other areas, including in the Special Session. He, therefore, asked the Chair what to expect between today and the MC11. His delegation felt that there could still be a window of opportunity to try to see how to take this dossier forward.

126. The Chairperson stated that Members would have heard the strong call by the G90 to take the ten ASPs to Ministers for their discussion. Although views to the contrary had not been expressed today, at the informal plurilateral consultations that she had conducted the day before, opinions were articulated in the sense that since no consensus had been reached, the Special Session should not transmit the proposal for Ministers' consideration. Nevertheless, there was also acknowledgement that it was the prerogative of Members to table or raise any matters they deemed appropriate for Ministers' consideration directly at Ministerial Conferences. Some delegations had made requests for the Chairperson to convey those messages to the Chair of the TNC and to the Chair of MC11. There had been a very clear articulation from the proponents on the demand for parallelism of treatment of all issues being discussed in the house, that is, the G90's proposals must be accorded the same treatment as would be accorded to other issues which still remained unripe. On the next steps from now to Buenos Aires, she stated that there were clear indications in her informal plurilateral consultations that the Special Session could not transmit the proposals. There had also been disagreement on what Ministers should discuss in Buenos Aires. She added that, nevertheless, she had not heard opposition to Ministers discussing development issues at MC11. She suggested using the time until Buenos Aires to prepare all Ministers on the issues that Members wanted them to address.

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

128. The meeting was adjourned.

____