



**General Council
9-10 December 2019**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 9-10 DECEMBER 2019

Chairperson: H.E. Ms. Sunanta Kangvalkulkij (Thailand)

The Chair and the Director-General bade farewell to Ambassador Eduardo Gálvez (Chile), and to Ambassador Junichi Ihara (Japan), the 24th Chairman of the WTO General Council, and expressed appreciation for their valuable contribution during their time as Permanent Representatives.

Subjects discussed¹:

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¹ The proposed agenda was circulated in document WT/GC/W/793.

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1 REPORT BY THE CHAIRMAN OF THE TRADE NEGOTIATIONS COMMITTEE AND REPORT BY THE DIRECTOR-GENERAL

1.1. The Chair recalled that the Director-General had convened Informal TNC and Informal Heads of Delegation meetings on 6 December where he had provided a report. The Chairs of Negotiating Bodies had also provided reports on the negotiating work where updates were available, and 45 delegations had taken the floor.

1.2. The Director-General recalled that the Informal TNC and Informal Heads of Delegation meetings on 6 December had coincided with the end of the week-long cluster on Fisheries Subsidies meeting. Ambassador Wills, Chair of the Negotiating Group on Rules had therefore made a brief oral report to the TNC and HODs and had immediately left to chair the meetings of the Rules Negotiating Group. He had noted he would provide a more comprehensive written report for the General Council, which could be found in document TN/RL/32.

1.3. The representative of Barbados said that Members had reached a stage where they should engage in deep reflection on the road ahead. Unfortunately, with little time before key deadlines, Members did not have the luxury of engaging in a protracted exercise. They should rather focus their efforts on ways in which they could bridge their varied interests by those Ministerial deadlines and commit to continue work with renewed vigour in instances where they could not achieve outcomes by the mandated deadlines. In so doing, the interest of all Members should be duly considered. While taking note of the body of work that was being undertaken in the various negotiating bodies, Barbados expressed its disappointment about the inaction which had plagued other negotiating bodies, particularly those whose work was of core interest to developing and LDC Members.

1.4. With the deadline for fisheries subsidies negotiations looming, Barbados concurred with other delegations that Members would not be in a position to complete their mandated work in time. Barbados therefore welcomed the Chair's proposed work programme for 2020. In so doing, Members should be mindful that the provision of appropriate and effective S&DT for developing and LDC

Members remained an integral aspect of their work. While commending the new Chair and Facilitators for the leadership demonstrated, many issues remained to be resolved – some of which had proven to be highly controversial in the past – and there was little time to resolve them. Barbados urged Members to work assiduously towards the kind of negotiations which would enable an outcome on fisheries subsidies in line with the Doha mandate and SDG 14.6.

1.5. Members stood at the precipice of inflicting irreparable damage to the rules-based multilateral trading system and with it, what set the WTO apart from its predecessor the GATT and other institutions like it. As 10 December drew closer, Barbados regretted to once again express concern about the future of the WTO rules-based nature of the multilateral trading system. Barbados thanked Ambassador Walker for his tireless efforts regarding the Informal Process on matters relating to the functioning of the Appellate Body and by extension towards unblocking the selection process of Appellate Body members. For the smallest among the Members, the two-tiered dispute settlement system was all that they had as recourse to the vagaries of international trade. Barbados urged Members to, as a matter of urgency, engage constructively with the aim to finding a solution that they could all unite around. Finally, Barbados associated with the statements made by the ACP and the CARICOM Groups.

1.6. The representative of the Russian Federation said that the state of affairs seemed to be the gravest since the establishment of the WTO, and for sure since Russia's accession in 2012. Regrettably, Members did little to avoid problems – with some of them intentionally creating new ones. Every year, the stress-test for the WTO was raised to a new level. There was nothing to be proud of in the destruction of the universally accepted institutions, vital for the existence and proper functioning of the WTO and multilateral trading system. However, at that moment, Russia would rather not focus on particular dismals related to the budget of the WTO and the Appellate Body.

1.7. He noted that the previous month, in Shanghai, Trade Ministers had agreed that the rules-based multilateral trading system should be firmly supported, and international trade should contribute to driving economic growth, job creation and sustainable development. They had supported the necessary reforms of the WTO, had urged that the selection of the Appellate Body members move on as soon as possible, and had called for the work on issues such as fisheries subsidies to be carried out immediately.

1.8. Russia remained committed to preserving and strengthening the multilateral trading system, with the World Trade Organization at its centre. History proved that the absence of the rule of law in the global trading system brought a slide towards unilateral economic measures and an increase in protectionism.

1.9. Despite some Members turning their back on the multilateral trading system, Russia still adhered to the joint statements of their leaders who had acknowledged that protectionism led to exacerbating global economic downturns and had placed the WTO at the centre of the fight against all forms of protectionism and in promoting economic growth and development.

1.10. Russia condemned the application of unilateral economic measures in international trade, including those used as an instrument of disguised and, more recently, undisguised protectionism and otherwise contrary to the WTO Agreements as well as those applied for political reasons, without approval by the UN Security Council.

1.11. That was particularly true with respect to the restrictive measures against the Russian Federation by certain Members. The Russian Federation reserved the right to apply special economic measures in response to unilateral restrictions. In exercising that right, the Decree of the President of the Russian Federation No. 560 of 6 August 2014 and the Resolution of the Government of the Russian Federation No. 778 of 7 August 2014, with all modifications and amendments thereto including the Resolution of the Government of the Russian Federation No. 1292 of 25 October 2017, had been adopted. While applying such special measures for the purpose of the protection of essential national security interests, the Russian Federation adhered to the WTO rules, including Article XXI of the GATT 1994.

1.12. The multilateral trading system was unique by nature. Original drafters of the WTO rules had integrated such provisions into the WTO Agreements so that the system could be modified and

improved. There was however no regulation that provided for the demolition of the WTO foundation under the disguise of the declared improvement.

1.13. The representative of the Philippines extended its appreciation to the Director-General for the steady hand and his principled leadership of the organization amid a time of great turbulence and unprecedented stress to the multilateral trading system.

1.14. Indeed, Members had come to a fork in the road on the future of the dispute settlement system. The Philippines fully associated with the statement delivered by Thailand conveying the ASEAN member States' serious concern that the two-tier dispute settlement system could be rendered inoperative the following week.

1.15. On MC12, he said that Members should pick up their pace. There was renewed momentum in the fisheries subsidies negotiations and the Philippines thanked Ambassador Wills for taking up the challenge of chairing the Negotiating Group on Rules. The facilitators had done excellent work in laying the groundwork for a potential outcome. The Philippines urged Members to fully empower the negotiators to build bridges and seek solutions. Only through constructive collaboration could the Membership truly produce multilateral disciplines on fisheries subsidies.

1.16. The Philippines also urged Members to give the WTO a boost in Nur-Sultan and to deliver on their Leaders' mandate in SDG 14.6 to specifically by 2020: (1) prohibit certain forms of fisheries subsidies which contributed to overcapacity and overfishing; (2) eliminate subsidies that contributed to illegal, unreported and unregulated fishing; and (3) refrain from introducing new such subsidies, while recognising that appropriate and effective special and differential treatment for developing and LDC Members be an integral part of the outcome. The Philippines also thanked Argentina and fellow co-sponsors for their statement at the TNC urging all Members to deliver on that mandate.

1.17. Concerning the Joint Statement Initiatives on e-commerce, investment facilitation, services domestic regulation and MSMEs, those discussions continued to move forward and the Philippines was encouraged by the good progress. As had been seen over the course of the year, the Joint Statement Initiatives and Members' ongoing work on the DDA could indeed co-exist and even mutually complement each other. Delivering on those Joint Initiatives at Nur-Sultan would give the WTO another boost.

1.18. The Philippines appreciated the views shared at the HODs/TNC meetings. It was clear that Members shared a deep and sincere commitment to the organization and the principles of the multilateral trading system. All Members wanted what was best for the WTO and they all wanted it to succeed – and they had the tools to make it so. They should all work together and fully commit to delivering at MC12.

1.19. The representative of Haiti associated with the statements made by CARICOM, the LDCs and the ACP and thanked all Members who had made proposals to live up to the new realities of world trade and to unblock the situation in the Appellate Body.

1.20. Regarding agriculture, Haiti took note of a greater interest by Members to help discussions move forward and commend the CoA Chair for the work he had done as Members had been witnessing a watershed and as there had been a speed up in the negotiations. Submissions had been made and others were in the pipeline. Such developments were important as agriculture was and remained the main activity of rural populations in developing countries in particular LDCs.

1.21. Regarding TRIPS, Haiti had noted very little progress on geographical indications. Members were not particularly interested in implementing the provisions of the bilateral and regional provisions to which they had committed themselves. Discrepancies still existed in their exchanges and Haiti encouraged various Members to pick up discussions on the matter again to reach convergence.

1.22. Regarding electronic commerce, Haiti recognized the importance of electronic commerce in the current world trade. LDCs were however still confronting difficulties to respond to the requirement concerning customs duties on electronic transmissions especially for data protection of consumers. In that regard, Haiti joined the statement made by the ACP which encouraged Members to come to an agreement that would benefit all while integrating development in the matter as far

as the moratorium and the broader discussions within the Work Programme on Electronic Commerce were concerned.

1.23. Regarding S&DT, Haiti was still greatly attached to S&DT which enhanced better integration of developing countries especially LDCs in the multilateral trading system. Recently, at an informal meeting of the CTD in Special Session, the G-90 had put forward the idea of a review of the different S&DT proposals in agreement with the work programme of the Committee. Haiti considered that such process would be fundamental if Members were to move forward in their discussions with a view to achieving significant results at MC12.

1.24. Regarding Fisheries Subsidies, Haiti had taken note of progress made in the discussions since the appointment of Ambassador Wills to the Chairmanship of the Negotiating Group on Rules. It was quite clear that it was impossible to conclude the negotiations by the end of the year. Haiti encouraged Members to pursue their constructive participation in 2020 to be able to adopt at the next Ministerial Conference an agreement on disciplines on fisheries subsidies.

1.25. The representative of Montenegro expressed concern that Members had not been able to complete negotiations on disciplines with respect to fisheries subsidies on illegal fishing. Montenegro was pleased to have a new Chair on the Negotiating Group on Rules and hoped that the period after the new year would bring new energy which would allow Members to achieve the expected results by MC12.

1.26. Montenegro remained committed to preserving fish stock, especially given that the Adriatic Sea was one of the seas where there was an obvious decrease in the fish stock. Montenegro's fleet was very old, making it necessary to renew it, but in a way that would not lead to additional endangerment of the fish stock. Special and differential treatment in that area should likewise be considered depending on the specificity of the country and the state of the sector in it.

1.27. Concerning the dispute settlement mechanism, Montenegro joined those Members that had expressed concern about the state of the WTO's basic mechanism involving its ability to effectively resolve disputes.

1.28. Montenegro supported the extension of the moratorium on imposing customs duties on electronic transmissions. The extension of the moratorium would support business especially MSMEs by providing much-needed predictability – further promoting the growth of digital trade.

1.29. As a signatory to the Joint Statement on Services Domestic Regulation, Montenegro reaffirmed its commitment to make progress on outstanding issues and hoped to achieve an outcome that would allow Members to improve the policy environment for trade in services.

1.30. As Members only had six months left until MC12, Montenegro reiterated its commitment to working constructively with other Members to reach a balanced and fair solution on the ongoing negotiations.

1.31. The Director-General reminded delegations that the Informal TNC and the Informal Heads of Delegation meetings that they had on 6 December was supposed to cover Agenda Item 1 of the General Council meeting. That was the purpose of doing that, so that Members would not repeat statements. The Director-General understood the reasons why some Members had asked for the floor to make their interventions or even additional interventions at the General Council. There were multiple reasons, which could include the absence of the Permanent Representative at the Informal TNC and Informal HODs meetings and the Permanent Representative's preference of personally making the intervention; groups of Members not finalising their joint intervention, or because there had been new events between the Informal TNC and Informal HODs meetings, among many others.

1.32. Despite those reasons, the Director-General urged all Members to avoid taking the floor under Agenda Item 1 of the General Council meeting. Otherwise, they would be frustrating what they had agreed to do with the Informal TNC and Informal HODs meetings. Some suggestions included allowing the Deputy Permanent Representative or anyone from the delegation to intervene on behalf of the Permanent Representative in case of absence. If there were other reasons why one could not make a statement, there was always a possibility of circulating a written statement and give them to the Secretariat for inclusion in the minutes of the General Council meeting.

1.33. As Members had a long list of agenda items to take up, it was useful that Members reminded themselves of why they had decided to have the Informal TNC and Informal HODs meetings at a different date. The Director-General reiterated his appeal to all Members not to use Agenda Item 1 of the General Council meeting to make additional interventions.

1.34. The Chair recalled that as per past practice and as had been announced, the Director-General's report and the reports of the Chairs of negotiating bodies would be included in the minutes of the General Council meeting. Statements delivered by delegations would also be included in the minutes under the item unless delegations had indicated otherwise.

1.35. The General Council took note of the report of the Director-General on 6 December² and on the meeting, of the report of the Chair of the Negotiating Group on Rules contained in TN/RL/32 and of the statements³ made that day as well as those delivered at the 6 December Informal TNC and Informal HODs meetings⁴.

2 IMPLEMENTATION OF THE BALI, NAIROBI AND BUENOS AIRES OUTCOMES (G/RO/89) – STATEMENT BY THE CHAIR

2.1. The Chair⁵ pointed out that matters related to the Bali Decision on TRQ Administration, the Work Programme on Small Economies, TRIPS non-violation and situation complaints, and the Work Programme on Electronic Commerce would be taken up in the succeeding agenda items.

2.2. Concerning the Nairobi Decision on Export Competition, the situation regarding the alignment of Members' schedules with its provisions had not evolved. Eleven Members with scheduled export subsidy commitments had currently had their revised schedules certified and two Members had circulated draft revised schedules for which the certification process was ongoing.

2.3. Moving to the Decision on Preferential Rules of Origin for LDCs, the Committee on Rules of Origin had forwarded to the General Council its report (G/RO/89), in line with the provisions of the Bali and Nairobi Decisions. The report contained the annual review of the developments in preferential rules of origin applicable to imports from LDCs. A number of areas were highlighted, including transparency, preferential tariff and import data, notifications, a new online tool called the "Origin Facilitator", updates received from preference-granting Members and examination of the utilization of non-reciprocal preferences by LDCs.

2.4. Turning to the LDC Services Waiver, at its meeting at the end of October, the Council for Trade in Services had held a dedicated session to review the operation of the preferences notified under the Waiver. The dedicated session had been organised in two parts: a workshop and a dedicated formal meeting of the Council.

2.5. The workshop on "Facilitating the Increasing Participation of Least-Developed Countries in Trade in Services" had offered diverse and valuable presentations and contributions. She understood that the dedicated formal meeting had been equally rich and that it had provided a platform for constructive and stimulating interventions with the active engagement of LDCs and notifying

² The Director-General's report (also circulated in JOB/TNC/77) and the reports of the Chairs of Negotiating Bodies at the 6 December Informal TNC and Informal HODs Meetings are incorporated in the minutes of this meeting and are reproduced in Annex 1 of this document.

³ At Namibia's request, its statement under this item is incorporated in the minutes of this meeting and can be found in Annex 3 of this report.

⁴ The statements at the 6 December Informal TNC and Informal HODs Meetings by the following delegations are incorporated in the minutes of this meeting and can be found in Annex 2 of this document: Argentina (Colombia, Iceland, New Zealand, Panama, United States, Uruguay and Argentina); Japan; Benin (African Group); Paraguay; Costa Rica (Joint Initiative on Services Domestic Regulation); Republic of Korea; Turkey; Australia (Joint Statement Initiative on Electronic Commerce); Thailand (ASEAN); Russian Federation; Chad (LDCs); India; Vanuatu (ACP); European Union; Pakistan; United States; Egypt; Norway; China; Uruguay (Informal Working Group on MSMEs); Canada (Ottawa Group); Brazil; Singapore; Peru; Switzerland; South Africa; Mexico; Chinese Taipei; Indonesia; Iceland; Bolivarian Republic of Venezuela; Hong Kong, China; Nigeria; Solomon Islands (Pacific Group); Chile (Structured Discussions on Investment Facilitation for Development); Kazakhstan; Panama (Article XII Members); Israel; Malaysia; Trinidad and Tobago (CARICOM); Colombia; St. Lucia (OECS); Nepal; Cambodia and Viet Nam.

⁵ The Chair's statement was circulated in document JOB/GC/224.

Members alike. The overall sentiment had been that the dedicated session had been a useful and productive event.

2.6. Moving on to the Bali Decision on the Monitoring Mechanism on Special and Differential Treatment, a dedicated session on the Monitoring Mechanism had been held on 22 November but the situation remained unchanged with divergent views persisting on how to proceed with the review of the Mechanism which was already long overdue.

2.7. At the November meeting of the CTD, the annual DFQF review had also taken place. The CTD Chair had noted that, in spite of the informal consultations he had held, it had again not been possible for the Secretariat to prepare the mandated report on Members' DFQF market access for LDCs – due once again to divergent views on the scope and coverage of the report.

2.8. In terms of the process leading to the establishment of the 2020-2021 Aid for Trade Work Programme, at the request of the CTD Chair, the Secretariat had consulted with groupings of developing Members. An informal CTD meeting would be held in the early part of 2020 for Members to exchange views, and the intention would be for a draft work programme to be then circulated for Members' consideration and subsequently discussed at a formal CTD Aid for Trade meeting in February.

2.9. Regarding the Bali Decision on Trade and Transfer of Technology, at the recent meeting of the Working Group, a number of developing Members and LDCs had stressed the importance of the work and called for an evaluation to be undertaken to determine what had been accomplished by the Working Group and what remained to be done.

2.10. Finally, regarding Trade Facilitation, for that meeting, the Chair of the Committee on Trade Facilitation, Ambassador Mohammad Haqjo (Afghanistan), had asked to share with the General Council an update about the work that had taken place in the Committee.

2.11. Ambassador Mohammad Qurban Haqjo (Afghanistan), Chair of the Committee on Trade Facilitation, said that the Committee on Trade Facilitation had been working collectively and constructively to achieve tangible, concrete results in 2019 and had passed two significant milestones that year. First, at its meeting in June, the Committee had agreed on its Rules of Procedure after three years of negotiations. At its 14 November meeting, in accordance with Paragraph 6 Article 4 of the Marrakesh Agreement, the CTG had approved the Rules of Procedure of the Committee on Trade Facilitation. Second, an important milestone had been achieved on 22 August. By that date, developing country Members had been expected to have notified to the Committee their individual plans for the full implementation of the TFA based on the unique flexibility provided by the Agreement. At present, 96% of developing country Members had completed their notifications – which meant that in addition to those Members which were already implementing the TFA in full, the Committee also had a roadmap for the implementation of the Agreement by all developing country Members. That was a very significant achievement.

2.12. Positive developments kept coming. By 22 February 2020, there would be additional clarity about the implementation of the TFA when least-developed country Members would be required to have notified their definitive dates for the implementation of Category B provisions.

2.13. He stressed that in such a turbulent time for the multilateral trading system, the developments in the Committee on Trade Facilitation showed that the WTO could deliver. Back in 2013, Members had succeeded in constructing an agreement with unique and extensive flexibilities. By 2019, they were invoking those flexibilities in a considerate and serious manner. Members were currently vindicating the extensive negotiations and compromises which delivered those flexibilities. That could be an opportune time to reflect on the value of that process. He noted that almost three years after its entry into force, the WTO's first-born agreement was then steady on its feet and would continue on a path to a successful implementation.

2.14. The Chair thanked the Chair of the Committee on Trade Facilitation for reporting on the positive developments in the Committee and commended him and all other Chairs of WTO Bodies for their efforts in facilitating WTO work in 2019.

2.15. The representative of Chad, on behalf of the LDCs, noted that the decisions concerning DFQF market access, LDC Services Waiver and Preferential Rules of Origin in favour of LDCs were the three main concerns of the LDC Group. A combination of an effective operationalization of those three decisions would significantly increase the LDCs' market share in global exports in goods and in services. The LDC Group therefore called on Members – and with the support of the relevant WTO Bodies – to ensure the promotion of the effective implementation on the ground to ensure the LDCs' increase in export capacity offered by the Ministerial Decisions agreed upon in Nairobi.

2.16. Concerning the Nairobi Decision on Preferential Rules of Origin, the LDC Group welcomed that since the Ministerial Decision, Members offering their preferences had notified almost all their requirements in terms of rules of origin. That was essential, together with the transmission of import data from LDCs to assess exactly how effective the regulatory mechanism adopted was and in order to find responses to any difficulties that exporters from LDCs could encounter in terms of their market access into developing and developed countries.

2.17. The LDC Group was ready to depend on the work of the Secretariat to promote the improvement of transparency on practices in terms of rules of origin and on preference utilization rates by LDCs. Similarly, the LDC Group thanked Members offering their preferences and encouraged them to improve their practices in terms of rules of origin. The final objective sought was to promote the existence of a favourable climate to ensure better competitiveness of products from LDCs and to build production capacity to bring about better integration of their countries into the international trading system.

2.18. The representative of Benin, on behalf of the African Group, said that it was important that Members continued to measure the results achieved in terms of implementation whether with regard to Bali or Nairobi Ministerial Decisions and to ensure that they continued to build upon those results particularly on agriculture and cotton.

2.19. The LDCs should be given the necessary tools in order to progress with measurable results in terms of DFQF market access, Preferential Rules of Origin and the Services Waiver as well as issues relating to accessions in terms on procedures, commitments and the necessary support.

2.20. Concerning technical assistance and capacity building in terms of building production and export capacity, the African Group encountered many limitations in the tools used in that regard such as Aid for Trade and EIF, among others. Those tools and mechanisms for cooperation and partnership should be further activated in order to support the efforts and initiatives of African countries and in particular the LDCs among them.

2.21. The General Council took note of the Chair's statement, of the report of the Committee on Rules of Origin in G/RO/89 and of the other statements.

3 REVIEW OF THE OPERATION OF THE BALI DECISION ON TRQ ADMINISTRATION – REPORT TO THE GENERAL COUNCIL (G/AG/29)

3.1. The Chair recalled that at MC9, Ministers had instructed the Committee on Agriculture to review and monitor the implementation of Members' obligations established under the Bali Decision on Tariff Rate Quota Administration to promote a continuing process of improvement in the utilization of TRQs, commencing no later than 2017, taking into account experience gained up to that time. The Review discussions had started at the October 2017 meeting of the Committee on Agriculture, and updates regarding the Review had been regularly reported to the General Council since then. Further to the mandate in the Bali Decision, the General Council was expected to take a decision on the recommendations arising from the Review no later than 31 December 2019 – unless Members agreed otherwise.

3.2. Ms. Christiane Daleiden Distefano, Chair of the Committee on Agriculture, noted that the Review of the Operation of the Bali Decision on Tariff Rate Quota Administration had commenced at the 27 October 2017 meeting of the Committee on Agriculture. There had been a very engrossing discussion among Members for about two years, which had proven to be rather challenging at times. In the end, discussions had been fruitful and the Committee at its meeting on 31 October 2019 had been able to deliver and to adopt the report of its Review circulated in document G/AG/29 and the

associated recommendations contained in Annex 2 to the report that had been transmitted to the General Council for decision at the current meeting, pursuant to the Bali Decision.

3.3. The Committee had reached an agreement on a number of important measures and processes aimed at enhancing transparency and improving TRQ notification practices. Members had also agreed to conduct a triennial review of the operation of the Bali TRQ Decision. Time had however not been ripe for Members to agree on definitive recommendations with regard to the future operation of Paragraph 4 of the Underfill Mechanism, and so they had decided to extend the deadline for decision on the subject matter by two years - which was the end of 2021.

3.4. She acknowledged Members' constructive engagement and flexible attitude during the review process to arrive at a valuable agreement on recommendations for the consideration of the General Council, and paid tribute to her predecessor for her hard work. She likewise wished to place on record the tremendous effort and support that the Secretariat had provided throughout the review discussion to assist Members reaching an agreement.

3.5. Pursuant to paragraphs 13-15 of the Bali TRQ Decision and further to the consideration of the matter in the Committee on Agriculture, the Chair proposed that the General Council took note of the report in G/AG/29 and approved the recommendations contained in Annex 2 to the report.

3.6. The General Council so agreed.

3.7. The Chair welcomed the decision and extended her sincere thanks to the of Chair of the Committee on Agriculture as well as to previous Chairs for their efforts in relation to the Review and in facilitating consensus on the matter.

4 WORK PROGRAMME ON SMALL ECONOMIES – REPORT BY THE CHAIRMAN OF THE DEDICATED SESSION OF THE COMMITTEE ON TRADE AND DEVELOPMENT

4.1. The Chair recalled that, in line with the agreement in the General Council in 2002, the Work Programme on Small Economies was a standing item on the agenda and the Committee on Trade and Development reported regularly to the Council on the progress of work in its Dedicated Sessions. In Buenos Aires, Ministers had adopted a Decision reaffirming their commitment to the Work Programme and instructing the CTD to continue its work in Dedicated Sessions under the overall responsibility of the General Council.

4.2. Deputy Director-General Yonov Agah, on behalf of the Chair of the Committee on Trade and Development, said that, at the meeting of the CTD's Dedicated Session on Small Economies on 1 November, Members had considered a proposal by the SVE Group for a Ministerial Decision at MC12 on the Work Programme on Small Economies.

4.3. The proposed Ministerial Decision was similar in structure to previous Ministerial Decisions regarding the Small Economies Work Programme. In terms of references to past work, the proposed text noted that the recently updated Secretariat compilation paper on the Work Programme on Small Economies – contained in document WT/COMTD/SE/W/22/Rev.9 – as well as previous versions of the paper, reflected the work of the Dedicated Session up to MC12. With regard to future work, the submission by the SVE Group proposed that the Dedicated Session looked at the impact of natural disasters on the trade of small economies and at the integration of small economies into new forms of trade.

4.4. A discussion had taken place on the basis of the proposed Ministerial Decision, and some questions had been posed to the proponents regarding the content of the submission. However, as a number of delegations had indicated that they had not been able to share a position on the proposed Ministerial Decision, it had been determined that further discussions among Members would be required.

4.5. He encouraged the proponents in particular to reach out to other Members, and had expressed his hope that, by the time of the next meeting of the Dedicated Session in the early part of 2020, the proponents would have undertaken all necessary consultations so that they would have a text ready for a Ministerial Decision that was agreeable to all Members.

4.6. That would be a particularly important step in the run-up to MC12 – not least because, at its next meeting, the Dedicated Session would need to approve its report to the General Council. As per past practice, the report to the General Council would not only contain a summary of work that had been undertaken since the last Ministerial Conference but would also contain the elements of an agreed text for a Ministerial Decision – including with regard to future work.

4.7. The 1 November meeting of the Dedicated Session had also served as an opportunity for the SVE Group to provide an introduction to some of the challenges faced by small economies in attracting investments. On that basis, the SVE Group had proposed that an in-depth discussion on the subject took place in the early part of 2020. As it had not been possible to come to a decision on the proposal at the meeting, it had been determined that further informal discussions among Members would be required on the matter as well.

4.8. The CTD Chair would be keeping a close watch on how discussions advanced in the coming months on the two issues that had been highlighted and stood ready to facilitate any informal discussions among Members, as necessary, in order to make progress on those issues.

4.9. The representative of El Salvador, on behalf of the SVEs, recalled the SVEs' statement in the previous General Council meeting and noted that the SVEs had finalised a proposed text for a Ministerial Decision on the Work Programme on Small Economies which had been considered by Members in the Dedicated Session of the CTD on 1 November. As had been highlighted in the report of the Chair, some Members had needed more time to consider the proposal and the SVEs hoped that with several clarifications made and further consultations, the draft Ministerial Decision could be adopted during the next dedicated session which would take place in spring.

4.10. On the other hand, the Group was proposing to hold a session on the topic concerning the identification of opportunities available and challenges faced by SVEs with respect to investment attraction with long-lasting effects on development in the margins of the spring meeting. In that occasion, presentations by experts from the WTO and other international organizations would help to inform the discussion of that important issue for SVEs. The SVEs would continue their constructive discussion with other Members on those two issues to advance the work of the dedicated session.

4.11. The representative of Trinidad and Tobago, on behalf of CARICOM, said that the Group associated with the statement made by the SVEs. CARICOM welcomed the discussions during the Committee on Trade and Development's 2019 meetings on the Work Programme on Small Economies addressing matters of particular relevance to the SVEs that were island States with specific reference to vulnerability to natural disasters and its impact on trade. As in previous occasions, CARICOM emphasised that natural disasters posed a real and significant threat to efforts to achieve the beneficial integration of SVEs that were island States into the multilateral trading system.

4.12. CARICOM noted the proposed organization of a half-day session in early 2020 to examine the role investment could play in enhancing the competitiveness of small and vulnerable economies and reducing trade costs. CARICOM welcomed that proposal even as it was being fine-tuned as such a session could prove very beneficial. It would provide an opportunity for Members, and particularly SVEs, to gain key insights on investment attraction and the value of investment in particular areas, such as research and development, technology and infrastructure. The proposed event would be a welcome step forward in the effort to achieve progress within the framework of the Work Programme on Small Economies.

4.13. CARICOM would also keenly follow developments related to informal discussions on the proposal of the SVE Group regarding a Ministerial Decision on the Work Programme on Small Economies. In closing, in the context of the ongoing discussion on WTO reform, CARICOM underscored the crucial nature of S&DT provisions for CARICOM and other SVEs.

4.14. The representative of St. Lucia, on behalf of the OECS, highlighted the OECS' disappointment at the slow progress towards mainstreaming development provisions relating to small, vulnerable economies into the architecture of WTO rulemaking. While December marked the end of the 2019 Atlantic hurricane season, that period merely offered a temporary reprieve from the catastrophic threats of climate change-related events. In that regard, the OECS asked that more meaning be given to the Work Programme on Small Economies by deepening and intensifying the discussions on

the inextricable link between natural disasters and trade. The good work of the WTO Secretariat itself confirmed that such disasters were detrimental to the trade performance of their economies and continually derailed their economic development prospects.

4.15. Technology-induced commercial transactions were rapidly shaping the landscape of global trade and investments. Those changes included modification of traditional value chains and supply chains as well as the switch to new digital and electronic products and services. Those changes were moving at a pace that required small States to move with alacrity if they were to seize the new opportunities they presented. In that regard and in keeping with the objective of the work programme, the OECS called for deeper conversation on those new forms of trade and the many challenges that accompanied them. It was imperative for Members to have greater understanding of the inherent complexities that those new forms of trade posed to small economies as they continued to strive for fuller integration into the multilateral system and greater participation in world trade.

4.16. As the SVEs continued to work towards advancing the text of the Ministerial Decision, the OECS looked forward to intensify engagements on investment attraction ahead of the spring meeting. The OECS associated with the statements made by the SVEs and CARICOM.

4.17. The representative of Barbados said that over the last few years, the rhetoric within and outside the WTO had focused on the threats to multilateralism and by extension the multilateral trading system as well as the future of the WTO if the organization remained unresponsive to the changing world. That rhetoric had been coupled with the retort that Members were duty-bound to complete the unfinished business of the current round of negotiations. Those viewpoints had brought to the fore issues like the relevance and reputation of the organization.

4.18. The inextricable link between natural disasters and trade was an essential discussion for small, vulnerable island states like Barbados as those phenomena impacted on every facet of their lives. They impacted their social, environmental and economic development including their food security and their ability to trade – both in importing and exporting. It further exacerbated the challenges posed by their insularity and remoteness and could significantly impact on their marine and air connectivity – the means by which their imports and exports were traded.

4.19. In 2017, the total damage by Hurricane Maria on the island of Dominica had amounted to 226 per cent of that country's GDP. That could not be significant in aggregate terms, but for Barbados, a small island of 166 square miles in totality with 290,000 people and recognized as one of the most densely populated countries in the world, it was a matter of its economic future – of when, how and in what Barbados and its people continued to trade – and served as an existential threat to the livelihood of its people and the island of Barbados. It was therefore deeply concerning that the issue of natural disasters and trade had not yet gain consensus for dedicated discussion on small economies. Barbados reiterated its gratitude to the Government of Australia for its generous contribution to bridging in part the statistical gap on those issues in the WTO.

4.20. Barbados thanked all Members for their continued support on the Work Programme on Small Economies particularly on the issue of "Investment attraction: Small Economies' Opportunities and Challenges" and looked forward to defining the programme and examining the role of investments in enhancing competitiveness and in reducing trade costs in small economies.

4.21. The General Council took note of the report of the Chair of the CTD and of the statements.

5 INFORMAL PROCESS ON MATTERS RELATED TO THE FUNCTIONING OF THE APPELLATE BODY – REPORT BY THE FACILITATOR AND DRAFT DECISION ON THE FUNCTIONING OF THE APPELLATE BODY (WT/GC/W/791)

5.1. The Chair recalled that at the General Council meeting in October, Members had had a fourth stocktaking of the work carried out in the Informal Process on matters related to the functioning of the Appellate Body. At that meeting, Ambassador David Walker, in his capacity as Facilitator, had delivered his fourth report, which had been issued in document JOB/GC/222. The draft instrument that the Facilitator had put forward on his own responsibility – comprising the convergence points that he had reported to the General Council in July – had been annexed to that report.

5.2. Since the October General Council meeting, the Facilitator had continued his consultations in different configurations and an Informal Open-Ended meeting had been held on Friday, 30 November, at which the Draft General Council Decision had been re-introduced with slight adjustments to the text, based on comments received from Members at and since the October General Council meeting. That was the Draft Decision which was on the agenda of the current meeting for Members' consideration and action which was circulated in document WT/GC/W/791.

5.3. Ambassador David Walker, Facilitator of the Informal Process on matters related to the Functioning of the Appellate Body, recalled that this was his fifth report⁶ to the General Council and that the General Council Chair and her predecessor had initiated the Informal Process to undertake a discussion aimed at seeking workable and agreeable solutions to improve the functioning of the Appellate Body and avoid deadlock come December. That was the purpose of his report that day.

5.4. As with his previous reports, his current report should be read in conjunction with his earlier reports to the General Council on 28 February, 7 May, 23 July and 15 October, which had been issued as JOB/GC/215, JOB/GC/217, JOB/GC/220 and JOB/GC/222, respectively.

5.5. As had been mentioned by the Chair, he had continued his consultations and meetings in a range of formats, keeping in mind the solution-focused spirit of the Informal Process. That had included a further small group session – the eleventh in the small group-format – on 27 November, as well as a sixth open-ended Informal Meeting on 29 November to ensure transparency and inclusiveness in the Informal Process.

5.6. As before, the informal small group meeting had comprised delegations and coordinators that had: (i) tabled written proposals; (ii) raised concerns about the functioning of, and the adherence to WTO rules by, the Appellate Body; and (iii) made alternative proposals and/or raised follow-up questions on the proposals, issues, convergence elements and the Draft General Council Decision annexed to JOB/GC/222.

5.7. He recalled that, based on the twelve proposals submitted to the Informal Process and the extensive discussions held until July, he had identified and had reported to the General Council, on his own responsibility, a set of areas and issues where he had detected convergence during the exchanges. Those convergence points had been circulated in JOB/GC/220.

5.8. Thereafter, a draft General Council instrument had been drawn up based on: (i) the convergence points reported in July; (ii) further comments he had received from Members at and following the July meeting; and (iii) his continued consultations and discussions with Members in a range of formats. The draft instrument, which had been put forward on his own responsibility as Facilitator, had been annexed to the report he had presented to the General Council in October, which had been issued in JOB/GC/222.

5.9. In presenting the draft instrument at the October meeting of the General Council, he had made four particular observations which he wished to recall: First, the adoption of such a General Council Decision would constitute a shared assessment by Members that the Appellate Body had, in some respects, not been functioning as had been intended under the DSU.

5.10. Second, the adoption of such a Decision should be accompanied by agreement to launch the selection processes to fill vacant positions – that being on the basis that a Decision could only apply if there was a body to which it could apply.

5.11. Third, such a Decision would have implications for the actions of the Appellate Body, but it would also carry implications for how Members looked to use the Appellate Body.

5.12. Fourth, to take such 'reset' action, Members would need to have sufficient trust and confidence in each other that they would work together to implement any such Decision in the coming years.

⁶ The Facilitator's report was circulated in document JOB/GC/225.

5.13. Since the October General Council meeting, he had continued his contacts with Members, and the issues surrounding the Appellate Body – as Members all knew – had been raised and discussed in various fora and settings, in and outside of Geneva.

5.14. Delegations had had sufficient time to carefully consider the draft instrument which had been attached to his report circulated in JOB/GC/222.

5.15. To that end, and in his capacity as Facilitator, he had put forward, for Members' consideration, the Draft General Council Decision, which had been issued in document WT/GC/W/791 as a stand-alone General Council document on 28 November and was before Members under that agenda item for consideration and action.

5.16. With regard to the Draft Decision, he had applied some further slight adjustments to the text of the draft instrument to take account of Members' feedback and comments received at and since the October General Council meeting.

5.17. First, on the basis of his engagement with delegations, he believed there was indeed a shared assessment that the Appellate Body had, in some respects, not been functioning as intended under the DSU. That had therefore been acknowledged in the preambular part of the Draft Decision.

5.18. Second, discussions in the Informal Process about Municipal Law had ranged more broadly across questions of law and fact, so it was more correct to describe that section as 'Scope of Appeal'; and he had considered it would be useful to reinforce the point Members had frequently made in the discussions, namely that: "Article 17.6 of the DSU restricts matters that can be raised on appeal to issues of law covered in the relevant panel report and legal interpretations developed by that panel."

5.19. In all other substantive aspects, the Draft Decision remained unchanged, and as Members had already seen it in JOB/GC/222.

5.20. At the October General Council, it had been said that in order to take meaningful action, Members needed to collectively understand how they had arrived at that point. Several hypotheses had been advanced – two of which had particularly caught his attention.

5.21. First, it had been noted that when some DSU rules had begun to be breached, such as on 90 days, some Members had sought to call that out but others had sought to excuse the breach – to take a pragmatic approach for the purpose of a particular dispute and to preserve what they had seen as the essentials of the system. Over time, the risk was pragmatism became practice.

5.22. Second, it had been noted that Members were creative and that, over time, the efforts of enthusiastic and innovative lawyers to prevail in a particular dispute could lead to "institutional creep" beyond Members' collective intention.

5.23. Perhaps those points could have caught Members' attention also, and to the extent that they were seen to have some descriptive resonance.

5.24. On that basis, he believed the Draft Decision, as recast, did indeed provide the basis for 'reset' action through which to help ensure the system operated according to the DSU rules as had been agreed by Members: (i) it set out upfront a shared acknowledgment that there was a problem; (ii) it provided instructions and guidance – for the Appellate Body and Members – across areas of convergence that had emerged from Members' discussion of issues identified as part of that problem; and (iii) it provided a forum for Members to express their views to the Appellate Body on the implementation of the instructions and guidance it contained.

5.25. He thanked the Chair of the General Council and all delegations for placing their trust in him as Facilitator. As with his previous reports, the current report would be issued in the JOB/GC-series, with WT/GC/W/791 attached to it for ease of reference. As he had said in October, it was for Members to decide what action they wished to take.

5.26. Since the October General Council meeting, there had been other related developments that bore on that: first, it had emerged that Members, through the appropriate body, could wish to consider the adequacy of current procedures for transparency and accountability related to Appellate

Body expenditures going forward; and second, it then appeared that Members who had filed appeals more than a year ago found themselves in the situation where those appeals were unable to be heard until the resumption of a functioning Appellate Body.

5.27. The second development had only added to the urgency of taking action on a situation that was material to the ability of Members to resolve their disputes.

5.28. As Facilitator, he could only hope that the discussions they had been having since the start of the year, and in recent weeks in particular, would have generated the trust and confidence needed to take such action.

5.29. He commended the Draft Decision in WT/GC/W/791 to the General Council for adoption that day on the understanding that Members also agreed to launch the selection process to fill vacant Appellate Body positions at the earliest practicable opportunity.

5.30. As always, he stood ready to assist the Chair of the General Council and Members, in whatever capacity could be required.

5.31. The Chair took the opportunity to once again sincerely thank Ambassador Walker on behalf of all delegations for his report and for his dedication in the Informal Process.

5.32. The representative of Japan recognized that the draft decision by Ambassador Walker focused on the areas and issues where there was convergence of Members' views. At the same time, implicit in Members' discussions was the existence of the remaining issues on which their views were still apart. Such difficult issues included, among others, appellate review of factual findings, the role of prior reports as well as the Appellate Body's interpretive approach and overreaching which hindered the Appellate Body from securing a positive solution to a dispute as Japan had underlined at a DSB meeting early in the year. Members should therefore continue their discussions on the remaining issues either in the informal process or in any other suitable fora in order to find a long-lasting solution to the Appellate Body matter.

5.33. On the other hand, Members needed to harvest what they had achieved through the Informal Process and move on to the next chapter together. In that respect, Japan agreed to adopt the draft General Council decision proposed by Ambassador Walker. The proposed decision reflected many points addressed in the proposal tabled by Japan, Australia and Chile in April that year. Japan also shared the views expressed by Ambassador Walker that a solution to improve the functioning of the Appellate Body could only have effect if there was a functioning Appellate Body. Thus, once the General Council adopted the decision, the DSB should immediately launch the Selection Process to fill vacant positions so as to implement the decision.

5.34. On a personal note, he took the opportunity to express his deep gratitude to all delegations as well as to the Director-General and the Secretariat for their support and friendship. As some of the formal colleagues had declared when they left Geneva, he also pledged that after finishing his job as Ambassador of Japan to the WTO, he would work as Ambassador at large for the WTO. He wished everyone all the very best.

5.35. The representative of Chile, on behalf of Argentina, Brazil, Colombia, Costa Rica, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay and Chile, said that Ambassador Walker had fulfilled his mandate as the Facilitator of the Informal Process on matters relating to the Functioning of the Appellate Body with full transparency in a participative and inclusive manner seeking to find viable solutions to the challenges raised in terms of the functioning of the Appellate Body. That had been an effort which merited Members' full recognition and which had achieved a concrete proposal – the approval of which would allow them to initiate the appointment process of new Appellate Body members and meet the obligations put forward to Members in accordance with the Dispute Settlement Understanding. The Members making that statement that day reiterated their commitment to the dispute settlement system within the World Trade Organization including a fully operational Appellate Body.

5.36. On a personal note, he thanked the Chair, the Director-General and colleagues for their words of farewell, support and friendship during his time in the organization as the Ambassador of Chile to the WTO.

5.37. The representative of Argentina noted that the focused discussions held throughout the year had been productive as they had drawn on specific proposals by Members which, in turn, had been supplemented by open, transparent and inclusive discussions. All interested Members had had the opportunity to make suggestions, be involved in discussions and voice criticism – as well as to make alternative proposals where deemed necessary.

5.38. Members currently already had a thorough assessment of the functioning of the Appellate Body and a better understanding of its strengths and weaknesses. Areas for improvement had come to light, requiring the commitment of all actors involved. The draft decision presented to the Members reflected the matters discussed over the course of 2019 and the possible points of convergence in order to move forward in a positive manner.

5.39. Argentina was prepared to proceed with the adoption of the draft decision submitted for consideration. As had been previously mentioned, the adoption of the decision went hand in hand with another highly important decision that the General Council should adopt, which concerned the launch of the selection process for six Appellate Body members.

5.40. Argentina had been among the first seven Members (along with Brazil, Colombia, Chile, Guatemala, Mexico and Peru) to point out, in the Dispute Settlement Body in April 2017, the need to start the selection process to fill the vacancy that would arise upon the expiry of Ricardo Ramírez Hernández's term of office. Therefore, the fact that Members needed to fill six out of seven possible vacancies put them in an excellent position to address some of the concerns that had been raised.

5.41. It would be up to Members to select "persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally", to ensure the system's continued success and to prevent any possible deviation from what had been agreed in 1994.

5.42. Argentina was aware that the adoption of the proposed decision as well as the decision calling for the start of the selection process would not mark the end of the road. Other matters that had been discussed still required Members' ongoing attention. Just as what it had been doing since the crisis began, Argentina stressed the need for transparent, pragmatic and inclusive dialogue in which all interested Members could participate.

5.43. Maintaining a fully functioning Appellate Body was of paramount importance as part of the rules-based multilateral trading system which Argentina fully supported. Multilateralism was based on the essential elements of cooperation and coordination, agreements and understandings. Argentina did not believe in a world in which the power of the strongest prevailed over the law and existing commitments. The dispute settlement system was therefore of central importance. Argentina would continue working to improve its functioning while maintaining its core attributes.

5.44. Breaking the state of paralysis into which the Appellate Body would fall in two days' time continued to be Argentina's priority. Argentina was prepared to continue contributing to the discussions, taking a pragmatic and inclusive approach. Argentina placed its trust in the commitment of the Membership for the organization to continue to have an effective dispute settlement system in which cooperation and the rule of law were central to its functioning.

5.45. The representative of Ecuador recalled that on numerous occasions, Ecuador, both in its own capacity and as a co-sponsor of a joint statement, had spoken of the severely negative impact that the absence of a dispute settlement system would have on the multilateral trading system.

5.46. Ecuador had joined the WTO without hesitation in the belief that fair rules of play would enable developing countries such as itself to participate more fully in international trade in goods and services. From the outset, it had been established that a fundamental component of the multilateral system would be the existence of procedures preventing unfair and damaging trade policy practices based solely on the exercise of misplaced power.

5.47. Regrettably, Ecuador had witnessed actions carried out in recent years by a number of other Members which had created an unlevel playing field. That situation was detrimental to the smallest countries as they remained defenceless against measures affecting their strategies to foster growth through enhanced international trade flows.

5.48. It was extremely paradoxical that while the current narrative proclaimed the importance of international trade for development, in practice, Ecuador saw nothing but the existence of greater restrictions that hampered exports and limited the legitimate domestic policy space of developing Members. Ecuador therefore asked where the logic was in accepting new rules and obligations.

5.49. Ecuador supported the adoption of the proposed decision and would continue to encourage frank and open discussions that would enhance multilateral mechanisms, but always within a framework of respect for all Members.

5.50. The representative of Nigeria underscored the importance of ensuring the effective functioning of the Appellate Body in order to uphold the integrity of the rules-based multilateral trading system. Since the inception of the WTO dispute settlement system in 1995, there had been remarkable improvements in the multilateral trading system. The dispute settlement mechanism had proven to be a very useful tool in resolving many trade disputes and had a high record of cases resolved.

5.51. Nigeria appreciated the Draft General Council decision presented by Ambassador Walker which had confirmed some signal of convergence in many areas. Nigeria particularly supported the provisions for transitional rules for outgoing Appellate Body members, the scope of appeal, advisory opinions and the section on overreach. As to the substance of the draft decision, Nigeria was in favour of the paragraph which stated that the Appellate Body should consider only matters raised before it and should not delve into issues of fact thus addressing the issue of overreach.

5.52. On the issue of Rule 15, Nigeria supported that the current provision of the Working Procedures of the Appellate Body be maintained to allow for the outgoing Appellate Body members to complete pending cases in order to avoid unnecessary delays in resolving a dispute, as a result of the fact that the incoming members would have to be thoroughly briefed and well acclimatised in their respective cases in order to carry on with their functions. Nigeria was likewise in favour of the automatic launch of the Appellate Body selection process 180 days prior to the expiry of their term to enable efficiency in the selection process and to prevent a vacuum in the Appellate Body.

5.53. Nigeria supported Paragraph 17 of the draft paper which stated that precedence should be invoked if found to be relevant to a case. That would inspire confidence and further ensure the strengthening of the judicial institution. On the issue of municipal law, Nigeria welcomed the idea that municipal law should be treated as a matter of fact and not law.

5.54. Despite those areas of convergence, some areas where Members' approach could differ persisted. For instance, on the issue of 90 days, while Nigeria agreed that the strict compliance with the deadline for the circulation of Appellate Body reports was useful – however, for obvious reasons, Nigeria had previously suggested an extension on that timeframe. In the spirit of compromise, Nigeria did not insist on that especially where there existed a window in the draft document where an extension was still possible based on the agreement of the parties involved. Also, on Paragraph 20, on the issue of regular dialogue between the DSB and the Appellate Body, the independence of the Appellate Body should be maintained to preserve some level of confidence in the dispute settlement system.

5.55. The priority at that critical time was for the impasse to be resolved. Considering the volume of work put in by all Members during the informal process in trying to address certain concerns, Nigeria urged the DSB to fulfil its obligation under the DSU to urgently fill vacancies as they arose to ensure the functioning of the Appellate Body in the near future.

5.56. The representative of Chinese Taipei said that Members' priority should be to initiate the selection process immediately. The cost of the Appellate Body's dysfunction was already reflected on individual disputes. No Member would benefit from the prolonged impasse. In that regard, Chinese Taipei supported Ambassador Walker's approach and was ready to join the consensus to adopt the decision. Chinese Taipei also supported Members' continued discussions on the improvement of the Appellate Body's function. The follow up discussion process should serve to review the implementation of the General Council decision. In addition, the structure of the process should be flexible enough to accommodate newly raised issues.

5.57. The representative of the Republic of Korea said that the draft decision reflected the convergent views on the Appellate Body issue at hand in a balanced and comprehensive manner.

Korea therefore supported the draft decision. Since the informal process had been initiated a year ago, Korea had engaged in discussions on the Appellate Body issue in various configurations to come up with practical solutions and unblock the Selection Process of Appellate Body members.

5.58. However, it was regrettable that Members had not found an agreeable solution to date – making the paralysis of the Appellate Body imminent. All Members had a shared responsibility to resolve the issue. Even if they would not reach an agreement by 10 December, they should continue to make their utmost efforts to find a solution as soon as possible. On its part, Korea would strive to contribute to bridging the divergent views among Members in a constructive way.

5.59. The representative of Chad, on behalf of the LDCs, noted that the LDC Group had registered to make a general statement on the matter under Item 14 of the agenda concerning the reform process – understanding that the issue of the Appellate Body was just one aspect of WTO Reform. At that stage, the LDC Group simply welcomed the efforts of Ambassador Walker for his regular interactions with Members even if the Group's expectations had not been fully met.

5.60. The representative of Barbados said that it appeared to be a good faith effort to present a document that the WTO membership could unite on while responding to the concerns of another – all with the ultimate goal of unblocking the impasse in launching the selection process for new Appellate Body members.

5.61. It had been deeply disquieting that despite those best efforts, Members had been unable to break the stalemate in launching the selection process and to thereby renew some normalcy to the proper functioning of the Appellate Body. It was a foregone conclusion that, as at the end of 10 December, the WTO's two-step, dispute settlement system would become inoperable as the Appellate Body would be two persons shy of the minimum number of Members required to adjudicate an appeal. Even if Barbados would beg to the greater senses of the membership to come to an agreement that day, it would still take some time to launch and complete the selection process and appoint new members to the Appellate Body.

5.62. According to the records, Barbados was not a frequent user of the dispute settlement system. Its value was not however always reflected on paper. The existence of a fully functioning dispute settlement system was what helped in maintaining the balance between the powerful and what sometimes seemed like the powerless. For the smaller and less powerful amongst Members, the two-step dispute settlement system was all that they had in a post-GATT modern day era of trade and litigation of trade disputes.

5.63. Barring of coming up with a solution that day, Members in seeking to come up with alternative dispute settlement solutions had found refuge in Article 25 of the DSU. Barbados however cautioned that such alternatives should not detract from finding a tenable solution to the impasse and should not be seen as a replacement of the Appellate Body function. There was some disquiet that such forms of alternate dispute resolution could infringe on inclusivity in disputes, and the quality and fairness of outcomes in those processes.

5.64. Barbados was supportive of a decision which secured the independence and impartiality of the Appellate Body and its members, and maintained the rights and obligations of Members. While noting that the draft decision addressed some of the concerns outlined, Barbados hoped that the commitment to continue working on other issues could unblock the selection process. In so doing, Members should however recollect the issue of broader dispute settlement reform where issues of interest to a wider cross-section of the Membership could be taken up.

5.65. The representative of Benin, on behalf of the African Group, recalled that the Appellate Body's legal and jurisdictional arsenal was cardinal to ensure the security and predictability of WTO rules, and the smooth functioning of the multilateral trading system. That was why the stalemate in which an institution of that size was confronted with was very worrying.

5.66. The African Group had participated in a committed and constructive manner in the work and consultations led by Ambassador Walker and supported the draft decision in WT/GC/W/791 dated 28 November 2019 on the functioning of the Appellate Body. The African Group urged Members to adopt, preserve and save the Appellate Body even at the last hour and for the United States to act in that direction.

5.67. The representative of Zambia associated with the statements made by the ACP, the LDCs and the African Group. Regarding the impasse in the appointment of members of the Appellate Body, it was regrettable that Members were only two days away from having a complete paralysis of a critical component of the dispute settlement system which would deny Members access to a fair and effective system to review trade disputes. It was however Zambia's sincere hope that the Facilitator-driven informal process would manage to find a positive resolution to that impasse that was acceptable to all Members. That was important if Members were to safeguard the relevance and credibility of the rules-based multilateral trading system.

5.68. It remained important that Members continued to pursue the development agenda to ensure that developing Members, particularly the LDCs, had a commensurate share of economic growth and development in line with their aspirations as had been outlined in the 2030 agenda on Sustainable Development. Zambia therefore strongly supported the call to work towards outcomes at MC12 and to effectively address issues on S&DT. As such, Zambia supported the G-90 proposal which would provide sufficient basis for it to work towards the agreement-specific outcomes at MC12.

5.69. With respect to Agriculture, it was again regrettable that Members had failed to beat the deadlines they had set for fisheries subsidies and public stockholding for food security purposes. The lack of sustainable progress in other areas of agriculture particularly on domestic support remained a serious concern. Zambia reiterated the critical importance of agriculture to Members' economies and would like to see strong efforts made towards addressing imbalances and distortions in global agriculture trade. Zambia could not overemphasise the importance of having a substantial reduction of OTDS, elimination of AMS as well as more clear disciplines on product-specific support to avoid subsidy-concentration on support products. Zambia underscored the importance of constructive engagement, dialogue and flexibility to ensure that Members kept the WTO system alive for development and inclusive growth for all.

5.70. The representative of Ukraine contributed to the discussions on the issue of launching the selection process of the members of the Appellate Body and reiterated its willingness to work towards finding a mutual solution on the issues concerned. The main problem was not the fact that the Appellate Body could depart from the current language of the DSU as some Members did not see the problem in those actions – but rather in that the dispute settlement system as such could not operate as had been agreed upon by Members.

5.71. In order to find an appropriate solution in an expeditious manner and to allow for the new appointments to take place, Ukraine shared and appreciated proposals put forward in the Draft General Council Decision on the Functioning of the Appellate Body and assured its willingness to work jointly thereon and was calling upon Members to engage in the negotiations in developing relevant amendments to the DSU which should respond to the current state of affairs. Ukraine stood ready to engage constructively and collaboratively to help resolve the impasse.

5.72. The representative of Trinidad and Tobago, on behalf of CARICOM, viewed the impasse in appointments to the Appellate Body with concern. If the impasse was not resolved in time to facilitate appointment by 10 December, the looming paralysis of the Appellate Body would damage the enforcement mechanism of the rules-based multilateral trading system. That ran contrary to Members' expectations of an open, transparent and rules-based multilateral trading system and was simply unacceptable, particularly for the small and vulnerable amongst them that depended on the presence of an effective and fully functional dispute settlement system to secure the balance between the large and the small, and the powerful and those that were less powerful.

5.73. CARICOM took note of the proposals which sought to address concerns raised about the functioning of the Appellate Body and believed that any reform adopted should promote the rule of law, independence, impartiality, consistency and predictability of the appellate process.

5.74. The representative of South Africa supported the statements made by the ACP and the African Group. South Africa was grateful to Ambassador Walker for the manner in which he had conducted the process and supported his efforts. Over the last two years, the membership had worked hard to overcome the impasse on the appointment of Appellate Body members. Despite a valiant effort to do so, it seemed consensus remained elusive. On 11 December, the appeals process of the WTO would be dysfunctional and would lead to existential crisis of the dispute settlement system. All the

components of the multilateral trading system were critical to ensure its effectiveness, including the dispute settlement mechanism.

5.75. South Africa's TNC statement emphasised that at the heart of a well-functioning multilateral trading system was an effective dispute resolution mechanism. Without the Appellate Body, the WTO dispute settlement system would lose much of its predictability and could eventually collapse. That in turn had serious consequences for future rulemaking efforts in the WTO as the value of negotiated outcomes depended on the ability of signatories to enforce them.

5.76. The Appellate Body's most important function was to prohibit any Member from making unilateral determinations as to whether another Member had violated its obligations under WTO law and stopped trade disputes from escalating into trade wars. It would be important that Members' rights were preserved during that difficult period and that pressure was not exerted on countries to implement panel rulings and give up the right to appeal.

5.77. The areas of convergence Ambassador Walker had identified while reflective of the hard work of the membership to unlock the impasse were not sufficient on their own and had to be part of a package that required agreement to launch the process for the selection of Appellate Body members. Any of the options currently available under the DSU were not ideal alternatives to the current system.

5.78. Article 25 had certain limitations. It had been foreseen as an alternative for "certain disputes that concern issues clearly defined by both parties". Parties to the dispute would agree on procedures to be followed which could lead to the fragmentation of the dispute settlement system. There were therefore no alternatives to the two-stage system as they would limit rights of Members to appeal, would subject disputes to power dynamics and were likely to fragment the system.

5.79. Without adding to the doom and gloom, on 10 December, the term of two of the remaining three Appellate Body members would expire, leaving a single member in office. The Appellate Body would effectively be dysfunctional with the possibility of using Rule 15 being put in question. Members should ask themselves what the consequences of that development would be. South Africa asked whether they had come to the end of history as had been once famously proclaimed and how an institution described as the crown in the jewel of the WTO became a poster child for all the ills that beset the organization.

5.80. The demise of the Appellate Body held severe consequences for the multilateral trading system including on whether might made right. South Africa asked whether Members were returning to a pre-WTO dispute settlement system where power relations would override considerations of rule of law, fairness and justice. South Africa wondered about the implications for smaller Members when justice was dispensed on the basis of unilateral decisions and coercion without consideration of binding multilateral rules. The Appellate Body impasse was certainly symptomatic of the challenges facing an inclusive, developmental rules-based trading system. There was a need for a further reflection by the Members on what that meant for the process they had embarked on.

5.81. Members needed to adopt a pragmatic approach to restore the dispute settlement system and to preserve its credibility and integrity. The immediate task should be the prioritization of the launch of the selection process and South Africa supported the call by 116 Members to launch the selection process. There was a need to strengthen the dispute settlement system. Such a discussion should include the issues raised by the Africa Group on accessibility, costs and representation.

5.82. The process to strengthen the dispute settlement system should be underpinned by the following principles: ensure independence and impartiality of the Appellate Body; preserve the current architecture of the dispute settlement system and the two stage dispute settlement system; preserve negative consensus and ensure an effective and efficient dispute settlement system.

5.83. It would therefore serve the membership well if they could have a proposal from the concerned Member as to what it would take to unblock the impasse. South Africa remained ready to engage constructively with Members as they navigated those turbulent waters.

5.84. The representative of Uruguay considered that the draft decision that Members had reached had found important points of convergence among the majority of the Membership while taking on

board the systemic concerns of other Members. Whatever the outcome, it was certain that the informal process had been a positive exercise and would serve as a basis for future negotiations if Members would not to reach consensus that day.

5.85. Even if Uruguay agreed that there was a need to review some aspects of the Dispute Settlement Understanding – and it had listened closely to the concerns aired on the Appellate Body – many of those concerns seemed reasonable. But to deprive Members of the dispute settlement system and to impede its full functioning was not the appropriate way to improve it.

5.86. Members were a few hours away from an unprecedented situation – the impossibility for the Appellate Body to function. That was a fact which introduced uncertainty regarding the functioning of the dispute settlement system. All Members would be impacted by that. Most certainly, those who would suffer most would be the small countries which, such as Uruguay, had in international law a guarantee that agreements would be respected and that the dispute settlement mechanism of the WTO was a shield against abuse in the trade arena.

5.87. Uruguay reiterated its full commitment to work in a constructive way with other Members to seek solution to ensure the full operational functioning of the dispute settlement system and urged Members to immediately launch the selection process to fill the vacant positions.

5.88. The representative of Pakistan noted that the efforts and contribution of Ambassador Walker towards resolving the crisis of the Appellate Body merited appreciation and so did the resolve of the remaining Members who had supported the efforts to restore the effective functioning of the dispute settlement system. Pakistan welcomed the draft General Council decision in document WT/GC/W/791 which it fully supported with the aim of ending the crisis. The value of an effectively functioning two-tiered dispute settlement system in the WTO particularly for developing countries and Pakistan's support for it were well-documented. It was that system that differentiated the WTO from most multilateral organizations.

5.89. That then was the end game. In less than two days, the Appellate Body would go into indefinite paralysis and Pakistan was concerned that allowing that step had the potential to rock the entire system at its core and would cause irreparable harm. Pakistan deeply regretted that Members were in that situation and urged the Membership to make that last effort fruitful by accepting the draft decision and instructing the DSB to launch the process to fill the Appellate Body vacancies immediately.

5.90. The representative of the Plurinational State of Bolivia fully accepted the draft decision contained in document WT/GC/W/791 to guarantee the continuity of the functioning of the dispute settlement system. Bolivia was ready to continue working to pursue that end.

5.91. The representative of India said that an effective dispute resolution mechanism was at the core of a functioning multilateral trading system. In the last 24 years, the WTO's two-stage, binding dispute settlement system had adjudicated hundreds of cases between Members. Although not perfect, the dispute settlement system had led to meaningful reductions in unfair trade practices and had helped to strengthen the rules-based international trading system. As one of the leading users of the WTO's dispute settlement system, the United States had been one of the biggest beneficiaries of that public good.

5.92. Unless the Membership acted in concert that day to lift the block on Appellate Body vacancies, Members would lose that public good which had served all of them so well. That would be a tremendous loss for the majority of Members who lacked the political and economic clout to enforce their rights and protect their interests in a system governed by power and not rules.

5.93. For the past two years, Members had engaged constructively and rigorously and had put forth several proposals to address the concerns expressed by the United States with the functioning of the Appellate Body. India thanked the Facilitator of the Informal Process for his efforts in trying to find common ground among a wide range of proposals and positions and for presenting the draft decision in document WT/GC/W/791.

5.94. With just one day to go before the curtains would come down on the Appellate Body, India called upon all Members to fulfil their treaty-obligations under Articles 17.1 and 17.2 of the DSU and

to adopt the draft decision put forth by the Facilitator with a view to urgently unblocking the vacancies in the Appellate Body.

5.95. As a responsible and concerned Member of the multilateral trading system, India was willing to join the consensus in adopting the draft decision so that it would lead to the end of the current impasse.

5.96. The choice that Members would make that day would have lasting implications for the future of the rules-based trading system. Members all had the collective responsibility to choose the long-term stability of the rules-based trading system over brinksmanship aimed at short-term gains. If Members failed to act that day to save the Appellate Body, history would not judge them kindly.

5.97. The representative of Egypt said that the draft decision focused on areas of convergence. In that regard, Egypt's position was to maintain a comprehensive approach focusing on all elements of developing countries' interest as contained in the African Group documents TN/DS/W/42 and TN/DS/W/92. Members should continue their discussions in all other areas of importance to enhance the dispute settlement system.

5.98. Resolving the crisis of the Appellate Body had been the immediate priority for the WTO. In that vein, Egypt supported the adoption of the draft General Council decision on the functioning of the Appellate Body as it represented a good basis for resolving the current crisis. In that regard, Egypt also stressed the urgency of filling all current vacancies in the Appellate Body.

5.99. Egypt was co-sponsoring the statement to be made by Switzerland under Item 15 of the agenda in support of the multilateral trading system and reaffirmed that the dispute settlement system was a central element in providing predictability to the rules-based system. Egypt reiterated its commitment to continue supporting its main principles and noted that Members were the masters of their own faith.

5.100. The representative of the United States thanked the Facilitator for his considerable efforts to date and for his report to Members. The United States was disappointed that it did not see convergence among Members with respect to an understanding and appreciation of the concerns raised. The United States did not support adoption of the draft decision.

5.101. He said that reaching that conclusion was not for lack of effort by the United States. No Member had been more constructively and consistently engaged on those substantive issues than the United States. For more than sixteen years and across multiple US Administrations, the United States had been raising serious concerns with the Appellate Body's disregard for the rules set by Members. Over the past two years, the United States had outlined its concerns in exhaustive detail. The United States had not avoided discussion. Rather, it had laid out in the clearest possible terms the US position on the issues raised.

5.102. While the DSU text was straightforward and clear, the Appellate Body had ignored that text, and many Members had not focused on just how far the Appellate Body's practice had strayed from that text. And beyond its detailed DSB statements, the United States had made clear its willingness to discuss those concerns further with any Member in order to deepen each other's understanding of those substantive issues. Several Members had participated in those dialogues and in many instances the United States had found the discussions to be frank and productive.

5.103. As engagement was a two-way street, for nearly a year, in the General Council and the Dispute Settlement Body, the United States had sought to deepen Members' collective understanding of the concerns raised and had asked Members to engage on a fundamental question: "why did the Appellate Body feel free to disregard the clear text of the agreements?"

5.104. The United States had not posed the question as part of an academic exercise. Rather, that question was critical in the context of any solution-focused discussion. Without an accurate diagnosis, Members could not assess the likely effectiveness of any potential solution.

5.105. A fuller understanding of the cause was particularly important. As the United States had explained, the rules of the DSU were clear. Where ambiguity or uncertainty over the meaning of the treaty text had not caused the problem, then simply re-affirming the rules that had been persistently

broken could not resolve the concern. Remarkably, nearly one year later, the United States had yet to hear Members engaged with it on that question.

5.106. Notwithstanding Members' public silence, at the October meeting of the General Council, the United States had offered several potential explanations based on conversations and on its own reflections. For example, one cause could be the ongoing challenges facing the WTO negotiating function and its oversight function, leading to unchecked institutional creep by the Appellate Body.

5.107. At the same meeting, the United States had suggested that another cause could be that some Members believed that the Appellate Body was an independent international court and its members were like judges who inherently had more authority to make rules than the focused review provided in the DSU. A related cause could be that some Appellate Body members viewed themselves as "appellate judges" serving on a "World Trade Court" that was the "centrepiece" of the WTO dispute settlement system, rather than one component of it. Such an expansive vision of the Appellate Body was not reflected in the DSU and had not been agreed to by the United States.

5.108. The United States had also commented at that meeting that it had been possible that some explanations for why the Appellate Body had felt free to depart from the clear text of the DSU could be specific to the concerns that had been raised. For example, with regard to the Appellate Body's repeated breach of Article 17.5 of the DSU, the United States had noted that while some Members had raised concerns about the Appellate Body's exceeding 90 days, particularly without consulting the parties, a few Members had excused the breach of their agreed rules. The United States had asked whether the attitude of those Members had contributed to a mindset among the Appellate Body that the WTO's rules and deadlines did not need to be respected.

5.109. Similarly, in that statement, with respect to so-called cogent reasons, the United States had noted the Facilitator's report which suggested that Members agreed that precedent had not been created through WTO dispute settlement. And so the United States had asked at that meeting why some Members advocated for the Appellate Body to assert that its interpretations should be followed by panels absent unidentified cogent reasons. The United States had also asked why then did the Appellate Body assert a precedential value for its reports like an authoritative interpretation that only Members in the Ministerial Conference or General Council could give.

5.110. More recently, at the November meeting of the DSB, the United States had sought to discuss with Members systemic concerns regarding the compensation of Appellate Body members. It had sought to further Members' understanding of the compensation structure as a general matter, and to consider the possible consequences of that structure. In that statement, the United States had commented that a system that provided a financial reward for violating DSU rules and prolonging the duration of an appeal would appear inconsistent with the objective behind the DSU rule of providing for the prompt resolution of disputes. And the United States had asked Members whether the current structure created the correct incentive, or a negative one; whether that structure encouraged prolonged appeals at the expense of clear WTO rules and whether, without debate or effective oversight, Members had acquiesced in a compensation structure that could undermine, rather than promote, the prompt resolution of a dispute.

5.111. Those repeated attempts over many months by the United States to provoke a meaningful conversation among Members in the DSB, in the General Council, and in the Informal Process had proven unsuccessful. Accordingly, Members were no closer to an understanding of how they had arrived at that point.

5.112. Despite US concerns with Members' failure to discuss that fundamental question, the United States continued to engage in the Informal Process, including through detailed reactions to the Facilitator's reports and draft decisions. The United States had raised a number of questions at the General Council meetings in July and October. Members had yet to engage and the United States' questions remained relevant. Even Ambassador Walker himself admitted that the adjustments to the draft decision from October to that day had been slight.

5.113. With respect to the issue of Appellate Body members whose terms had expired, the draft decision would appear to depart from the DSU and permitted Appellate Body members to serve beyond expiration of their terms.

5.114. Regarding the 90-day deadline for Appellate Body reports, the DSU text was already clear, and yet the Appellate Body had failed to respect it. The United States asked whether there was a reason to think that that language would ensure a different result.

5.115. With respect to the issue of appellate review of questions of fact, the United States was concerned that the Appellate Body would say it was already abiding by the text in the Facilitator's Report, especially since the Appellate Body had interpreted DSU Article 11 to convert questions of fact into questions of law. And some Members would even support the Appellate Body's approach to Article 11 despite real-world consequences everyone could see such as a current appeal with dozens of Article 11 challenges to panel fact-finding – an appeal that had been going on for 17 months and for which the Appellate Body had held not one but two oral hearings lasting weeks.

5.116. With respect to advisory opinions, similarly, the Appellate Body presumably considered that it was already abiding by the text in the Facilitator's report. The United States asked for the basis to consider that that language would have a different result.

5.117. Regarding the issue of precedent, the Appellate Body had relied on the reference in the DSU to security and predictability to justify its cogent reasons approach and the United States was concerned that the proposed language in the draft decision did not address the issue.

5.118. With respect to the issue of overreach, it was clear that the Appellate Body would say that it already abided by the text of Article 17.6 of the Anti-Dumping Agreement and, in turn, the text in the Facilitator's Report. The problem was that the Appellate Body had adopted an erroneous interpretation of Article 17.6 that rendered it inutile. The United States had not yet seen convergence on how to address the issue or other instances in which the Appellate Body had departed from the plain text of other covered agreements.

5.119. The United States had heard some Members claiming that a regular dialogue between the DSB and the Appellate Body would ensure that the clear rules would be respected going forward. The United States questioned the utility of such a dialogue when Members held different views on the issues raised.

5.120. For instance, some Members believed that Appellate Body reports should be followed by panels absent cogent reasons. Other Members disagreed. A regular dialogue would only allow for further airing of those differences ultimately to be resolved by the Appellate Body.

5.121. But the experience of the past years gave the United States no reason to believe the Appellate Body would willingly change its invention that Appellate Body reports should be treated as precedent when that approach – though contrary to WTO rules – enhanced the Appellate Body's role and power in the dispute settlement system.

5.122. In sum, the United States appreciated that – as a result of engagement by the United States and other Members and the efforts of the Facilitator – some progress had been made as more and more Members were willing to admit the Appellate Body had departed from what Members had agreed.

5.123. Despite that limited progress, some Members refused to acknowledge a problem even existed, and there had been no discussion of why the Appellate Body had departed from its agreed role. Moreover, the United States failed to see convergence on how to ensure that the limitations imposed by Members in the DSU were respected going forward and what the consequences were for continued failure to adhere to those limitations.

5.124. To find an appropriate and effective solution, it was imperative for Members to engage in a discussion on how they had come to that point.

5.125. The representative of Jamaica, on behalf of the ACP, had been monitoring developments closely with the expectation that the areas of convergence in that draft decision would resolve the concerns held by some Members and would allow for the immediate launch of the Appellate Body Selection Process. It was not an overstatement to offer the view that the WTO and the multilateral trading system was facing the deepest crisis since its establishment over two decades ago. To look back even further from the GATT to the conclusion of the Uruguay Round, the established view held

by Contracting Parties was that common trade rules buttressed by an effective governance structure would support global peace and security. That normative view was confirmed by the fact that countries with commercial and trade ties were more likely to find peaceful solutions to disagreements that arose.

5.126. Indeed, it was that view that had led to the integration of the global economy through common rules underpinned by effective enforcement. The convergence of common rules and for the first time a binding mechanism for the adjudication of disputes had provided a platform for transparency and predictability in the conduct of international trade. Any adverse impacts on that adjudicative mechanism could negatively affect the functioning of the multilateral trading system. It was for that reason that the ACP Group continued to express deep concern that the blockage of the Selection Process for Appellate Body members could have adverse impact on the integrity of the dispute settlement system. That meant that a period of hibernation as it had been was inevitable. That was a sobering reality that Members currently faced.

5.127. On the substance of the draft decision, the ACP Group noted progress on the transitional rules for outgoing Appellate Body members, the 90-day timeframe for appeal, the meaning of municipal law, advisory opinions, precedent and overreach in the interpretation of the WTO Agreements. In addition, the draft decision called for the Dispute Settlement Body to establish in consultation with the Appellate Body a mechanism for regular dialogue between Members and the Appellate Body where Members could express their views on issues including in relation to implementation of the draft decision. While the ACP Group would have preferred a more substantial approach to improving the functioning of the Appellate Body, the ACP Group endorsed the draft decision with the hope that it would lead to unblocking the appointment process while leaving other important outstanding issues to be taken up at a later date.

5.128. Some delegations had floated the idea that a paralysed Appellate Body could be replaced by an alternative appeals mechanism under Article 25 of the DSU concerning expeditious arbitration. Should Article 25 arbitrations become the default appeal mechanism, there would be a risk of, inter alia, a fragmentation of approaches to the settlement of disputes in absence of a common framework for Article 25 appeals and issues of inclusivity, access and confidence in the delivery of equity and fairness. Those were real concerns especially from small economies. The ACP Group therefore could not support any replacement of the Appellate Body as had been constituted by the DSU with any permanent or alternative mechanism. There was also fear that discussions on the establishment of an alternative appeals mechanism albeit temporary created a risk that attention would be diverted away from finding a long term workable solution to the current Appellate Body crisis and restoring a fully constituted and functioning Appellate Body.

5.129. The ACP was composed of small economies, LDCs, landlocked developing countries, small island developing States, post-conflict countries and post-colonial societies – all of which were grappling with multi-fold development challenges. The multilateral trading system supported by a workable dispute settlement system was critical to not only preserving the rules but allowed for the equality of Members under the rules. If Members did not resolve the crisis, they would create the conditions where economic and political force and coercion would replace rules-based adjudication. Members stood the real possibility of the rollback of the trend towards consensus and collective rulemaking. The ACP therefore supported the draft decision and urged Members to find a speedy resolution to the impasse before it was too late.

5.130. The representative of the European Union said that the Informal Process had lasted for almost a year. Faced with the blockage of Appellate Body appointments by the United States, the rest of the Membership had very clearly and very concretely demonstrated, by the many proposals that had been made and by their open engagement in the process, its willingness to address the concerns raised by the United States.

5.131. The European Union commended the outstanding work done by the Facilitator. His draft decision could have been the right basis for unblocking the appointments. However, as Members had just heard, the United States was not ready to unblock on the basis of the revised draft decision as had been presented that day. At the same time, the United States had not formulated any single proposal or counterproposal of its own.

5.132. Members should be clear that day as to where that left the WTO Membership. In two days' time, they would have an unprecedented situation in the World Trade Organization which would no longer be able to deliver binding resolution of trade disputes and would no longer guarantee the right to appeal review. That was in clear breach of the WTO contract in force since 1995.

5.133. Members should be clear about what in fact would happen in two days. The actions of one Member would deprive other Members of their right to a binding and two-step dispute settlement system even though that right was specifically envisaged in the WTO contract. The actions of one Member would have that result for the rights of all other Members.

5.134. More fundamentally, the very idea of a rules-based multilateral trading system was at stake. The European Union firmly believed in a multilateral trading system where rules could be enforced, where disputes could be submitted to adjudicators, and where rulings of ad hoc panels could be appealed before a standing appeal instance that gave guarantees of quality and independence.

5.135. While the European Union itself was the world's largest trading block, it would not support, and would not condone, a system slipping into power-based economic relationships.

5.136. There had been almost 600 disputes brought to date before the WTO. The immense majority of those disputes had been positively resolved, either through consultations or through adjudication. Those 600 cases were only the tip of the iceberg. The very existence of an effective dispute settlement system had helped to prevent countless breaches of the rules. While some Members had in fact never availed themselves of the dispute settlement system, and many Members had only litigated a few cases since 1995, the system had clearly benefitted all Members, including the smaller economies.

5.137. While the agenda item focused on the dispute settlement function of the WTO, the stakes were obviously higher and cut across all functions of the WTO. It had sometimes been said that the dispute settlement crisis was merely a manifestation of the concerns with the inadequacy of the substantive WTO rules to address current challenges.

5.138. The European Union supported the reform and upgrade of the WTO in all its functions. But Members should remedy the current situation by boosting the WTO's negotiating arm rather than chopping off its dispute settlement arm.

5.139. At that juncture, the European Union conveyed a clear message of openness and determination and continued to support all efforts leading to the unblocking of Appellate Body appointments – as it wanted a system that worked for and that included all Members.

5.140. The European Union had always been open, and remained open, to discuss constructive proposals to improve the functioning of the dispute settlement mechanism and, in particular, of the Appellate Body. Nevertheless, at that point, where the Appellate Body was about to become non-operational as a result of the actions of one Member, the European Union emphasised that it had served well all Members in an independent, highly professional and, given the circumstances, very efficient manner. The European Union therefore commended all the present and past members of the Appellate Body on their work as well as the staff working on the Appellate Body's secretariat.

5.141. Pending such resolution, the European Union was also determined to preserve its rights as enshrined in the WTO Agreements, notably the right to an appeal review. The European Union would therefore continue preparing contingency measures that would apply in case the appointments remained blocked. Members owed it to their citizens and their businesses because it was ultimately them that benefited from the system.

5.142. The representative of Indonesia said that the draft decision presented by Ambassador Walker had the potential to address the concerns allowing Members, in parallel and in good faith, to embark on the selection process. Regardless of the many imbalances with the rules that Members had agreed in the Uruguay Round, Indonesia always placed its faith in the rules and the institution that the international community had created. Undoubtedly, the dispute settlement mechanism, the Appellate Body in particular, was the standout achievement that had served as the equalizer among states allowing Members to stand on an equal footing regardless of their size and power.

5.143. Indonesia had long affirmed the importance of an independent and impartial Appellate Body. It was a major scaffolding of the two-tiered dispute settlement system that had been created at the time when the World Trade Organization had been established in 1995. Indonesia also maintained that an independent and impartial Appellate Body was vital for enforcing and implementing trade agreements. Developing Members had always looked for a robust Appellate Body to resolve trade disputes without fear or favour and Indonesia did not want might to become right when it came to deciding disputes between Members.

5.144. Members should intensify their efforts to ensure that the Appellate Body remained functional after 11 December. At that late hour, it was important for Members to demonstrate flexibility in breaking the impasse of the Appellate Body Selection Process expeditiously. Indonesia was willing to support efforts to find an amicable solution to that grave crisis. Otherwise, Members would lose the most important arm of the multilateral trading system at a time when they were embarking on new trade agreements.

5.145. Without the Appellate Body, existing and future trade agreements could hardly be enforced. Although time was not on their side anymore, Indonesia would keep its slight optimism alive and hoped that there would be a slight probability for the General Council to take the decision in ending the blockage during the course of the meeting or at the foreseen future. Indonesia remained hopeful that Members would be able to prove to the world that the deliberate process as well as the spirit of flexibility to reach consensus still remained in the heart of the organization.

5.146. The representative of Turkey said that there were no words to describe the gravity of the situation concerning the current deadlock. Members' discussions for almost a year had revealed in certain areas the need for more clarity on their understanding of the DSU. The draft decision of Ambassador Walker outlined main areas of convergence among Members, clearly reflected Members' discussions and served as a good basis to follow.

5.147. On the issue of transitional rules for new appeals, Turkey could go with the direction of the draft decision including Ambassador Walker's recommendations in that area. However, for current appeals, the only rule Members had as of that day was Rule 15 which had been adopted in 1996 by the Appellate Body for transitional arrangements. The current rule in its wording and as had been practiced by the Appellate Body did not differentiate between the appeals based on whether oral hearings had been held or not. Members were however faced with uncertainty on the matter since the Appellate Body was currently prepared to apply Rule 15 only to selected cases – leaving other appeals unaddressed. It was unacceptable, unfounded and inconsistent with current practice and under the Appellate Body's Rules of Procedure. The Appellate Body should treat all pending appeals in the same manner – without discrimination. Any contradiction with that would have no legal basis.

5.148. All dispute settlement processes were central elements in providing security and predictability to the multilateral trading system. As the embodiment of that system, the Appellate Body should not therefore cause unpredictability and uncertainty. Turkey remained committed to resolving the impasse and was ready to work with all Members in crafting workable solutions.

5.149. The representative of the Russian Federation said that during the last General Council meeting in October, Ambassador Walker had presented his report in the form of a draft General Council decision. After careful consideration, the Russian Federation noted that it generally supported the ideas and principles contained in the suggested draft decision. It had however serious shortcomings as it was silent in respect of the key issue – the date for the launch of the Appellate Body selection process. The draft decision should be precisely clear in that regard.

5.150. The existence of the Appellate Body ensured the predictability and consistency in the application of WTO provisions. Its non-existence, de jure or de facto, was clearly in contradiction with the Dispute Settlement Understanding and impeded the attainment of the objectives of not only the Understanding itself but of the WTO Agreement in general. The disruption of the Appellate Body's work or even its non-functioning was not a solution to any of the concerns the United States had deigned to vocalise to date unless the Appellate Body's mere existence, as enshrined under Article 17 as it had been agreed and as it had been included in the DSU, was the real concern of the United States.

5.151. The Russian Federation thanked all Members that had contributed their sincere efforts to finding a resolution to the Appellate Body crisis and called upon the urgent launch of the appointment process of the Appellate Body members.

5.152. The representative of Brazil said that it was unfortunate that Members had not reached a consensus on the issue in a timely manner and that the Appellate Body was becoming non-functional. Brazil was still prepared to engage and discuss solutions with all Members. Members needed those discussions to focus on a clear endgame, to build trust among themselves and to restore the dispute settlement system as had been envisaged in the DSU.

5.153. The representative of Singapore noted that Members already knew which side of history they were unfortunately on. It was deeply disappointing that, despite the best efforts of Ambassador Walker in the Informal Process as well as the many proposals tabled by various Members, they would not have a fully functioning Appellate Body on 11 December because the United States had blocked the consensus on the way forward.

5.154. Together with the vast majority of Members, Singapore had a systemic interest in the maintenance of the two-tier binding WTO dispute settlement mechanism that was underpinned by negative consensus. It was a little known fact but the first ever WTO dispute – DS1 – had been filed by Singapore in 1995. As its pioneer user, Singapore continued to cherish the security and predictability accorded by compulsory dispute settlement to small States like Singapore and reaffirmed the importance of that fundamental principle.

5.155. Despite an earlier warning that winter was coming, Members had not been able to find a solution to avoid its cold blast. That said, there was still life after 10 December. All Members should not cease in their efforts to address the Appellate Body impasse. Singapore called on Members to adopt a constructive approach bearing in mind that the ultimate aim should be the unconditional unblocking of the Appellate Body Selection Process. Singapore also called on all Members to act responsibly and in good faith in ensuring the prompt settlement of disputes within the WTO framework. Given that it was Ambassador Ihara's last General Council meeting, Singapore found it apt to recall that he had been responsible for kickstarting the Informal Process at an Informal General Council meeting on 17 January.

5.156. The representative of Mexico recognized Ambassador Walker's highly valuable attempts as Facilitator in the Informal Process initiated in order to address the concerns raised by the United States with the sole objective of unblocking the process to fill the vacancies in the Appellate Body. The active involvement of Members in the process with more than twelve individual and joint proposals submitted by more than ninety proponents was a clear testament of the interest of the Membership to find a solution to the impasse. However, to date, that continued to be insufficient for the Member who had raised concerns.

5.157. Mexico deeply regretted that consensus had not been reached and that Members were in the imminent situation that in two days they would see the day that they had never wanted to see arrive. They were facing an unprecedented situation where they would no longer have a second instance in the dispute settlement mechanism with an incomplete Appellate Body clearly to the detriment of the rights of all Members whether or not they were users of the system. That was a tool to which they would no longer have access. Mexico sincerely trusted that that situation would be brief.

5.158. As with many other Members, Mexico had without any doubt benefitted from the dispute settlement system since the establishment of the WTO. Like many others, Mexico had a firm conviction that the dispute settlement system should guarantee the rights of its Members to access an appeals stage and that the system should function effectively and efficiently. Mexico reiterated its commitment to the dispute settlement system and to the multilateral trading system as a whole. Mexico continued to stand ready to work constructively seeking the objective of unblocking the impasse and of addressing that critical situation.

5.159. The representative of Switzerland extended its heartfelt thanks to Ambassador Walker for his commitment and his work. Switzerland regretted that, despite the efforts of a great many Members as well as their receptiveness to addressing the concerns raised, they had not yet managed to find a solution that would unblock the Appellate Body member appointment process.

5.160. The WTO dispute settlement mechanism was vital for the security and predictability of the multilateral trading system. It was therefore essential that Members continued to engage in good faith with a view to the prompt and definitive settlement of their disputes.

5.161. Switzerland hoped that the period of uncertainty would be as brief as possible. To that end, it was essential to continue working together under the auspices of the General Council in order to find concrete solutions. For those efforts to have a chance of succeeding, it would be important that all Members engaged constructively in the discussions.

5.162. The representative of Guatemala noted that Members, through their proposals and engagement in the informal process had demonstrated their support to the rules-based multilateral trading system. For more than two years, the United States had been providing detailed statements in the DSB and the General Council outlining its positions and articulating its concerns with the functioning of the Appellate Body.

5.163. During that time, Members had actively and constructively focused on understanding and considering the concerns expressed by the United States on the functioning of the Appellate Body. The international trade community had been discussing those concerns for more than twenty-four months already. Hundreds of papers, editorials, workshops, seminars and round tables had been published and organised around the world. The United States' concerns were by then crystal clear.

5.164. It was evident that Members had been readily offering solutions to those concerns. Proof of that was the draft decision presented by Ambassador Walker that day. The draft decision was the result of the informal process on Appellate Body matters held under the auspices of the General Council. Both the informal process and the draft decision were testaments of Members' determination to find a prompt resolution to the current impasse.

5.165. It was worth mentioning that the draft decision was the result of a process that had taken place with the notable absence of proposals and active engagement of the United States. Instead of participating in the results-oriented exercise led by Ambassador Walker, the United States had limited itself to require Members' agreement with its own positions as a prerequisite to start discussing possible solutions.

5.166. Members had run out of time. In two days, they would all be witnesses to the paralysis of the Appellate Body. Without the willingness of the United States to compromise, not much could be done. The United States was an important player in the international arena. It remained Guatemala's hope that, in the near future, the United States would again take up its leading role in promoting and enhancing the core values of the organization.

5.167. The Appellate Body and the dispute settlement mechanism had been fundamental in preserving the rules-based multilateral trading system. Unless Members agreed on pressing temporary measures, they would stand to lose two of the main features of that mechanism: the binding nature of its decisions and the possibility to have a review of issues of law covered by panel reports and the legal interpretations developed by panels.

5.168. Guatemala, like a great majority of Members, could not afford to lose a system which relied on the rule of law and due process. The rule of law and due process were particularly important for developing and LDC Members. A coordinated response by all Members to the absence of a functional Appellate Body would be fundamental in the weeks and months to come. Only that would ensure the preservation of the foundations of the multilateral trading system.

5.169. Guatemala remained committed to take positive steps to have a fully functioning dispute settlement system including the Appellate Body. In the meantime, Guatemala would contribute constructively in the search for alternatives to preserve the main features of the dispute settlement mechanism. Guatemala looked forward to working with all interested Members in that regard.

5.170. The representative of Canada valued the efforts made to date to promote a solution-oriented dialogue and noted that over the past year, many Members had engaged and had taken a constructive and flexible approach. Unfortunately, owing to the approach taken by the United States that had expressed concerns without making proposals to address them yet, Members were unable to reach consensus that day and unblock the Appellate Body appointment process.

5.171. Canada deeply regretted that the impasse had reached the point where it would have serious consequences on an institution that overall had served all Members well. Canada did not deny that change was needed but strongly believed that blocking the full functioning of the Appellate Body was neither appropriate nor necessary as a means to achieve reform.

5.172. Canada had been and continued to be prepared to play an active role in supporting effective appellate review that met the needs of Members and fully respected the Dispute Settlement Understanding. Canada remained open to forward-looking discussions with Members, but Members likewise needed the United States' meaningful engagement.

5.173. In the meantime, and to safeguard stability in the dispute settlement system while the Appellate Body was unable to hear new appeals, Canada was considering temporary mechanisms including the Canada-EU interim appeal arbitration arrangement and other approaches.

5.174. Despite that day's unfortunate outcome, Canada remained committed to the institution and would continue to engage on all issues and to promote WTO reform and modernization through the work of the Ottawa Group.

5.175. The representative of Australia supported the adoption of the proposed decision which affirmed Members' expectations of Appellate Body practice. Australia saw an urgent need to build on that work and find concrete solutions to remaining issues including the review of factual findings and on overreach. Australia would continue to work hard to resolve the impasse and launch the Appellate Body Selection Process as soon as possible. Australia strongly valued an efficient and effective dispute settlement system that safeguarded Members' interests operating as they had all intended.

5.176. The representative of China said that, due to the opposition by the United States, the General Council had failed to adopt the draft decision on improving the functioning of the Appellate Body, which was expected to be the outcome of consultations among Members led by Ambassador Walker. Members' failure to agree on the decision had paved the way for the Appellate Body, an important component of effective WTO dispute settlement mechanism, to temporarily go lights out. That undoubtedly dealt the most severe blow to the multilateral trading system since its establishment.

5.177. He had foreseen that result and had therefore chosen to wear a black tie that day. That tie had been prepared by his wife for him to attend funerals. Nevertheless, he did not want to show even the slightest frustration since the setback could help Members stay cool and reflective and could push them to move forward.

5.178. Over the past 25 years since the establishment of the WTO, the dispute settlement system had played an outstanding role. Panels and the Appellate Body had rendered decisions in almost 200 disputes – most of which had been settled smoothly and effectively. China could still remember those disputes regarding bananas, cotton, airplanes, beef, tuna, trade remedies and gambling, among others, just like they had happened yesterday. Being regarded as the crown jewel, the Appellate Body had seized the limelight for quite a while.

5.179. The current backlash on globalization experienced throughout the world would however inevitably spread to the multilateral trading system. Unilateralism and protectionism were on the sharp rise. It was therefore not surprising that someone would attempt to use its might rather than WTO adjudication to change trade policies of other Members. One Member's persistence to go on its own way could finally lead to paralysing the whole Appellate Body – revealing the fragility of the multilateral trading system.

5.180. China asked what the Appellate Body's worth was for Members. For those who upheld multilateralism, the Appellate Body was an invaluable asset. For those who preferred the laws of the jungle, they deemed it worthless. For the world trade order, the paralysis of the Appellate Body could bring irreparable damage and unintended consequences. The security and predictability Members had enjoyed could not be taken for granted.

5.181. The international community could not afford to lose justice. China was confident that the Appellate Body would restore its functioning sooner or later. Even if the jewel fell from the crown into wild grass, its brilliance could not be missed. In that regard, 117 Members had called on the

immediate launch of the selection process which was a strong testament of majority of the Membership's political will to restore the Appellate Body. China therefore renewed its support to Ambassador Walker to continue the informal process. More importantly, when reflecting on the improvement of the Appellate Body, Members should consider how to protect it from future systemic sabotages.

5.182. In future dispute settlement, besides the panel proceedings, Members would still be entitled to use arbitration under Article 25 of the DSU regardless of whether a Member was happy or not. Although arbitration was not the same as appellate review, it nevertheless could be utilised to preserve the two-tier dispute settlement system before the restoration of the Appellate Body and the essentials of the current system could be preserved in spite of differences in formalities.

5.183. The burning of Notre-Dame de Paris was a tragedy. Fortunately, most of its cultural relics had been salvaged from the fire and the French people would restore it. To preserve institutional memory was therefore vitally important. Regarding Appellate Body members and experts within the Appellate Body Secretariat, from its Director to each and every staff attorney, their knowledge, expertise and experience were of exceptional value which constituted the common treasure of the multilateral trading system. Members should be truly grateful to their excellent work, outstanding performance and prominent contributions. At the same time, China wished them to take good care of themselves and encouraged them to further contribute to enhance and improve the multilateral trading system.

5.184. The representative of Benin, on behalf of the African Group, noted that the African Group had listened closely to the interventions made under item 5 of the agenda and recalled that the Appellate Body's legal and jurisdictional arsenal was cardinal to ensure the security and predictability of WTO rules and the smooth functioning of the multilateral trading system. That was why the stalemate in an important pillar of the WTO was very worrying.

5.185. The African Group had participated in a committed and constructive manner in the work and consultations led by Ambassador Walker and supported the draft decision in document WT/GC/W/791 dated 28 November 2019 on the functioning of the Appellate Body. The African Group urged Members to adopt, preserve and save the pillar even at the last hour and for the United States to act in that direction.

5.186. The representative of Japan deeply regretted that the General Council had been unable to adopt the draft decision proposed by Ambassador Walker and to instruct the DSB to launch the selection process to fill the vacancies. That would mean, together with the failure of the DSB to agree on the issue of pending appeals, that the Appellate Body would cease to function at least for now. Having said that, as the one who, as the then General Council Chair, had asked Ambassador Walker to take the role of the Facilitator, he wished to see the discussion of the agenda item end on a more positive note.

5.187. Thanks to the Informal Process and the draft decision reported that day, Members had a good groundwork on which they could build their future work. Although they were entering a realm of uncertainty, such uncertainty would also provide them with a rare opportunity to experiment a variety of means to resolve disputes which could in turn give them tools to build a viable and sustainable dispute settlement system that would work to the benefit of all Members. Members owned the system, not vice versa. Through their continuous effort, Members should make tangible progress of that discussion to resolve the deadlock in the lead up to MC12. Japan stood ready to further proactively contribute to those efforts.

5.188. The representative of Colombia fully supported the declaration read by Chile that day on its behalf and that of several other Latin American delegations. The informal process had been led by Ambassador Walker with a great deal of discipline seeking results and with an enormous amount of transparency. Colombia likewise reiterated its deeply rooted support for the multilateral trading system including all the elements that went with it.

5.189. As Members were aware, as of the following day, the Appellate Body would go into deep sleep. Colombia hoped that it would just be a power nap. Members should therefore continue working immediately – perhaps even harder to be able to wake the Appellate Body through multilateral

understanding. In that regard, Colombia invited all Members to look for solutions with a pragmatic vision that they should also show rigor without making that discussion even more polarised.

5.190. The representative of Cameroon associated with the statements made by the African Group and the ACP and welcomed the contribution of all parties to find an immediate solution to the Appellate Body impasse. As had been indicated by the African Group and other delegations, the draft decision did not reflect all the concerns mentioned by Cameroon, but it offered an opportunity to consolidate convergence points while avoiding any breakage in the dispute settlement system. The proposal was a reasonable starting point which Cameroon fully supported.

5.191. The gaps observed in the functioning of the Appellate Body were not to the benefit of only one Member. Appellate Body members should be able to solely perform their duties in order to apply the instruments of the WTO with impartiality. Cameroon therefore welcomed the quality of the decisions made by the Appellate Body since its establishment.

5.192. Although it was undeniable that Appellate Body members were selected by the Membership and therefore their opinions should be limited to the questions raised by the parties, the Appellate Body and its operation should strengthen the independence of its members, strengthen the participation of developing countries and encourage the improvement of its procedures without altering the quality of their decisions. Appellate Body members should be respected while bringing in the necessary flexibilities.

5.193. There was a grave risk of seeing the blockage observed as a prevalence of the law of force where the Appellate Body represented the force of law. Cameroon reiterated its availability to work constructively for the fair and swift resolution of the Appellate Body issue and remained confident in the wisdom of all parties to ensure that the force and the rule of law would prevail in the near future.

5.194. The Chair stressed once again that the draft decision emanated from nearly one year of discussions and that it represented the collective effort and good will of the entire membership to address the concerns that had been raised with regard to the functioning of the Appellate Body and its adherence with the DSU. It remained up to Members on how that work would be taken forward in the future. The Chair and Ambassador Walker would be looking to assist Members in those efforts going forward.

5.195. The Director-General said that, as Members all knew, a well-functioning, impartial, binding dispute settlement system was a core pillar of the WTO. Rules-based dispute resolution prevented trade conflicts from ending up in escalating tit-for-tat retaliation which was very difficult to reverse once it started becoming intractable political quagmires. A well-functioning dispute settlement mechanism therefore reduced economic uncertainty – giving businesses the confidence they needed to make long-term investments. Members, on their side, would also feel more confident about negotiating and implementing new rules if they knew that those new rules would be somehow enforced – the opposite would likewise apply.

5.196. Obviously, the paralysis of the Appellate Body did not mean that the rules-based, dispute settlement had stopped at the WTO altogether. Members would continue to resolve WTO disputes through consultations, panels and other means envisaged in the WTO Agreements such as arbitration under Article 25 or his good offices under Article 5 or any other provisions. They were all there and available to all Members. Although Members could devise all sorts of interim mechanisms and stop gaps, they could not abandon what should be their priority – finding a permanent solution.

5.197. In the long term, Members needed an effective, predictable dispute settlement system to which all Members could subscribe. Most Members said that they wanted an effective and efficient two-step review process based on automaticity and impartiality. If that was what they wanted then it was their duty to deliver. They could not simply sit back and expect that an answer would present itself. He said that he did not think Members could outsource that task to academics, lawyers, thinktanks or anybody else. He did not think they could rely solely on Geneva experts either. That was undoubtedly a very sensitive political issue that required a political approach in Geneva and in capitals. Members should dig deeper.

5.198. After hearing a number of Members individually and after hearing the discussion that day, the he had a very strong feeling that Members would need to explore a broader spectrum of issues.

Ambassador Walker's process had certainly produced important elements for their path forward. He commended his determination, commitment, creativity and the progress that he had managed to get from Members. A lot had been achieved and Members should build on that.

5.199. Having said all that, Members could be missing some pieces to complete the puzzle. There could be other aspects of the dispute settlement mechanism that had not yet been properly examined and that needed to be considered if they were to find a truly permanent solution. He did not know for sure whether they actually needed a somewhat broader investigation. And he did not know for sure what such an investigation could cover. But he had no doubt that Members needed to dig deeper.

5.200. Members should go further and discuss all that with an open mind at a more political level – at the Heads of Delegation level. He hoped that Members would intensify their engagement in trying to find solutions of a more permanent nature. Members would always be on the driver's seat as it was always the case in the organization. The Facilitator and the General Council Chair had just indicated that they would continue their efforts.

5.201. For his part, he would very shortly start more intensive consultations with Members both individually and in groups trying to figure out initially: (i) whether they were already discussing all the elements that needed to be addressed in their solution-finding efforts – because if they were not, it did not matter how long it would take for them to be discussing about those things that they had already under the Walker Process – they would never get to a solution; (ii) they needed to discuss what basic concepts they should agree on to make progress – and he was not sure that they were looking at those things. He was therefore inviting Permanent Representatives to get personally acquainted with the particulars of the issue before them, with everything they were discussing as well as to get more clarity on what their overarching political parameters or circumstances were so that they could contribute as much as possible to their common endeavour. So that was an invitation that he hoped Members would follow up.

5.202. The General Council took note of the report of the Facilitator and of the statements.

6 THE DEVELOPMENT ASSISTANCE ASPECTS OF COTTON – STATEMENT BY THE DIRECTOR-GENERAL

6.1. The Chair recalled that in 2004, the General Council had instructed the Secretariat to continue to work with the development community and to provide the Council with periodic reports on the development assistance aspects of the Cotton Initiative. The Council had also instructed the Director-General to consult with the relevant international organizations, including the Bretton Woods Institutions, the FAO and the ITC, to direct effectively existing programmes and any additional resources towards development of the economies where cotton had vital importance. The Bali and Nairobi Decisions had reaffirmed the mandate and had invited the Director-General to continue to provide periodic reports.

6.2. The Director-General reported that on 7 October the WTO had hosted the Launch of World Cotton Day. That same day, a Partners' Conference had also been held. The World Cotton Day launch had been hosted at the request of the C-4 – Benin, Burkina Faso, Chad and Mali. The WTO Secretariat had organised the event in collaboration with the Secretariats of FAO, UNCTAD, UNIDO, ITC and the International Cotton Advisory Committee. The WTO had been honoured by the participation of eight Ministers and four Heads of International Organizations. Over 850 participants had gathered there including Geneva-based Ambassadors and delegates, international civil servants and a cross-section of the global cotton community.

6.3. The event had highlighted cotton's economic contributions, particularly in terms of the links among cotton, trade and development. It had also offered a unique opportunity for participants from all over the world to build relationships and share perspectives. Members and participants had praised the event and had expressed support for the C-4's formal request for an official United Nations World Cotton Day.

6.4. The launch had underlined the need to create a more level playing field for trade in cotton, and to increase development assistance on cotton and cotton-related products, in particular for least-developed countries.

6.5. The Partners' Conference held on World Cotton Day had focused on new initiatives in favour of cotton, including a joint WTO-UNCTAD-ITC project to foster the production of cotton by-products in African LDCs. He was pleased to report that donors had committed to support the cotton sector in beneficiary countries, particularly for the development of cotton by-product value chains in LDCs.

6.6. Cotton by-products – like cottonseed oil for human consumption or cottonseed meal for livestock – presented untapped economic potential in LDCs and developing countries, particularly in Africa. Value addition fostered local transformation and generated additional revenue. So Members should look forward to continuing reporting on the progress and outcomes of the Joint WTO-UNCTAD-ITC initiative.

6.7. He then invite Deputy Director-General Wolff to report on the recent work under the Director-General's Consultative Framework Mechanism on Cotton as he chaired that mechanism on his behalf.

6.8. Deputy Director-General Alan Wolff, on behalf of the Director-General, reported that work on the Director-General's Consultative Framework Mechanism on Cotton had continued to make progress during 2019.

6.9. The latest revision of the Evolving Table captured the development assistance projects and programmes conducted by Members and other organizations which they had reported in the context of the Consultative Framework. The update had been circulated on 11 November 2019 in document WT/CFMC/6/Rev.27. The figures and information showed an increase in active cotton-specific development assistance. The total number of projects listed in Part I ("Cotton Specific Development Assistance") had increased to 30, for a total value of committed resources of USD 247.5 million.

6.10. For "agriculture and infrastructure-related development assistance", where assistance related to cotton was provided under more general agricultural or infrastructure support programmes, a new project had been notified bringing the total number of active projects to 44.

6.11. He reported that participants regarded the discussions in the Consultative Mechanism as being productive, dynamic and inclusive. In those discussions, beneficiaries had highlighted key elements in their new projects for feedback by potential partners, and donors had shared the results and lessons learned from ongoing and concluded projects. In addition, important presentations had been made by partner organizations, companies and other institutions in which they had shared their experiences and best practices.

6.12. He encouraged all Members, especially those with a variety of smaller projects in the pipeline or ongoing, to notify them to the Secretariat for proper inclusion in the Evolving Table. That would greatly enhance transparency and further reinforce the role of the Evolving Table as a comprehensive monitoring tool of updated project information focused on cotton.

6.13. He thanked the Members and multilateral agencies who had active cotton specific projects recorded in the Evolving Table. Those were: Australia, Brazil, the European Union, France, Germany, India, Italy, the Netherlands, Sweden, Switzerland, the United States, the Enhanced Integrated Framework, FAO, ITC and UNCTAD. Further, he commended Brazil, China, India and Pakistan for their significant contributions on the platform of South-South Co-operation for Cotton Development Assistance.

6.14. The sustained engagement of those partners in cotton development assistance was very encouraging, particularly in the area of WTO cooperation where results could generate an immediate and positive impact for millions of people in cotton-producing developing countries and LDCs.

6.15. The representative of Benin, on behalf of the C-4, reiterated the C-4's profound gratitude to Ambassador Deep Ford for his efforts, initiatives and helpful interactions and supported his approach aimed at steering the negotiating work in agriculture, in general, and cotton, in particular, towards achieving significant and measurable outcomes by MC12.

6.16. The C-4 also thanked the Cotton Quad+ members for their renewed commitment to continuing the consultations with a view to enhancing the transparency and monitoring of cotton-related trade measures affecting the global cotton market. It was particularly grateful to those who, at the last Quad+ meeting held on 26 November 2019, had commented on the C-4's proposal

circulated in document JOB/AG/165 – TN/AG/SCC/GEN/21. The C-4 urged Members to work with a view to adopting the draft decision amended at the last Quad+ meeting held on 26 November 2019.

6.17. Regarding development, the C-4 expressed its profound thanks to the Members involved in financing the development component of cotton for their active and marked contribution to the successful organization of the first World Cotton Day held in Geneva on 7 October 2019.

6.18. The C-4 urged Members to ensure that the outcomes were implemented, and to contribute to the financing of projects for the strengthening of cotton production and processing capacities, within the framework of the Cotton Roadmap programme and its "cotton by products" component.

6.19. Finally, the C-4 informed Members that its Seventh Ministerial Meeting would take place in Koudougou, Burkina Faso, on 29 January 2020. It would be preceded by the experts' meeting on 27 and 28 January 2020. The International Cotton and Textile Fair and the International Salon of Cotton/Textiles would be held on the same occasion. Members were invited to take part in those events in Koudougou.

6.20. The representative of Chad, on behalf of the LDCs, thanked the Director-General, all Members and the Secretariat for all of their efforts in favour of development in the cotton sector for LDCs. They also thanked their bilateral and multilateral partners for their assistance. Cotton offered a special opportunity to increase agricultural productivity, revenues and welfare for millions of LDC producers. It was a major social and economic issue and played a decisive role in the development of their countries.

6.21. Cotton represented some 12% to 30% of GDP and 40% of export revenues for the C-4 countries which were all LDCs. A drop in global cotton production and prices as well as a lack of local processing tools constituted a major concern for the LDCs which were seeking the means to overcome their situation which undermined the development of that sector. That was why the development dimension of the cotton sector should remain at the heart of their work.

6.22. The LDC Group endorsed the decision taken by the Ministers of the C-4, particularly the need for C-4 countries to carry out modernization programmes for their production system and to strengthen their productivity through the development of services in terms of mainstreaming, research, access to inputs and financing as well as structural transformation of the cotton sector.

6.23. The LDC Group was committed to multilateral negotiations to find fair, balanced, substantial, measurable and sustainable solutions to that issue with regard to domestic support which created distortions in the international cotton market. The LDC Group hoped that Members could see and encourage further discussion within the WTO in that issue through to a happy outcome on the issue of cotton between then and MC12.

6.24. The representative of the United States said that the United States had committed considerable resources to cotton development assistance and continued to support a range of initiatives designed to address production problems in West Africa. Millions of US dollars had been committed to capacity building efforts for cotton. From 2005-2018, the United States had provided to African countries approximately USD 42 million in cotton-specific development assistance projects and approximately USD 1.2 billion in agriculture and infrastructure-related projects. Currently, the United States had an active programme – the West-Africa Technical Assistance Programme for the C-4 and Senegal.

6.25. The representative of India joined other delegations in congratulating the Director-General, the WTO Secretariat and the C-4 for the success of the first World Cotton Day on 7 October 2019. India had been providing assistance to strengthen both the agriculture and textile part of the cotton value chain in Africa. In a spirit of South-South cooperation, India had implemented a large Cotton Technical Assistance Programme in six African countries, namely – Benin, Burkina Faso, Chad, Malawi, Nigeria and Uganda over a period of seven years from 2012 to 2018. The programme had led to the training and capacity building of thousands of African farmers, scientists and government officials on the use of better agronomic practices. It had also led to the creation of cotton-related infrastructure.

6.26. At the Partners' Conference held on the first World Cotton Day, India had announced its decision to launch a second phase of the Cotton Technical Assistance Programme based on the success of Cotton TAP-1. In its second phase, the programme would be scaled up in size and coverage and would be introduced in five additional countries, namely Mali, Ghana, Togo, Zambia and Tanzania. The Cotton TAP programme would thus cover a total of eleven African countries including the C-4. The programme would focus on increasing cotton production and improving the post-harvest and plant residue-based industry in the participating countries, as well as building the capacity of the cotton-based textile sector in those countries. India remained committed to building on its longstanding development partnership with Africa in the field of cotton.

6.27. The representative of China supported the WTO Programmes on cotton-related development assistance. China also supported the C-4's proposal on reducing and eliminating the most trade-distortive factors to create an impartial environment for trade and development which were also essential elements of China and India's proposal. Cotton had always been prioritised in South-South Co-operation and China-African Cooperation as a key area of development assistance programmes. In the last five years, China had invested over hundreds of millions of USD in C-4 and other African countries in the form of joint business farms, technology demonstration farms and capacity building to improve the African Cotton industry and livelihood.

6.28. Looking ahead, China would continue to implement the action plan adopted by the China-Africa Cooperation Forum Summit and promote comprehensive economic and technological cooperation with African Cotton countries. China would help them develop a cotton industry development plan to achieve high quality cotton production and to establish their own cotton value chain.

6.29. The General Council took note of the statements by the Director-General and the Deputy Director-General, and of the other statements.

7 TRIPS NON-VIOLATION AND SITUATION COMPLAINTS MORATORIUM – COMMUNICATION FROM CANADA, CHILE, COLOMBIA, GUATEMALA, NEW ZEALAND, PANAMA AND URUGUAY (WT/GC/W/790)

7.1. The Chair recalled that the delegation of Chile and the other co-sponsors had requested the Secretariat to include that item in the agenda of the meeting – together with the communication circulated in WT/GC/W/790. In that regard, she noted that after a number of consultations led by the TRIPS Council Chair and an open-ended informal meeting of the TRIPS Council on 19 November, it had emerged that consensus around an extension of the moratorium until MC12 could be possible, and that a group of Members had intended to make a proposal for extension in the context of the General Council – which had been item 7 of the agenda. In the absence of a further request for discussions, the meeting of the TRIPS Council had therefore been closed without a recommendation on the issue.

7.2. The representative of Chile noted that, concerning the proposal put forward by Chile, Canada, Colombia, Guatemala, New Zealand, Panama and Uruguay, their communication had proposed for the General Council to decide to maintain the moratorium on TRIPS Non-Violation and Situation Complaints under the TRIPS Agreement until the next Ministerial Conference. Maintaining that moratorium, just as the moratorium on electronic commerce, had been a historical balance struck by the Ministerial Conference. That was why the proponents considered that it was important to maintain a constructive dialogue between delegations and to give themselves time to try and find joint understandings on those matters.

7.3. Those formal and informal discussions on the subject in the TRIPS Council had shown the need to have more time to try and come up with joint understandings and consensus on the different aspects contained in the mandate of Article 64 of the TRIPS Agreement. To that end and considering the historical positions of the Members on the matter, the decision on the extension of both moratoria should be taken together given their importance and the balance that it represented in the House.

7.4. The representative of Panama said that it co-sponsored the proposal in the hope that Members would pick up substantive discussions in the TRIPS Council or in other appropriate fora concerning the scope and modalities of those cases. Given the importance of the possible consequences of substantive results in favour or against extending the moratorium, Panama considered that that be

extended until the next Ministerial Conference so that their Ministers would decide on that matter. Panama hoped that the proposal would be accepted by all Members.

7.5. The representative of Guatemala co-sponsored the proposal with the idea of extending the moratorium to MC12 with the view to having more time to try and come to consensual agreements on the different aspects contained in Article 64 of the TRIPS Agreement and to continue having a constructive discussion on the scope and modalities in that area.

7.6. The representative of Uruguay co-sponsored the proposal because it considered that if Members would not extend the moratorium, they would be opening the door to a very vague legal concept and its implementation on such types of cases would be a problem. That could be a systemic risk because it could lead to the adjudication of different issues in the area of intellectual property and would limit the use of flexibilities especially for developing countries.

7.7. The TRIPS Agreement called upon Members to have a discussion on the scope and modalities of that type of complaints. However, for more than ten years, Members had not had an in-depth discussion on the matter because consensus was difficult to reach in that area. As such, the moratorium should become permanent and Uruguay supported the proposal to find a consensual solution on the matter.

7.8. The representative of Bangladesh noted that its position on the matter was well-known. Bangladesh was in favour of establishing a permanent moratorium. During the previous meetings of the General Council and the TRIPS Council, Bangladesh had always invited views and ideas of Members who had been proponents of the application of the non-violation and situation complaints on the scope and modalities of the proceedings as had been required by Article 64.3 of the TRIPS Agreement. The Council needed to be better informed and only then would Bangladesh be in a position to examine and consider the proposal.

7.9. In the General Council, a proposal for the temporary extension of the moratorium had been tabled. However, the TRIPS Council should have been the forum used so that the issue would be discussed with deeper engagement of all concerned. The concept of non-violation and situation complaints appeared to be still an unknown territory, and unless the scope and modalities were outlined first, Members could not go any further in their discussion. If non-violation and situation complaints were made applicable to TRIPS, any issue in the universe could be brought as cases under that umbrella. Clear delimitations should therefore be conceived, defined and thoroughly examined first.

7.10. Since the moratorium would end in December 2019 and before Ministers would take a further decision on that matter at MC12, there would be a period of uncertainty. Bangladesh therefore joined the proponents in calling for a temporary extension of the moratorium on TRIPS Non-Violation and Situation Complaints until MC12. On that issue, Bangladesh reiterated its readiness to constructively engage with Members.

7.11. The Chair then said that she would move to the item on the Work Programme on Electronic Commerce and that she would open the floor at the end, including on the possible action on the draft decision in document WT/GC/W/790⁷.

⁷ See discussions under Item 8 – Work Programme on Electronic Commerce.

8 WORK PROGRAMME ON ELECTRONIC COMMERCE

8.1 Statement by the Chair

8.2 Reports by the Chairs of the Council for Trade in Goods and of the Council for Trade in Services (G/C/66 and S/C/58)

8.3 Work Programme and Moratorium on Electronic Commerce – Communication from Chad on behalf of the LDC Group (WT/GC/W/787)

8.4 Work Programme and Moratorium on Electronic Commerce – Communications from Australia; Canada; Chile; Colombia; Costa Rica; Georgia; Guatemala; Hong Kong, China; Iceland; Israel; Republic of Korea; Mexico; New Zealand; Norway; Panama; Paraguay; Singapore; Switzerland; Thailand and Uruguay (WT/GC/W/782/Rev.2, WT/GC/W/792)

8.1. The Chair drew attention to the reports submitted by the Chairs of the Council for Trade in Services and the Council for Trade in Goods contained in documents S/C/58 and G/C/66, respectively.

8.2. Deputy Director-General Yi Xiaozhun, on behalf of the Chair of the Services Council, stated that, as had been outlined in the relevant written report, the Council for Trade in Services had discussed the Work Programme on Electronic Commerce at its formal meeting on 30 October. At that meeting, the United States had provided additional clarification on various questions that had been posted about its submission on the economic benefits of cross-border data flows and a couple of delegations had offered further observations under the US submission. China had presented a case study on e-commerce and poverty alleviation which had highlighted that digital technologies could play a role not only in the urban context but also in rural areas. Noting that the moratorium on customs duties on electronic transmissions had been crosscutting in nature, one delegation had recalled the interventions and submissions it had made on the issue in that body.

8.3. Ambassador José Luis Cancela (Uruguay), Chair of the Goods Council, referred to his factual report to the General Council contained in document G/C/66 and recalled that the Goods Council, in accordance with the 2017 Ministerial Decision, had included the issue of the Work Programme on Electronic Commerce on the agenda of its meetings of March, July and November 2018, and April and July 2019. At those meetings, he had invited delegations to express their opinion and make suggestions on their work in that area particularly in preparation of the mandated periodic reviews to be held at the General Council meetings of July and December 2018, and July 2019.

8.4. Since the Twelfth Ministerial Conference would be held in June 2020, the Goods Council had considered it useful to include the issue of the Work Programme on the agenda of its meeting on 14 and 15 November 2019. At that meeting, he had reminded the Goods Council of the mandate contained in document WT/L/1032 and had invited delegations to express their ideas and opinions, and to make suggestions regarding the revitalization of the Work Programme and the question of the moratorium on the imposition of customs duties on electronic transmissions. However, despite his call, no delegation had taken the floor at that meeting.

8.5. The Chair recalled that the delegation of Chad on behalf of the LDC Group had requested the Secretariat to add the third sub-item under item 8 of the agenda which included a communication from the LDC Group circulated in document WT/GC/W/787.

8.6. The representative of Chad, on behalf of the LDCs, said that the LDCs had submitted its contribution with the aim of highlighting the LDCs' interest on electronic commerce as well as their concerns regarding the need for concrete action to respond to the LDCs' situation in that area. The content of the communication had already been presented to the Council for Trade in Goods as well as to the Council for Trade in Services. The LDCs had mentioned a number of important elements that should be discussed. For example, they would like to look into the costs and benefits of e-commerce for LDCs in a more in-depth fashion and the various possibilities for improving LDCs' integration into the e-commerce platform.

8.7. In their communication, the LDCs had drawn Members' attention on certain challenges they were faced with. By genuinely taking on board those challenges, the WTO would enable the LDCs to

better develop and use electronic commerce. Those challenges included: limited knowledge by companies, government agencies and e-commerce regulatory bodies; lacking mechanisms to support the creation of enterprises in the e-commerce sector; concerns relating to the potential negative effects of e-commerce and the way they could be mitigated; the lack of affordable infrastructure in the ICT area and the access to credit cards and the very high number of non-banking consumers with very limited experience of online purchasing and the lack of appropriate systems to ensure the physical delivery of online purchases; the mistrust of users vis-à-vis quality and efficiency; inadequate online payment systems and funding of LDC enterprises in that sector and limited knowledge of enterprises wishing to use electronic trade and ICTs in a strategic way to buy goods and services through trade among enterprises, those between enterprises and final consumers or those between enterprises and the government; lack of statistical data on e-commerce in LDCs; very weak legal frameworks where consumer protection was necessary and the lack of clarity regarding the nature of electronic transmissions and the LDCs' capacity to levy domestic taxes as opposed to customs duties when appropriate.

8.8. The Chair said that concerning the fourth sub-item under item 8 of the agenda, the delegation of Switzerland and the other co-sponsors had requested the Secretariat to include that sub-item on the agenda of the meeting which included communications circulated in documents WT/GC/W/782/Rev.2 and WT/GC/W/792.

8.9. The representative of Switzerland, on behalf of the co-sponsors, recalled that, at the General Council meeting on 15 October, Switzerland had introduced a communication on the Work Programme and Moratorium on Electronic Commerce on behalf of a number of Members. That day, twenty Members were co-sponsoring the proposal in document WT/GC/W/782/Rev.2.

8.10. The co-sponsors noted that, since 1998, Members had periodically taken decisions at Ministerial Conferences to continue their practice of not imposing customs duties on electronic transmissions.

8.11. Recognising the potential implications from the moratorium lapsing prior to the next Ministerial Conference, the co-sponsors were proposing an extension of the moratorium until the Twelfth Ministerial Conference. They also proposed to continue the work under the Work Programme on Electronic Commerce during that period.

8.12. The co-sponsors also underlined that the moratorium was without prejudice to Members' right to impose internal taxes, fees or other charges in a manner consistent with WTO Agreements. The co-sponsors were therefore proposing that the General Council adopted the decision to that effect as had been drafted in document WT/GC/W/792.

8.13. They understood that consultations on those issues were still ongoing and they were ready to engage constructively in those talks with a view to working out a mutually agreed solution.

8.14. The Chair noted that consultations on a possible way forward were still ongoing and proposed to suspend the consideration of agenda items 7 and 8 and revert to them later in the meeting and in the meantime, to take up the rest of the items under the agenda.

8.15. At the resumption of the meeting the following day, on 10 December, the Chair recalled that, throughout the year, work on e-commerce had been guided by the mandate given by Ministers at MC11. In their Decision, Ministers had agreed to reinvigorate the Work Programme, to hold periodic reviews and to continue the practice of not imposing customs duties on electronic transmissions until the Twelfth Ministerial Conference in 2019.

8.16. The General Council had periodically reviewed progress of work on e-commerce based on the reports from the Chairs of the respective bodies. Members had heard the most recent reports from the Chairs of the Goods Council and the Services Council under the earlier sub-item. She once again encouraged all Members to contribute to the work in the relevant bodies.

8.17. Given the December 2019 expiry date of the moratorium which had been confirmed by the General Council at its meeting in July 2018, she had begun consultations with delegations on the Work Programme and the Moratorium. Those consultations, in different configurations, had been aimed at reaching an agreement on a draft decision for the consideration of the General Council. In

addition to the bilateral and small group meetings, she had convened two informal open-ended meetings to report back to the wider Membership and thus ensuring a transparent and inclusive process.

8.18. On the basis of that extensive process of consultations, she was pleased to inform Members that there seemed to be convergence on a draft decision for the General Council's consideration at that meeting. The draft, which was before them in document WT/GC/W/794, was the result of delegations' constructive engagement throughout the process of consultations, including in the last few intensive days and up until the previous evening. It was the result of a considerable effort of flexibility and spirit of compromise for which she was grateful. She was putting forward that compromise text based on her assessment and on her consultations and urged all delegations to give it positive consideration.

8.19. She therefore proposed that the General Council adopted the Decision on the Work Programme on Electronic Commerce as contained in document WT/GC/W/794 and the Draft Decision on TRIPS Non-Violation and Situation Complaints as contained in document WT/GC/W/790.

8.20. The General Council so agreed⁸.

8.21. The Chair thanked all delegations for their flexibility and readiness to compromise. In adopting the two decisions, Members had given a much-needed positive message about their ability to work together and deliver multilateral outcomes. She then opened the floor under Items 7 and 8 of the agenda.

8.22. The representative of Benin, on behalf of the African Group, intervened under items 7 and 8. He said that the two moratoria submitted for Members' consideration had their own logic and would have to be treated separately.

8.23. Regarding the Moratorium on TRIPS Non-Violation and Situation Complaints (NVCs), the African Group continued to maintain the position that NVCs should not apply to the TRIPS Agreement. Furthermore, the flexibilities provided to developing countries under the Agreement were fundamental including in relation to public health. Since the scope and modalities of NVCs had not yet been determined, the African Group supported the extension of the moratorium on the issue.

8.24. Regarding the Moratorium on Electronic Commerce, the African Group appreciated that, as a result of the consultations under the Chair's leadership and her facilitation of the process, Members had been able to reach a text of a decision urging the reinvigoration of work under the Work Programme on Electronic Commerce contained in document WT/L/274 dated 30 September 1998.

8.25. The African Group called for the consideration of all issues of interest, including the scope, definition and impact of the Moratorium on Customs Revenue Losses resulting from operations carried out by electronic transmissions. The African Group remained concerned about the implications of the moratorium on revenue losses related to electronic transmissions, and recommended that appropriate modalities for the treatment of such losses be sought, including through compensation. The African Group urged the membership to engage in structured discussions on those issues in good faith as they would be critical to decision-making at MC12.

8.26. With the above prerequisites, and the granting of flexibilities to Members including the LDCs, the African Group adhered to the consensus Members had just achieved by adopting the decision. Members should therefore work with a view to contributing to improving the capacities of populations in developing countries and LDCs and to effectively use the digital tool as a lever of development.

8.27. Apart from the implications of the moratorium, the other technical aspects to be addressed that aimed to promote participation of developing countries and LDCs in the digital economy included: the development of digital infrastructures, access to payment instruments by the largest number of people, consumer protection and cybersecurity, the processing of data flows and their location, the protection of intellectual property and start-ups and the training of individuals and enterprises, including functional literacy, in rural, peri-urban and urban areas.

⁸ The decisions were subsequently circulated in documents WT/L/1079 and WT/L/1080, respectively.

8.28. The representative of India⁹ said that India's position on the issue of TRIPS Non-Violation and Situation Complaints remained unchanged. Introducing NVCs into the TRIPS Agreement was unnecessary. As such, any benefits arising from the Agreement could be adequately protected by applying the text of the Agreement in accordance with accepted principles of international law without any need for introducing the legally uncertain notion of NVCs.

8.29. Serious concerns remained on the debilitating impact that NVCs in TRIPS could have on the regulatory policy space of Members and on TRIPS flexibilities. They could not only have a chilling effect on Member's exercise of their TRIPS flexibilities but also severely restrain the ability of Members to achieve other public policy objectives.

8.30. India looked forward to working with likeminded Members in making NVCs inapplicable to TRIPS. Pending that, India supported the proposal for extension of the moratorium on the applicability of NVCs to the TRIPS Agreement until MC12.

8.31. Concerning item 8, India thanked the LDCs for their proposal which sought Members' engagement under the Work Programme on some key challenges identified by them in the context of electronic commerce.

8.32. As the digital revolution was still unfolding, India had on a number of occasions reiterated that it was important to first understand the complex and multi-faceted dimensions of issues related to e-commerce. India still did not comprehend the full implications of effects of e-commerce on competition and market structures, issues related to transfer of technology, automation and robotization and its impact on traditional jobs and the gaps in policy and regulating frameworks in developing countries. India had therefore been a proponent of strengthening the multilateral work under the non-negotiating and exploratory Work Programme on Electronic Commerce.

8.33. Under the multilateral work programme and with the intention of understanding the implications of the moratorium on customs duties on electronic transmissions, India along with South Africa had introduced two submissions in July 2018 and in June 2019.

8.34. India therefore supported the communication from Chad on behalf of the LDC Group and suggested that all aspects concerning the e-commerce moratorium, being cross-cutting issues, should be deliberated in the General Council.

8.35. India was aware that the Ministerial Decision on the moratorium would expire that month unless the General Council decided to renew it for another six months up to the Twelfth Ministerial Conference. An extremely important issue highlighted in its two recent submissions on the moratorium made jointly with South Africa in the General Council was the need of providing clarity and arriving at a common understanding of what the moratorium covered. Without such an agreement on the scope of the moratorium and the definition of electronic transmissions, it would be very difficult to assess the impact of the moratorium on the economy not only in terms of loss of tariff revenue but even the broader impact on efforts at digital industrialization. India reiterated that much more serious and dedicated work was required to examine more deeply the scope of the moratorium, the definition of electronic transmissions and to identify the categories of products which were covered under the moratorium.

8.36. India had also been repeatedly highlighting in the various meetings of the General Council in 2018 and 2019 that the developing countries bore the brunt of the potential tariff revenue loss due to the moratorium. The UNCTAD Trade and Development Report of 2019 confirmed that the moratorium resulted in a loss in tariff revenue of more than USD10 billion globally, 95 per cent of which was borne by developing countries. It was also important to keep in mind that the estimate of USD10 billion as the potential tariff revenue loss per annum was only the tip of the iceberg as that estimate was based on only a small number of 49 HS-6-digit products. Further, as more products were getting digitised due to technological advancement, that estimate of fiscal revenue foregone would snowball.

8.37. With the advent of industry 4.0 and the advance of 3D printing technologies in the near future, the moratorium would also erode the existing GATT bound rates which were typically higher in

⁹ Intervention made under Items 7 and 8.

developing countries, and bring them to zero for digitised products. That could have a catastrophic effect on the ability of developing countries to protect their nascent domestic digital industries resulting in loss of jobs and destitution.

8.38. The above issues needed to be well understood for enabling developing country Members to make more informed policy decisions. In the various meetings of the General Council held in 2018 and 2019, India had been suggesting that the General Council intensified and accelerated work under the multilaterally mandated work programme and convened dedicated discussions to find answers to the key issues highlighted in its submissions as well as any other issue related to the moratorium which would ensure that Members had sufficient time to reflect and consult with their stakeholders before the decision on the moratorium due in December 2019.

8.39. In fact, more than two months back during the informal, open-ended meeting of the General Council held on 1 October 2019, India had suggested that the WTO Secretariat organised another workshop on the moratorium on the lines of what had been organised in April 2019 wherein all the leading researchers and experts on the issue were provided a common platform to deliberate on the key issues relating to the moratorium. India's proposal for even a workshop had not however been agreed to.

8.40. Despite repeated submissions and discussions on those critical issues, namely scope of the moratorium and definition of electronic transmissions, a comprehensive understanding of the impact of the moratorium and on imposing customs duties on electronic transmissions, India had not seen focused engagement on the part of the Membership to try and find answers to those pressing questions.

8.41. In recent times, the WTO had been unable to address the issues of unilateral measures by certain Members, attacks on the core principles of non-discrimination and S&DT, disciplines on fisheries subsidies, asymmetries in the Agreement on Agriculture or deliver on a number of mandates such as on a permanent solution for public stockholding for food security purposes. All of those issues would undoubtedly be on the WTO agenda for the next six months. The issue around the moratorium should be addressed along with all those issues at MC12 with the Membership proactively and constructively engaging on them over the next six months.

8.42. In the spirit of working together, when the WTO was in turbulent waters, India would not therefore, at that time, come in the way of a consensus on the issue of a six-month extension on the moratorium and could join the consensus on the Chair's text as had been outlined in document WT/GC/W/794. The Work Programme on Electronic Commerce at the WTO should however be reinvigorated. It should be structured and prioritised and work on it needed to begin early in 2020 with a commitment of the Membership to engage on topics brought forward by Members including on scope, definition and impact of imposing customs duties on electronic transmissions. Without clarity on those issues, especially the scope of the moratorium on customs duties, there could be no predictability and certainty even for business, trade and industry.

8.43. India would continue to closely watch developments over the next six months and the commitment of the Membership to addressing its concerns which were shared by a number of Members from developing countries and LDCs in determining its position on the issue at MC12.

8.44. The representative of Jamaica, on behalf of the ACP, said that the Group fully recognized that Members lived in a technologically advanced era and that developments in technology were evolving at an astronomical rate. Big data, cloud computing, 3D printing, the internet of things, artificial intelligence and augmented reality were just a few examples of how the world had changed since the 1998 Work Programme on Electronic Commerce.

8.45. While the ACP took note of those changes, what had not changed or at least not at a significant enough rate was some Members' challenges concerning access to basic electricity and infrastructure which would enable their economies to benefit from those advancements or enable them to benefit from e-commerce and improve their ability to move from being mere buyers to becoming suppliers of their products on the internet.

8.46. Far too many times had some Members been unaware of the implications of some of the technological advances on their economies, their businesses or their consumers. The ACP Group had

therefore been chief among those who had insisted that for them, work under the current work programme was not exhausted, particularly its development dimension. The Work Programme on Electronic Commerce and the Moratorium therefore remained of critical importance and served as an essential feature of the WTO landscape.

8.47. While the remit of the work programme was broad in terms of the issues that could be covered, it would be remiss of Members to discount the incessant calls for their continued conversation on unfinished business on issues under the work programme and on the moratorium concerning the application of customs duties on electronic transmissions. As the ACP Group had indicated in its previous statement at the General Council, in arriving at an agreement around which Members could all coalesce, they should fully take into account of and integrate the development dimension as it related to the moratorium and wider discussions within the Work Programme on Electronic Commerce.

8.48. The ACP Group supported the continuation of the Work Programme and the moratorium until MC12. Though the ACP Group would have preferred the identification of a more elaborate listing of issues for future discussions and that Members address any recommendations on those issues by April 2020, the text of the draft decision was wide enough to incorporate all of those issues. The ACP Group therefore joined the consensus on the draft which had been presented for Members' approval.

8.49. The ACP Group however wished to place on record a few of the issues of interest to the Group of further importance which included: the nature of electronic transmissions, feasibility of imposing duties, treatment of other duties and charges, the impact of the moratorium on developing country and LDC revenue, any discriminatory treatment between physically traded goods and the digital version of those goods, consequences of the digital divide, costs to developing country and LDC consumers and businesses, discrepancies between traditional goods or products and electronic equivalence and the application of internal taxes on electronic transmissions.

8.50. The ACP Group would continue to engage positively in the discussions on the work programme with the aim of ensuring that their interests as developing country Members particularly the LDCs and the SVEs were fully reflected in those discussions.

8.51. On behalf of Jamaica, she associated with the statements made by the ACP Group and CARICOM. Further to the decision taken by CARICOM Trade Ministers at a recent meeting of their Regional Council for Trade and Economic Development, Jamaica placed on record its support for renewing the 1998 exploratory mandate of the Work Programme on Electronic Commerce and to temporarily continue the practice of not imposing customs duties on electronic transmissions until MC12. Jamaica however did not think that time was ripe to give consideration to a permanent moratorium on the imposition of customs duties on electronic transmissions especially not until the impact of such a move had been studied and assessed particularly for developing country Members.

8.52. Electronic Commerce represented a growing and evolving medium of international trade with estimates ranking its value at 2.3 trillion in 2017 and the expectation was for it to reach 4.5 trillion by 2021 – almost doubling in value. That underscored the growth potential of the sector which needed to be properly studied and assessed. Jamaica therefore looked forward to working with Members in the lead up to MC12 on the specific issues identified in the ACP statement.

8.53. The representative of Trinidad and Tobago, on behalf of CARICOM, noted that, mindful of the negative implications of allowing the moratorium relating to customs duties on electronic transmissions to lapse prior to the June 2020 Ministerial Conference, the CARICOM Group joined with the broad consensus regarding the retention of the current practice, namely refraining from imposing customs duties on electronic transmissions, until MC12. CARICOM noted the distinction between adherence to the moratorium and exercise of the right of Members to impose internal taxes in a manner that was consistent with WTO Agreements.

8.54. The CARICOM Group had taken note of the efforts of the four designated WTO bodies responsible for the implementation of the Work Programme on Electronic Commerce to comply with the MC11 mandate regarding the reinvigoration of the Work Programme. The CARICOM Group acknowledged that there had been limited progress in respect of implementation since 1998 and welcomed efforts to achieve meaningful steps forward in that regard.

8.55. The CARICOM Group joined the rest of the ACP Group in advocating for particular attention to be paid to addressing a number of issues raised by Members within the framework of the Work Programme on Electronic Commerce. Those included the impact on developing country and LDC revenue of the moratorium on the imposition of customs duties on electronic transmissions and consequences of the digital divide. The clear identification of specific areas of work for the four WTO bodies responsible for the implementation of the work programme could bring impetus to their implementation efforts.

8.56. The representative of Chinese Taipei¹⁰ was pleased to see that Members had shown flexibility to avoid suspension of the moratoria on TRIPS Non-Violation and Situation Complaints and on Electronic Commerce before MC12 to protect the interest of the global enterprise and consumers. At the same time, Chinese Taipei welcomed more discussions on the issues such as scope, definition and implication of the moratorium on customs duties – and would jointly participate in that.

8.57. The representative of Thailand¹¹ commended the General Council Chair and the TRIPS Council Chair for their efforts in relation to facilitating consensus on the respective moratoria and congratulated all Members for their contributions and flexibility leading to the consensus for the temporary extension of the two moratoria. Those decisions put a stamp on Members' achievement that had produced a much needed positive signal to all stakeholders in maintaining certainty and predictability in the global trade community. The adoption of the extension of the two moratoria would be vital in fostering trust and cooperation between the Members which were essential elements for further success in their future discussions.

8.58. The representative of South Africa¹² associated with the statement made by the African Group and agreed with the view that as a matter of principle each moratorium should be considered on its merits. The linkage between the two was at best artificial.

8.59. In relation to the TRIPS NVCs, NVCs should not apply to the TRIPS Agreement. South Africa urged the proponents of the application of NVCs under the TRIPS Agreement to provide concrete examples of the kind of scenarios under which an otherwise TRIPS consistent measure would impair or nullify benefits beyond those arising from the obligations set out in the Agreement. It could therefore be useful to clarify what situations the proponents wished to avoid by having a non-violation remedy available under the TRIPS Agreement and, on the other hand, to ensure that non-violation remedies in the TRIPS context would not be so broad as to have the effect of expanding the existing TRIPS obligations or nullifying flexibilities that had accrued to Members in that regard. The moratorium should be permanent. Alternatively, until the modalities and scope were agreed, the Membership should agree that NVCs should not be launched. In the interest of consensus, South Africa could however support the draft decision as had been proposed by Chile.

8.60. In relation to the Work Programme on Electronic Commerce and the Moratorium, South Africa noted the content of e-commerce reports submitted by the Chairpersons of the Council for Trade in Goods and the Council for Trade in Services contained in documents G/C/66 and S/C/58 respectively. It was evident from those reports that little or no discussion had taken place on the Work Programme on Electronic Commerce in the respective bodies as had been envisaged in Section 1.1 of the General Council Decision establishing the programme for the relevant WTO bodies as set out in Paragraphs 2 to 5 of document WT/L/274. Furthermore, in line with Paragraph 1.2 of the same document, South Africa took good note that all aspects of the work programme concerning the imposition of customs duties on electronic transmission should be examined in the General Council. In that respect, despite a call by their Ministers at MC11 to reinvigorate Members' work in line with the mandate contained in WT/L/274, Members had not heeded that call to do so.

8.61. South Africa had consistently advocated for further discussion on the implications of the non-imposition of customs duties on electronic transmissions. There was no consensus on the scope and definition of electronic transmissions. The debate since 1998 had focused on whether electronic transmissions should be treated as goods and be exposed to customs duties as defined under Article II of GATT 1994 or as services where GATS schedules applied. When the decision on the moratorium on customs duties on electronic transmissions had been taken, the scope of electronic transmissions had been identified as digitised products. That evolved into digitizable products as per

¹⁰ Intervention made under Items 7 and 8.

¹¹ Intervention made under Items 7 and 8.

¹² Intervention made under Items 7 and 8.

the WTO Note of 2016. The recent debate seemed to attempt to expand the scope to digitizable products and services. There was a further attempt to define electronic transmissions as digital deliveries which covered along with digitizable products, digitally delivered business services. It was clearly in the interest of the Membership to engage in a structured discussion to clarify the definition and scope of electronic transmissions to enable Members to fully assess the implications and inform decision-making.

8.62. According to UNCTAD, the potential tariff revenue loss per annum was estimated at USD 10 billion per annum using bound duties. At USD2.6 billion, the potential tariff revenue loss to Sub-Saharan African countries was almost ten times that of the WTO High Income countries, whereas for the WTO LDC Members, the potential tariff revenue loss was five times that of the WTO High Income countries. For South Africa, the loss was at USD 36 million per annum if one would look at bound rates and USD 25 million per annum based on applied rates. A study by UNCTAD showed that developing country Members could generate 40 times more tariff revenue by imposing customs duties on electronic transmissions as compared to developed countries, many of which had almost zero bound duties on physical imports of digitizable products.

8.63. While there were benefits to electronic commerce, there were many challenges for developing countries arising from the digital divide, concentration in digital trade, tax avoidance by digital firms and revenue and digital industrialization implications. The decision on the e-commerce moratorium was not a procedural matter but an important decision due to growing trade in digitizable products which had significant implications for developing countries who were the net importers of those products. The moratorium as South Africa had said on a number of occasions was asymmetrical to developing countries. That was a significant concession by developing countries without any compensation in return.

8.64. The implications of the moratorium were not only limited to revenue. There were significant industrial development implications especially with the technological advancement on 3D printing. The broader implications were therefore in terms of losing policy space to develop digital capabilities and infrastructure which could have important implications for manufacturing and industrialization.

8.65. Any decision to further extend the E-commerce Moratorium to June 2020 could not be rolled over automatically without considering how Members could reinvigorate their discussions. It was not business as usual. The key issues that were critical to decision-making going forward were: the scope and definition, technical feasibility of imposing customs duties and the impact of the moratorium. While South Africa had agreed to join the consensus for a short-term extension of the moratorium by a further six months until MC12, it would be important for the Membership to use that time wisely to ensure structured discussions on those issues to facilitate informed decision-making by their Ministers at MC12. Without clarity on those issues, the moratorium would increasingly be difficult to maintain.

8.66. The representative of Barbados said that the 1998 Work Programme on Electronic Commerce was an indispensable aspect of the regular work in the WTO. In an age of rapid technological expansion, the work programme served as a vital discussion forum on issues and topics of relevance to electronic commerce, the sharing of experiences, understanding the challenges faced by developing and least-developed countries in advancing their e-commerce bases and bridging the knowledge gap among Members. Barbados therefore strongly supported the reinvigoration of work under the work programme.

8.67. It would be essential to continue discussions in the four bodies outlined in the 1998 decision as well as in the cross-cutting discussions under the remit of the General Council. Barbados commended the LDC Group for identifying issues of interest to them and which could benefit from future discussions within those configurations. Many of those issues were also of interest to Barbados and it looked forward to receiving and contributing to proposals for discussions on those and other issues in the lead up to MC12.

8.68. On the issue of the moratorium, Barbados supported the continuation of the current practice of not imposing customs duties on electronic transmissions until MC12 and was supportive of further discussions on its impact on developing and LDC revenue, economic and social aspects of the economy, businesses and consumers as well as the application of internal taxes on electronic transmissions.

8.69. Barbados supported the draft decision on the Work Programme on Electronic Commerce which was before Members for approval. Barbados looked forward to reinvigorated and productive discussions within the context of Members' exploratory work under the Work Programme on Electronic Commerce and stood ready to engage in Members' continued work in that regard. Barbados associated with the statements made by the ACP Group and CARICOM.

8.70. The representative of St. Lucia, on behalf of the OECS¹³, said that, regarding agenda item 7, the OECS was mindful that since the founding of the WTO, Members had maintained the practice of not imposing NVCs under the TRIPS Agreement. At MC11, Ministers had agreed to extend until the end of 2019 the moratorium on TRIPS Non-Violation and Situation Complaints. In the interest of allowing Members to pronounce themselves on the matter, as had traditionally been the case, the OECS supported an extension of the moratorium until MC12.

8.71. On agenda item 8, the OECS associated with the statements made by the ACP Group and CARICOM. Since 1998, the Work Programme on Electronic Commerce had been a feature of the multilateral trading system. The OECS Member States were mindful of the development benefits of electronic commerce because it could assist them in lowering trade cost, democratising competitive relationships among firms and furthering their integration into the global economy. They were also mindful of the limitations which prevented them from benefiting fully from electronic commerce. Those included nascent regulatory regimes and slowness in deploying the latest network and infrastructure which would enable them to engage in the digital economy.

8.72. The OECS agreed to continue the work under the Work Programme on Electronic Commerce until the next Ministerial Conference and to maintain the current practice of not imposing customs duties on electronic transmissions until MC12. The OECS had taken that decision because as had been the practice since 1998, Ministers should ultimately pronounce themselves on those matters. Discontinuing the work under the work programme as well as not renewing the moratorium at that time could potentially be disruptive to digital trade.

8.73. Notwithstanding that day's decision, both the work programme and the moratorium, the OECS conceded that Members should do more to assist developing and LDC Members to reap the benefits of digital transformation. In the case of the OECS, legislation with respect to data protection, cybersecurity and online consumer protection were either lacking or severely underdeveloped. Furthermore, the OECS Member States had gaps in respect of financial inclusion, information and communication technology infrastructure, education and trading as well as acceding and accessing capital and technology which prevented them from fully benefitting from the global digital economy.

8.74. The legislative and infrastructural gaps previously outlined were fundamental building blocks in a digital society and for that reason, the OECS Member States put it to the Members that any reinvigoration of the work programme should address those issues and their needs. They asked all Members, particularly their developed country partners, to reflect on the kinds of assistance that they could provide to countries like them to ensure that Members' work under the work programme would lead to meaningful development enhancing outcomes.

8.75. The representative of Switzerland¹⁴ said that, with respect to the Work Programme on Electronic Commerce and the Moratorium, Switzerland was convinced that the discussions foreseen early 2020 would demonstrate the merits of having a moratorium.

8.76. Regarding the Moratorium on Non-Violation and Situation Complaints under the TRIPS Agreement, Switzerland's position had not changed. No additional modalities were needed for NVCs in the TRIPS context. Extending the moratorium until the Twelfth Ministerial Conference would allow Ministers to take a decision on the matter at MC12. That was the reason why Switzerland had been in a position to join the consensus on the extension of the moratorium until MC12.

8.77. The representative of Indonesia¹⁵ was delighted that Members were able to secure consensus on the extension of the Moratoria on Electronic Commerce and on TRIPS Non-Violation and Situation Complaints until MC12. On the Work Programme on Electronic Commerce, the period in the lead up to MC12 could be used to enhance Members' understanding on the impact of the moratorium since

¹³ Intervention made under Items 7 and 8.

¹⁴ Intervention made under Items 7 and 8.

¹⁵ Intervention made under Items 7 and 8.

the imposition of customs duties on electronic transmissions should be observed through a holistic perspective that included, among others, potential of revenue loss, the need for trade statistics on digital goods, risk assessment related to digital trade and maintaining certain degree of flexibility for future adjustment if required. Indonesia likewise looked forward to continuing discussing the Moratorium on TRIPS Non-Violation and Situation Complaints in the TRIPS Council.

8.78. The representative of Japan noted that the moratorium of not imposing customs duties on electronic transmissions had provided certainty and predictability for business and trade thus contributing to the development of the digital economy that Japan was promoting through the Osaka Track Initiative. Thanks to the intensive consultations conducted by the General Council Chair, Members had reached a compromise solution which extended the moratorium until MC12 and Japan was pleased with that interim arrangement. Japan continued to engage in discussions on various aspects of the e-commerce moratorium so that the Ministers would be able to make an informed decision on the matter. In that regard, Japan appreciated the communication from the LDC Group which would contribute to reinvigorating the work programme.

8.79. Japan had taken into account the unique challenges facing the developing countries in particular LDCs through their open-ended discussions and a number of studies – and Japan would continue to do so. In the bilateral context, Japan had provided in the last three years the total amount of USD 350 million as development assistance in the field of ICT. Japan would continue to support developing countries for the sake of inclusive development of the digital economy.

8.80. The representative of Chad, on behalf of the LDCs, said that, as the LDC Group had left to go to the informal meeting the previous day, it had been filled with doubt. There had been no certainty on whether or not Members would reach consensus on the text with what they had added given the specificities and constraints of LDCs. The LDC Group therefore welcomed the consensus from developed and developing Members. An assessment by the WTO of the moratorium and the feasibility of imposing customs duties relying amongst others on various contributions were essential. Regarding taxes, for example the digital tax suggested by France, the LDC Group would like to know a little more on the implications of such a tax as well as on the taxes levied by certain developed countries on goods and services. It was important for the LDC Group to understand the implications for LDCs of the use of such taxes to be able to respond to their concerns regarding loss of revenue while the moratorium was extended. The LDC Group would also like to better understand the feasibility issues.

8.81. The representative of Australia¹⁶ was very pleased that Members had agreed to extend the two moratoria to MC12. The e-commerce moratorium was a critical element of the modern trading system that by providing certainty and predictability for business particularly MSMEs had promoted the growth of digital trade – providing their businesses with better access to customers and customers with more choice. While Australia's clear preference was for a permanent moratorium, that decision was a pragmatic compromise that took into account the concerns expressed by some delegations and reflected a longstanding practice that Ministers decided on those issues.

8.82. The representative of Chile¹⁷ said that the adoption of the decision on the extension of the two moratoria was significant given the importance they had and the balance they represented for Members. Chile had supported and co-sponsored both moratoria and had in particular submitted to the General Council a proposal regarding the extension of the moratorium on TRIPS Non-Violation and Situation Complaints.

8.83. The representative of Argentina¹⁸ was pleased that consensus had been reached beyond the current limitations and conditions and was satisfied with the decision Members had just taken. Never had the world been so big for the smallest among them. The decision could provide many opportunities to those with fewer resources. Argentina appreciated the flexibility of many Members that had chosen the path of consensus and hoped that, for the organization's sake, that approach could be mirrored by other delegations on other matters.

8.84. The representative of Pakistan agreed that the 1998 Work Programme should be reinvigorated in a focused way with structured discussions. Given that new research and realities had surfaced on

¹⁶ Intervention made under Items 7 and 8.

¹⁷ Intervention made under Items 7 and 8.

¹⁸ Intervention made under Items 7 and 8.

the issue in recent times, a thorough examination on the scope and definition of electronic transmissions was warranted. Members should likewise develop a deeper and clearer understanding of the revenue, industrial and developmental implications from the moratorium for developing countries. Pakistan appreciated that reinvigorating the work programme accompanied the temporary extension of the moratorium and would provide more time to carry out that exercise in earnest.

8.85. The representative of the United States thanked the Chair for her leadership on the issue and Switzerland for putting forward the original proposal to extend the customs duty moratorium. Since Members had first established the prohibition on customs duties on electronic transmissions in 1998, the moratorium had supported the development of digital trade as an engine for global growth.

8.86. There was a growing body of research that demonstrated the significant economic benefits of the moratorium for developed and developing countries alike. In light of that evidence, the United States continued to believe that all Members should be prepared to agree to a permanent moratorium on customs duties on digital transmissions.

8.87. While the United States remained committed to that long-term goal, it recognized that the issue had always been addressed at the Ministers' level and it was happy to resolve the ambiguity around the deadline agreed to at MC11 by agreeing to the decision extending the moratorium until MC12. The decision also continued the Work Programme on Electronic Commerce under which the United States looked forward to continuing discussions.

8.88. The representative of Mali said that the e-commerce problem was a development problem. It was difficult to carry that out due to very low levels of relevant services such as banking. Although Mali had already reached a rate of 23% of banking services – showing some progress from 2018 where it only had 18% – that level was not yet sufficient for Mali to embark upon e-commerce. UNCTAD was assessing Mali's e-commerce readiness – the results of which would soon be available. Upon getting that diagnosis, Mali would be able to move further in the area of electronic commerce. At the same, it was also important for the four WTO Bodies that had been entrusted with the monitoring of the 1998 Work Programme on Electronic Commerce to carry out assessments and look at the results and developments in that area. Based on the results, they should draft documents to be circulated to Members so that they would know whether the development objectives had been met or not.

8.89. If development partners would only respect their commitments, Mali would already be able to start engaging in e-commerce. But the current situation resembled someone who did not know how to swim being forced to do so by throwing them into a rough sea and telling them to just swim. Mali therefore asked the Membership to help it to first learn and be acquainted with electronic commerce and its surrounding issues before moving forward because it was still quite far away from all the objectives currently being discussed in that area. Members all had ambitions. Mali also wanted to be a developed country – but it should be given the means for that to happen. Members should help Mali progress and move forward.

8.90. The representative of the European Union¹⁹ was very pleased that the draft decision that had been put forward extending the e-commerce moratorium by six months to MC12 was approved. The European Union could also support the parallel extension of the TRIPS Moratorium on Non-Violation and Situation Complaints.

8.91. The European Union thanked the Chair for the intensive consultations she had carried out in the last few days. It was only thanks to her efforts that Members had managed to develop and agree on the compromise text.

8.92. A six-month extension would not however provide sufficient predictability and security that consumers and businesses – both in developed and developing countries – needed when engaging or planning to engage in e-commerce. The European Union therefore hoped that their Ministers would be in a position to consider a longer term – if not permanent – extension at MC12.

8.93. The European Union was also pleased to be in a position to agree with the extension of the Work Programme on Electronic Commerce and appreciated the renewed interest of Members to have

¹⁹ Intervention made under Items 7 and 8.

dedicated discussions in that forum in early 2020. The European Union was open to engage in balanced discussions on the trade-related issues that Members would wish to bring forward also taking into account the recent economic studies that provided scientifically solid new evidence on the economic implications of the moratorium.

8.94. The representative of Malaysia viewed the importance for the WTO to give a positive signal to the business community and the public society at large. There should not be a gap between December 2019 and MC12. That was why Malaysia welcomed the consensus reached on the Work Programme on Electronic Commerce. On an important note, Malaysia appreciated the efforts made by Members to engage in an intellectual dialogue to further discuss e-commerce moratorium issues. Through such initiatives, Malaysia hoped they would help Members especially developing countries and LDCs to better comprehend issues and discuss the subject constructively in future meetings.

8.95. The representative of the Republic of Korea reiterated, as a staunch supporter of digital trade and e-commerce, the importance of maintaining the moratorium on customs duties on electronic transmissions on a permanent basis. Korea welcomed and supported the General Council's decision made under the spirit of constructiveness and cooperation among Members. The moratorium would provide certainty to the business climate while adding to the credibility of the multilateral trading system. Korea looked forward to a positive outcome from the discussions so as to assist Trade Ministers in making objective and positive decisions at MC12.

8.96. The representative of Canada²⁰ welcomed the decisions agreed by consensus based on the proposals submitted by Chile and co-sponsors to extend the moratorium on the application of Non-Violation and Situation Complaints to the TRIPS Agreement and to extend the moratorium on customs duties on electronic transmissions both to MC12. That pragmatic outcome would ensure predictability and certainty until those moratoria could be considered by Ministers at MC12. In particular, Canada was looking forward to continuing its engagement on various aspects under the Work Programme on Electronic Commerce including discussions on the broad benefits of the moratorium on customs duties on electronic transmissions for developed and developing country Members.

8.97. The representative of Israel welcomed the decision to extend the moratorium on e-commerce to MC12. That was an important decision that sent a positive message of certainty and predictability to the international business community.

8.98. The representative of Nigeria²¹ said that the scope of application of NVCs under Article XXIII (b) and (c) of the GATT continued to be examined by the TRIPS Council. In the absence of any concrete decision made in that regard, Nigeria welcomed the proposal by Chile, Colombia, New Zealand and Panama and thanked them for introducing their paper which sought the extension of the moratorium of the TRIPS Non-Violation and Situation Complaints. Nigeria supported that proposal. The next logical step Nigeria would like to propose was for that moratorium to be extended until Members would be able to agree on the scope. Furthermore, that extension should not be linked to any other issue. As Members had reached end of the year, it was high time for them to seriously suggest a concrete direction on that issue with MC12 in mind.

8.99. Concerning item 8, Nigeria thanked the LDC Group for its submission on the Work Programme and Moratorium on Electronic Commerce circulated in document WT/GC/W/787. Trade arrangements including e-commerce generated benefits and cost with the welfare of parties depending on the balance of the two effects. It was therefore pertinent that parties undertook the assessment of the impact of such arrangement on their economies to enable them to take informed decisions. Nigeria therefore supported the call by the LDC Group for the four designated bodies under the Work Programme to delve deeper into the benefits and costs of e-commerce for LDCs given that some LDCs lacked the capacity to independently undertake such analysis.

8.100. Such assessment should not however only focus on the static effects of e-commerce especially the moratorium on electronic transmissions but should also include the opportunities the arrangement availed LDCs and developing country Members. A multilateral e-commerce arrangement would not only encourage niche specialization given the growth in the demand and

²⁰ Intervention made under Items 7 and 8.

²¹ Intervention made under Items 7 and 8.

supply of digital products in Members' economies but would also foster the integration of their economies into the global digital value chain.

8.101. The challenges identified by the LDCs in their paper which could undermine their ability to optimise their gains from an e-commerce arrangement were also true for most developing countries. Nigeria therefore urged Members to prioritise work under the Work Programme on Electronic Commerce in line with the 2017 Ministerial Decision contained in document WT/L/1032 and develop clear and actionable programmes that took into account the concerns and challenges of developing countries. Such a programme should have measurable deliverables and timelines.

8.102. Nigeria thanked Australia and other proponents of the draft General Council decision circulated in document WT/GC/W/792. E-commerce was an economic reality that was unlocking the potentials of economies by triggering growth and creating wealth and jobs. Nigeria was likewise mindful of the supply side constraint that was undermining e-commerce gains for developing countries.

8.103. Some of those constraints included those highlighted by the LDC Group in its submission. The lack of progress of work under the Work Programme on Electronic Commerce since the last twenty-one years further promoted scepticism in some quarters as to whether key players in global e-commerce were committed to the development of a multilateral e-commerce work programme that would be beneficial to developing countries.

8.104. As had been stated in its earlier intervention, Nigeria urged all Members to prioritise work under the Work Programme on Electronic Commerce and develop clear and actionable programmes that took into account the concerns and challenges of developing countries. In that regard, Nigeria supported the draft General Council decision which stated that "Members agree to continue the work under the Work Programme on Electronic Commerce, based on the existing mandate as set out in WT/L/274".

8.105. With regard to the moratorium on the imposition of customs duties on electronic transmissions, Nigeria was mindful of the legitimate concerns on the effect of the moratorium on tariff revenue especially given the results of some static analysis that were in the public domain. In modelling the impact of trade arrangements on economies of parties, static analysis alone did not however tell the whole story given that it excluded economy-wide dynamic effects of such arrangements. Nigeria was also conscious of the benefits and opportunities that e-commerce provided in terms of fostering the integration of its economy into the global digital value chain and associated productivity gains. Time was therefore needed for Members to undertake the requisite detailed assessment of the economic impacts of the moratorium on their respective economies to guide informed decision-making.

8.106. In the interim, the need to extend the moratorium until MC12 in order to forestall the distortionary effects of unpredictable global e-commerce environment for business and consumers from the moratorium lapsing prior to MC12 could not be overemphasised. In that regard, Nigeria supported the draft General Council decision which stated that "Members agree to maintain the current practice of not imposing customs duties on electronic transmissions until the Twelfth Ministerial Conference".

8.107. The representative of China supported the General Council decision to maintain the current practice of not imposing customs duties on electronic transmissions until MC12. In the meantime, it was important to have meaningful structural discussions in early 2020. In that regard, China thanked the LDC Group for its proposal which identified a series of key challenges for LDCs in the utilization of e-commerce. It was an important and shared obligation for all Members to bridge the digital divide and to allow all developing Members in particular the LDCs to benefit from e-commerce. China looked forward to working closely together with Members to fulfil that historical task.

8.108. The representative of Uruguay noted that Uruguay had co-sponsored the proposals for the extension of the two moratoria as they would undoubtedly have systemic and transcendental effects. Uruguay hoped that the spirit of cooperation and joint efforts among Members would multiply from that day with the aim of achieving concrete and definitive outcomes at MC12 on that and on other matters of relevance to the organization.

8.109. The representative of Hong Kong, China said that, as a co-sponsor of the two communications led by Switzerland on the matter, Hong Kong, China had been pleased to support the decision to extend the moratorium so that their Ministers would make an informed decision at the coming Ministerial Conference. Meanwhile, the existing mandate of the Work Programme on Electronic Commerce, as set out in WT/L/274, was broad enough to cover all the relevant topics for future discussions. Hong Kong, China would be pleased to engage constructively in it.

8.110. Hong Kong, China was a longstanding supporter for making the moratorium permanent as it had provided certainty and predictability to the global business community for e-commerce to thrive in the past twenty years. The WTO and the multilateral trading system were facing challenges at various fronts. Members should act responsibly and extend the moratorium so as to avoid sending a negative signal to the world that the WTO was backtracking on its good work and adding uncertainties to the business community.

8.111. The representative of Colombia said that, as a co-sponsor of the proposals for the extension of the two moratoria, Colombia was delighted of the fact that Members had been able to reach that point of convergence especially taking into account the turbulent time they were going through. That was one amongst many of the positive messages coming out of the General Council which undoubtedly should be highlighted.

8.112. The representative of the Russian Federation welcomed the decision on the technical extension of the moratorium until the Twelfth Ministerial Conference while continuing the work under the Work Programme on Electronic Commerce. Members should likewise continue the discussions on the nature and implications of the moratorium.

8.113. In the meantime, Members needed to make it clear that the e-commerce moratorium should not preclude the imposition of internal taxes, fees or other charges in a manner consistent with the WTO Agreements. The Russian Federation was looking forward to further discussions on resolving the moratorium issues until the Twelfth Ministerial Conference.

8.114. The representative of Brazil supported the search for a consensual decision concerning the follow up of the 2017 Ministerial Decision on the Work Programme on Electronic Commerce. It was a complex issue and Brazil appreciated the efforts made by the Chair to promote a constructive discussion among Members in the General Council. Brazil understood that different perspectives could remain but Brazil favoured the continuation of the moratorium which Members had been renewing for two decades. In that regard, Brazil was also fully aware of the needs of the LDCs.

8.115. The General Council took note of the Chair's statement, of the reports in S/C/58 and G/C/66, and of the other statements.

9 REQUEST FOR OBSERVER STATUS BY THE AFRICAN UNION – COMMUNICATION FROM BENIN ON BEHALF OF THE AFRICAN GROUP (WT/GC/W/789)

9.1. The Chair said that the item had been placed on the agenda at the request of the delegation of Benin on behalf of the African Group, together with a communication circulated in document WT/GC/W/789 concerning a request for Observer Status by the African Union. In that regard, she recalled that the process for granting Observer Status to IGOs was governed by Annex 3 of the Rules of Procedure (WT/L/161) – which provided that "requests for observer status shall be made in writing to the WTO body in which such status is sought" and "shall be considered on a case-by-case basis by each WTO body to which such a request is addressed." Members were therefore considering that request for the General Council.

9.2. The representative of Benin, on behalf of the African Group, recalled that about thirty years earlier, the Commission of the former Organization of African Unity, now the African Union, had submitted the request for observer status to the World Trade Organization. In his letter dated 17 November 2019 addressed to the Chair as well as to the Director-General of the WTO, the Chair of the African Union Commission, His Excellency Mr. Moussa Faki Mahamat, had renewed that request.

9.3. Indeed, in its vision to structurally transform its economy, through industrialization and economic and social development, Africa was committed to realising economic and commercial

projects that were truly action-oriented and results in all areas of intervention including international trade. It shared and promoted the goals and objectives of international trade supported by multilateralism. The launch in Niamey on 07 July 2019 of the African Continental Free Trade Area was part of that commitment and the major objective of promoting economic growth and inclusive and sustainable development.

9.4. That was why, with its forty-four current WTO Members and nine WTO Observers, comprising 53 out of 55 of the African Union Membership and one-third of the WTO Membership, the African continent had, through the intermediary of the Chair of the Commission of the African Union, His Excellency Mr. Moussa Faki Mahamat, renewed the request for observer status of the African Union at the WTO. It strongly recommended that its application received the expected legitimate favourable outcome. The whole Africa was looking to Geneva and the WTO that day.

9.5. The representative of Egypt fully supported the statement made by the African Group. The African Continental Free Trade Area would cover a market of 1.5 billion people and GDP of USD 2.5 billion across all 55 Member States of the African Union out of which 44 were WTO Members and 9 African countries were in the accession process. In terms of numbers of participating countries, the African Continental Free Trade Area would be the world's largest free trade area since the formation of the WTO. Consolidating the African continent into one trade area provided great opportunities for trading enterprises, businesses and consumers across Africa.

9.6. The Economic Commission for Africa estimated that the AfCFTA had a potential both of boosting intra-African trade by 52.3% by eliminating import duties and to double that trade if non-trade barriers were also reduced. Egypt urged the whole Membership to agree on granting the African Union observer status in the WTO. Egypt was positive that the decision would enable the African Union to better formulate the common Africa trade policies as well as better coordinate the position of the African countries into the international trade negotiating fora.

9.7. The representative of Nigeria associated with the statement made by the African Group. Under the auspices of the African Union, regional integration which had always been at the heart of Africa's strategy for economic transformation had progressed from geopolitical Regional Economic Communities to the African Continental Free Trade Area being operationalised at the Twelfth Extraordinary Summit of the Heads of State and Government of the African Union in Niamey, Niger on 7 July 2019. The AfCFTA was a major steppingstone towards the creation of an Africa Customs Union and the attainment of the African Union Agenda 2063: "The Africa We Want".

9.8. In order to enhance the participation of the 44 African Union Member States that were Members of the WTO and 9 others that were in the process of acceding to the WTO in the multilateral trading system, the need for effective coordination could not be overemphasised. Consequently, African Union Member States had mandated the AU to coordinate and harmonise the position of African countries and regions in international trade arrangements especially within the multilateral trading system. Furthermore, as Africa progressively deepened and upscaled its economic integration, it was likely that African Union Member States could cede part, if not all of the administration of their trade and other economic policies to the African Union.

9.9. In view of the role of the AU in shaping the WTO positions of African States that were Members of the WTO and enhancing their participation in the multilateral trading system, it was pertinent that the AU was granted WTO observer status to enable the organization participate in the activities of the WTO and its technical sub-committees.

9.10. Nigeria called on Members to favourably consider the application of the African Union by granting Permanent Observer Status to the African Union in all WTO bodies.

9.11. The representative of Argentina was pleased to be considering the request by the African Union as it was new and irrefutable proof of the interest and significance that the WTO had managed to attain in that case not only for one country but for an entire continent. The African Union gave Members two examples to follow: (i) by setting such an ambitious goal as becoming the world's largest single market and (ii) that goal involved every one of its countries.

9.12. Argentina would even go as far as to say that it actually set three examples. As well as the two previous elements, there was also the fact that regional integration was sought by means of,

inter alia, coordinated cross border outreach. In other words, the request could be beneficial, not only for the African Union, but also for the multilateral trading system itself.

9.13. Argentina was confident that the African Union would be able to express its positions in a constructive manner enhancing the discussions and contributing to the strengthening of a rules-based trading system.

9.14. The representative of South Africa supported the statement made by the African Group. The African Union was advancing its integration agenda on the basis of what was outlined in Agenda 2063. At the core of that vision was a development integration agenda that combined market integration with industrial and infrastructure development. In advancing that agenda, it was important to ensure the alignment between WTO Agreements and the AfCFTA so as to ensure the commitments African countries made at the WTO supported Africa's integration Agenda. The request for Observer Status was therefore critical to ensure Members achieved those objectives.

9.15. The rationale for that request was that the AU had just established the AfCFTA, that would once functional be the biggest single market with 1.5 billion people and a combined GDP of USD 2.5 trillion. In addition, 44 of the WTO Members were AU Member States. The Abuja Treaty outlined Africa's vision for regional integration which would start with the operationalization of the AfCFTA. South Africa urged Members to consider that request favourably. The establishment was a significant milestone in the integration agenda of Africa. The AU was responsible for the implementation of the AfCFTA and the request for Observer Status was a clear commitment by Africa to a rules-based multilateral trading system.

9.16. The representative of the Kingdom of Saudi Arabia, on behalf of the Arab Group, said that the participation of all qualified international intergovernmental organization in the WTO Bodies was very crucial and every effort should be made to facilitate it. That would help Members in their outreach efforts and also to build the consensus globally on the issues in the House of Trade. The Arab Group remained strongly committed to supporting the WTO Members' consensus to welcome each qualified IGO as observers to the WTO. In that regard, the Arab Group strongly supported the request of observer status by the African Union.

9.17. The representative of Chad, on behalf of the LDCs, noted that, given the daily struggle to increase inclusivity and that the vast majority of LDCs were from the African Continent, the LDCs called on all Members to look favourably to the legitimate request presented by Benin for the African Union to become an Observer within the organization.

9.18. The representative of Haiti supported the request presented by Benin on behalf of the African Union for Observer Status in the big family of the WTO. Such a decision could benefit the LDC Group.

9.19. The representative of Cameroon fully supported the statement made by the African Group. The reform undertaken by the Heads of Government of African States made the African Union Commission an important development actor for trade policy in the continent. The creation of the African Continental Free Trade Area demonstrated that will. It would therefore be fair and advisable for the request for Observer Status by the African Union to receive a warm and consensus-based welcome from the Members.

9.20. The representative of the European Union noted that the European Union's trade and investment partnership with Africa was a priority. The European Union supported the African Union's efforts to implement the African Continental Free Trade Area and welcomed Africa's commitment to the rules-based multilateral trading system with the WTO at its core. On the request that Members had in front of them by the African Union for observer status, the European Union would need more time to reflect and discuss internally before it could be in a position to share its position.

9.21. The representative of the United States said that the United States was currently not in a position to agree that any supranational regional group be granted permanent Observership to the General Council and its affiliated bodies. The United States looked forward to continuing the work alongside African countries as individual WTO Members with their own rights and obligations.

9.22. The representative of Uruguay supported the incorporation of the African Union as an Observer as Uruguay considered that that would contribute to strengthening the multilateral trading system – the WTO in particular.

9.23. The representative of Benin, on behalf of the African Group, noted that the message that the African Group had heard from the different delegations who had spoken at the meeting showed that there was legitimacy, that it made sense and that there was need to use the WTO as a forum to promote inclusion. The African Group therefore thanked those delegations who had expressed their interest and support with regard to its request.

9.24. The African Group clarified to the United States that it was not the African Union's intention to establish a supranational position in terms of its request. As the African Group had explained, the request was made to help the African WTO Members and Observers organise themselves by having coherence and consistency in their interventions, establishing synergies and remaining constructive as they always were. That was what they had wanted to put across as a first message after the discussions they had had that day. The African Group hoped that Members would soon arrive at a positive conclusion on the matter so that Africa could know that it was heard throughout the WTO.

9.25. The Chair said that given what she had heard from delegations during the meeting, she understood that more time was needed for Members to consider the request. She remained available to consult with delegations who wished to further discuss the matter.

9.26. The General Council took note of the statements.

10 ACCESSION OF CURAÇAO (WT/ACC/CUW/1) – REQUEST FROM THE KINGDOM OF THE NETHERLANDS

10.1. The Chair recalled that the item was included in the agenda at the request of the delegation of the Kingdom of the Netherlands and further to the communication from Curaçao circulated on 1 November in document WT/ACC/CUW/1. In the communication, Curaçao was requesting accession to the WTO Agreement pursuant to Article XII.

10.2. The representative of the Kingdom of the Netherlands introduced the request for accession of Curaçao in document WT/ACC/CUW/1 and through the General Council Chair, invited the Minister of Economic Development of Curaçao – H.E. Giselle McWilliam to speak on behalf of the Government of Curaçao.

10.3. Upon taking the floor, the Minister of Economic Development of Curaçao said that the Government of Curaçao appreciated the opportunity to briefly motivate its application to become an independent WTO Member as a separate customs territory and autonomous country within the Kingdom of the Netherlands.

10.4. Curaçao was already an original Member of the WTO because it shared a common membership within the Kingdom of the Netherlands with three other countries: Aruba, Sint Maarten and the Netherlands. However, the country of the Netherlands, the European part of the Kingdom, was part of the European Union, whereas Curaçao was a small island developing country in a region far away from Europe. The request for an independent WTO membership was based on a decision by the Government of the Kingdom of the Netherlands in 2015. Since then, Curaçao had conducted consultations with several Members.

10.5. As a small island developing country, like for example Barbados, the Dominican Republic and St. Lucia, Curaçao eagerly wanted to integrate more in its own region. That integration was only possible based on WTO rules which was being demonstrated by the negotiations currently being conducted with Colombia and the Dominican Republic as well as the consultations with Trinidad & Tobago. Consequently, the WTO would provide Curaçao with the required passport to conduct bilateral trade agreements with other countries especially in its region for its people.

10.6. In addition, Curaçao had been a participant to the GATT at least since 1949 which meant that it had a history of deep commitment towards multilateralism and international organizations. In that respect, its aspiration was to directly participate in the global trade dialogue and to contribute to the further inclusion of smaller countries into the world economy.

10.7. The WTO system moreover provided transparency to all countries, small and large alike, based on its system of multilateral, plurilateral and bilateral agreements. Although it faced many practical challenges, as Members had witnessed that day, the WTO was the world's best bet in avoiding disrupting international trade wars.

10.8. In a more local context, the WTO provided them with a good body of knowledge and best practices in international trade. The WTO therefore helped them to bring their systems and practices, where necessary, in line with the global environment for investment, services and trade facilitation to attract much needed foreign investments.

10.9. Those were the main motivations for its application to become a Member of the WTO in its own right as a separate customs territory. Curaçao stood ready to initiate the process of accession negotiations and remained in the hands of the Membership to continue the process.

10.10. The representative of Trinidad and Tobago noted the transmission by the Kingdom of the Netherlands of the formal application of the Government of Curaçao for accession to the WTO, pursuant to Article XII of the Marrakesh Agreement. Trinidad and Tobago welcomed that development and the consensus arrived at among Members regarding the placement of the matter on the agenda for the General Council. Trinidad and Tobago also expressed gratitude regarding the details outlined in WT/ACC/CUW/1 relating to the current economic policies and the foreign trade regime of Curaçao.

10.11. Trinidad and Tobago had taken note of the rationale put forward by the Government of Curaçao in expressing its preference for an accelerated process based on its longstanding membership first of the GATT and then of the WTO as part of the Kingdom of the Netherlands. Trinidad and Tobago would monitor developments related to that request for accession of its neighbour and fellow Caribbean country and hoped that the accession process would be smooth.

10.12. The representative of Uruguay welcomed the request for accession to the WTO presented by the Minister of Curaçao that day.

10.13. The representative of the European Union noted the request circulated to the Membership. The European Union welcomed the statement, but regretted not to be in a position to express its opinion yet due to several legal issues that had to be examined and consultations to be carried out.

10.14. The representative of the United States thanked Curaçao for submitting its request for accession to the WTO pursuant to Article XII and for its statement of the current economic policies and the foreign trade regime. The United States was a strong advocate of the WTO accession process. For every applicant, the accession was fundamentally a process of trade liberalising domestic reform. The United States was reviewing Curaçao's request and statement carefully and would ask to meet with Curaçao bilaterally to seek clarity on certain elements before it would be in a position to make a decision.

10.15. The Chair understood that more time was needed to further consult on the request. As General Council Chair, her door remained open to delegations who wished to further discuss the matter. She thanked the delegation of Curaçao for its application and for being at the General Council that day.

10.16. The General Council took note of the statements.

11 PROCEDURAL GUIDELINES FOR WTO COUNCILS AND COMMITTEES ADDRESSING TRADE CONCERNS – STATEMENT BY CO-SPONSORS OF WT/GC/W/777/REV.4

11.1. The Chair recalled that the European Union had requested the Secretariat to include that item in the agenda which included a statement of the co-sponsors of document WT/GC/W/777/Rev.4. A room document had also been made available concerning that item.

11.2. The representative of the European Union said that, on behalf of all co-sponsors of the proposal for "Procedural Guidelines for WTO Councils and Committees Addressing Trade Concerns", the European Union provided a brief update of their ongoing efforts to improve the proposal since the previous General Council meeting in October.

11.3. The objective of the proposal was to make a modest yet practical contribution to increasing the effectiveness of the WTO in general, and Members' dealing with each other's trade concerns in particular. Without changing a comma in Members' rights and obligations, the proposed guidelines could help WTO regular work become more user-friendly, respond better to the expectations of their stakeholders, and contribute to strengthening the WTO as the basis of their trade relationships.

11.4. The gist of what the co-sponsors had heard at the last General Council and in exchanges with Members had been encouraging especially that several small delegations considered the proposal beneficial. Overall, feedback suggested that they were on the right track. The co-sponsors had been working with Members bilaterally and in small groups to clarify some remaining questions and to explore how to accommodate concerns.

11.5. Some Members had expressed concern that the proposal could put into question or jeopardise what worked well in certain committees. In fact, the co-sponsors were aiming for the opposite and had taken inspiration from existing good practices for bodies that lacked such practices.

11.6. The co-sponsors had circulated a room document that day which compared existing rules and practices in a selection of WTO Councils and Committees with the suggestions that were in their proposal. The table was a factual compilation and had benefitted from valuable input by the Secretariat. It illustrated that the suggestions in their proposal did not jeopardise existing good practices because they either were about making work easier for Members, for example through the earlier circulation of agendas, or had no interference with Committee practices.

11.7. Numerous Members had pointed out that the envisaged 30 days to reply to written questions in Paragraph 7 could be too challenging. The co-sponsors were looking into ways of addressing that issue as part of the next revision.

11.8. The co-sponsors had heard that the suggestion in Paragraph 11 to be economical in repeating known arguments which picked up an existing practice for the sheer sake of increasing efficiency could be misunderstood as intended to limit the possibility of expressing concern. As that was clearly not the objective, the co-sponsors were reflecting on how to improve the drafting.

11.9. Finally, the co-sponsors wholeheartedly agreed with a remark made at the last meeting that "political will is more important than procedures". That said, a framework for dialogue could nevertheless facilitate engagement in situations where political will could not be obvious immediately. The co-sponsors were not naively assuming that the guidelines would end all concerns and avoid all disputes but were confident that it could help resolve the "resolvable" trade concerns.

11.10. As Members knew well, the European Union was equally active in raising and responding to trade concerns which was probably normal for an economic actor of that size. The European Union's interest rested in making engagement in both directions more constructive and effective.

11.11. The representative of Nigeria noted that, although the Nigerian delegation had earlier forwarded Rev.3 to its capital for consideration, Rev.3 and Rev.4 were practically the same document except for the inclusion of Iceland and North Macedonia as co-sponsors. As it had stated at the previous General Council meeting, Rev.3 and Rev.4 contained some good elements that if well-developed would enhance the process of addressing trade concerns without necessarily increasing the burden for developing countries. Nigeria stood ready to engage proponents to explore further flexibilities for developing countries especially LDCs who could encounter difficulties to respond to a trade concern or to implement those Procedural Guidelines.

11.12. The representative of Argentina agreed with the co-sponsors that the regular WTO Council and Committee meetings provided an opportunity to discuss and resolve concerns about trade related measures adopted by the Members. Argentina had seen how and had played a part in ensuring that the Council and Committee agendas had increased the component dedicated to discussing specific trade concerns.

11.13. The situation was particularly noticeable in the Committee on Sanitary and Phytosanitary Measures and in the Committee on Technical Barriers to Trade in which the Membership had recently become increasingly concerned about the trade practices of a small number of Members.

11.14. Dialogue and openness were key to working effectively. In that regard, the WTO Agreements provided important tools in order to make progress in a constructive manner. Argentina however remained concerned about any type of initiative that aimed to curtail Members' rights to express their concerns freely, when necessary and to the appropriate extent, regarding other Members' trade practices. Members could not promote freedom while simultaneously trying to curb it.

11.15. Argentina was not sure that a horizontal approach such as the one suggested was the best way of addressing the specific and diverse functions of the various Councils and Committees. Argentina did however look positively on the fact that the initiative aimed to improve the system of communication between Members and the availability of existing information for each meeting.

11.16. As some Committees had already drawn up their meeting schedule for the whole of 2020, the General Council could formally request that all the regular Councils and Committees do likewise – seeking to avoid meeting overlap. It was also important to keep in mind that each Member was speaking on behalf of the People whom it represented and that they were not therefore merely referring to a representative's wishes but to the demands of the people being represented until the issue would cease to be of concern.

11.17. The representative of Ecuador was grateful to the European Union and the other co-sponsors for their work and for holding consultations with the rest of the Membership so that their comments on the proposal could be heard. Improvements could be made to the way in which the Committees operated and could facilitate the effective resolution of trade concerns.

11.18. Nevertheless, the procedures suggested in the proposal could inadvertently combine to restrict the full exercise of the right of Members to raise their trade concerns in the various bodies. Ecuador had repeatedly expressed that concern not only in the General Council but also within the framework of the consultations with the European Union and other proponents. For instance, the document contained a proposal that the agenda included a report on which bodies had addressed trade concerns regarding the same measure and how often, in that case, there was some concern as to the question of interpretation and the possible negative emphasis that could be given to the reiteration.

11.19. The text also proposed that when a particular trade concern was repeatedly raised before a WTO body, each Member should try to refer back to its most recent statement on record. Although it was a best endeavour provision, it could still give rise to the over-simplification of the matter in question – affecting the possibility of including new elements in a concern. Ecuador saw the merit and usefulness of wanting to establish uniform procedures for the various Committees. The proposal should however continue to be developed with flexibility to balance it out for those Members whose concerns which were regrettably increasing needed to be heard and addressed.

11.20. The representative of Canada fully supported the need for improvements to meeting arrangements as a valuable contribution to strengthening the WTO's deliberative function overall. Canada would soon provide the co-sponsors with some drafting suggestions and looked forward to constructively engaging on the proposal.

11.21. The representative of Uruguay reiterated the importance of not impacting Members' possibility to include concerns on the agenda of regular bodies and not prejudging each Member's right to decide what matters they could put forward or positions and arguments they could present in a meeting – bearing in mind their legitimate interests and concerns and the political value that could be given to repeating the same concerns in a multilateral setting. Uruguay remained ready to have open and constructive discussions with interested Members to improve the regular functioning of the Committees and Councils of the organization and their results particularly concerning the effective resolution of the numerous trade concerns brought before them.

11.22. The representative of Chad, on behalf of the LDCs, said that the LDC Group would be making comments on that matter under item 14 of the agenda.

11.23. The representative of Paraguay noted that the room document presented by co-sponsors would help Members see a crosscutting overview of the modifications that their proposal would imply including its impact on the different Committees and their functioning. Paraguay fully agreed with the objective of improving the functioning of the Councils and Committees of the organization. Those

improvements should focus on finding a pragmatic solution to the problems that the delegations faced on a daily basis in taking part in meetings and should not create new procedures which could pose more obstacles to the participation of small delegations in them.

11.24. While recognising the positive elements contained in the proposal such as the annual programming of meetings, the circulation of minutes earlier before each meeting and questions and answers in writing to delegations, among other things, Paraguay was not in a position to go along with any proposal which would limit the time Members had to introduce items on the agenda that created the expectation of compliance of subjective requirements for the submission of trade concerns and encouraged Members to limit the exercise of their right to make statements under trade concerns. Those measures would make discussions more bilateral when they should be multilateral. Paraguay therefore urged the proponents to make the appropriate adjustment that would make it possible to reach the necessary consensus to approve a proposal which contained elements with a potential to achieve the objective sought.

11.25. The representative of Indonesia asked the proponents to closely identify and take into account the comments and observations on the proposal before presenting it to the General Council. Indonesia remained enlightened on the effectiveness of the method proposed by the co-sponsors in resolving trade concerns. However, Indonesia was uncertain on the assurance that the proposed method would not put unnecessary burden to the Members, Chairs and the Secretariat. Indonesia was therefore not in a position to support the proposal but remained open to further discussions.

11.26. The representative of South Africa recalled her delegation's statements delivered in previous meetings of the General Council on that matter. South Africa emphasised that it had identified a number of elements in the proposed procedural guidelines that could improve the functioning of the Committees and Councils. Some of those elements had been recently discussed and agreed in the various Committees. For instance, convening notices were sent well in advance of the meetings. Agendas indicated items raised for the first time and those that had been previously raised. The Secretariat was also in the process of establishing a database to manage trade concerns. South Africa found those measures to be working well within the framework of the Committees concerned.

11.27. While there was value in some elements of the proposal, there was a need for consideration of the proposal by the Committees and Councils in relation to whether they were in line with the mandate and rules of procedure of the various institutions and for each institution to identify what could be applicable based on its mandate. South Africa remained concerned with the proposed horizontal procedural nature of the guidelines. The Councils and Committees carried out the functions assigned to them by their respective agreements and by the General Council. The wholesale modification of the rules of procedures in various Committees would be indiscriminate and would fundamentally affect the operation and the purpose for which they had been established.

11.28. Moreover, South Africa had not heard any responses on the following concerns it had raised in the past: how the proposed procedural guidelines would ensure that the role of the Chairpersons of the Councils and Committees including the Secretariat was not overly enhanced and how to ensure that the report of the Chairperson would not divert Members' attention away from resolving a specific trade concern to a discussion of the Chair's report. The co-sponsors should also ensure that the proposal would not impose additional obligations and was onerous especially to developing countries – in particular to LDCs. South Africa was not convinced that the proposed guidelines would lead to the effective resolution of specific trade concerns.

11.29. The representative of Guatemala said that the document included information that had been asked for at the beginning of the year concerning the procedures that would be replaced in the Committees by the proposal. Guatemala highlighted the importance of improving the functioning of the Committees particularly the organization of meetings, circulation of documents and minutes, and the option of putting questions and answers in writing. Those would make it possible to better coordinate things between Members and missions including their capitals and take part in meetings.

11.30. Establishing new procedures would however create a limitation in the participation of Members in the different discussions in the various Councils and Committees such as those relating to specific trade concerns in the SPS and TBT Committees. That was of great concern because the list of trade concerns was growing and that certain Members had particular interests in them. Guatemala was ready to improve the procedures in the different Committees and Councils to resolve

trade concerns while respecting the rights of Members to intervene in those bodies. Guatemala was not in a position to support the document but remained ready to continue discussing the matter to ensure transparency in the functioning of WTO Councils and Committees.

11.31. The representative of the United States reiterated that the position of the United States on the proposal remained unchanged. The United States encouraged the European Union in particular to focus on resolving the longstanding specific trade concerns that the United States and others had been raising in multiple WTO Councils and Committees for years.

11.32. The representative of Bangladesh associated with the statements made by the LDC Group. The proposed procedural guidelines aimed to bring positive changes in the working procedures of the Councils and Committees. Bangladesh welcomed the constructive ideas in the draft proposal. Although it was already in its fourth revision, no changes had been made from the third revision apart from the inclusion of two additional co-sponsors.

11.33. In previous General Council meetings, Bangladesh had consistently suggested changes in the existing convening notice templates which should include, inter alia, information like the date of the last meeting of the relevant Council or Committee, document reference of the minutes of the previous meeting and the name of the Chair. Members should also review the suggested time-limit for circulating a convening notice before the actual date of the meeting and the time-limit for circulating the minutes after each meeting. Bangladesh also proposed that a summary note should be published on the WTO website immediately after each meeting. That would immensely help smaller delegations who were unable to attend all meetings in regularly updating their information repository.

11.34. The aim of the submission was to strengthen the capacity of the WTO Councils and Committees to help Members function more efficiently. In that respect, Bangladesh encouraged Members to reflect on the wider scope that the proposed guidelines had so that their decisions would not create difficulties in the future. For example, Paragraph 13 of the draft suggested that Members should ensure the participation of capital-based experts in person or through video conferencing. The co-sponsors should re-think whether all Members would be in a position to implement that call for all informal meetings. Bangladesh would continue to constructively engage with the co-sponsors and other Members on the issue.

11.35. The representative of the European Union had taken good and careful note of all the comments. The co-sponsors would continue to engage across the board to try to explain the background, the reasons and the benefits that their proposal could bring to the Membership to continue with improving the working of the WTO Councils and Committees.

11.36. The General Council took note of the statements.

12 CHALLENGES POSED TO THE WTO BY NON-MARKET POLICIES AND PRACTICES – UNITED STATES

12.1. The Chair noted that the item was on the agenda at the request of the delegation of the United States.

12.2. The representative of the United States said that the agenda item had been requested to discuss an important systemic issue that was critical for the continued vitality – and the very relevance – of the WTO. The issue was the challenges posed by non-market policies and practices to the WTO. The distortions caused by non-market practices threatened the goals Members shared for a free, fair and mutually advantageous trading system. Non-market practices in which governments intervened to distort competition and drove preferred outcomes to benefit certain domestic actors undermined the public's confidence in the WTO.

12.3. He said that it was hard to imagine Members' citizens supporting the WTO if the trading system could not ensure that Members' citizens, workers and businesses could both compete on a level playing field and could enjoy the benefits of innovation, hard work and fair competition.

12.4. Members had known that from the time they had entered into the WTO Agreement. In the Marrakesh Declaration, the parties declaring their intention to establish the World Trade Organization

had stated that they had wanted to promote their economies' participation in a world trading system based on open, market-oriented policies and the commitments set out in the Uruguay Round Agreements and Decisions. Members had also collectively noted their desire to operate in a fairer and more open multilateral trading system for the benefit and welfare of their peoples. And when new Members had acceded to the WTO, their protocols of accession had also confirmed their efforts to embrace market-oriented policies. Market-oriented conditions had been a key element to ensure that the acceding and existing Members would fully benefit from reciprocal and mutually advantageous commitments.

12.5. But when the State put its thumb – or even its fist – on the scale to distort competition and drive preferred outcomes to benefit certain domestic actors, that was unfair. The United States had seen governments exercised control over the allocation of resources such that key factors of production as land, labour, energy and capital were not allocated or priced according to market principles – resulting in huge distortions in international trade.

12.6. The United States had seen State Enterprises being developed into national champions – often behind the walls of restrictive market access barriers – and then set loose on global markets. And the non-market advantages that had fuelled the domestic development of State Enterprises could continue to flow – often shielded from view through lack of transparency and market discipline – and drive their international operations. The United States had seen forced technology transfer practices, through which a government could obtain foreign technologies through non-market-based transactions to benefit domestic actors. And the United States had seen non-market policies and practices led to massive excess capacity, which businesses had reported in sectors as varied as steel, aluminium, cement, chemicals, refining, flat glass, shipbuilding, paper, solar panels and modules and others.

12.7. And so, the United States had continually seen how non-market-oriented policies and practices not only harmed the interests of the particular workers or businesses directly involved. They also undermined confidence in the world trading system as a whole and that the WTO supported fair, market-oriented outcomes.

12.8. Members needed to return the institution to its core mission of promoting fair, market-oriented outcomes. In the past, several Members had expressed a shared view that market-oriented conditions were fundamental to a free, fair and mutually advantageous global trading system, leading to a level playing-field between all operators in the market. The United States had also in the past expressed the view that forced technology transfer policies created unfair competitive conditions for workers and businesses and undermined the proper functioning of international trade.

12.9. The United States hoped that other Members too shared that vision. A shared commitment to open, market-oriented policies remained critical to ensure a level playing field for their workers and businesses. To build confidence in the organization as promoting free and fair trade, Members should discuss and reinforce their commitment to market-oriented values.

12.10. In sum, the current challenges posed to the WTO by non-market policies and practices called for Members to recommit the WTO to promoting a world trading system based on open, market-oriented policies. That recommitment was especially important as they considered WTO reform and what it could look like. Reform would only be effective and durable if Members had a shared understanding of the principles underlying the organization.

12.11. In conclusion, he said that the United States would be seeking to engage with any interested Member in initiatives to support market-oriented policies and outcomes and to reinforce the values Members had endorsed when they had helped create the institution.

12.12. The representative of China had heard the term "non-market policies and practices" referred many times and asked what that term meant. For China, it was the ban of foreign products and companies from normal trade under the disguise of national security without any substantive proof. Reference had also been made to distortion of trade – which for China was the blatant disregard of the WTO rules and one's own commitments and the unilateral raising of tariffs.

12.13. Every Member had its unique economic system and no one should have a monopoly in determining what a market economy was and was not. China did not think any Member would allow

others to dictate how Members should run their own economies or models not because it was good for it but because it was good for them.

12.14. China's market economy system was evolving and improving constantly. China welcomed comments, suggestions and even criticisms from the international community on how to deepen its reforms. China would adopt those suggestions that could contribute to its economic growth and would say "thank you but no thank you" to those that would undermine it. For what was within the jurisdiction of the WTO, China should adhere to those rules as it had done in the past. For what was outside of the scope of the WTO, Members had full right to make their own decisions. As a large trading nation, China would responsibly consider the externalities of its economic policies.

12.15. As such, China had amended its Foreign Investment Law to explicitly prohibit forced technology transfer, although its government had never implemented such policies whatsoever. China had fully complied with the rulings and recommendations of the DSB in all disputes despite its disagreement to some decisions. China had hosted the China International Import Expo to spur imports for two consecutive years regardless of the accusation that China was a mercantilist. Concerning that event, the exhibition space taken up by American companies that year had reached 47,500 square meters ranking first among all participating countries.

12.16. China had voluntarily lifted restrictions on foreign equity cap of securities companies, securities investment fund companies, futures companies, and life insurance companies beyond its WTO commitments, although some blamed that its services sectors were not open. Although it was not true that its industrial policies distorted market competition claimed by some, China had still explicitly requested that greater progress be made in creating a market-based, rules-based and internationalised business environment when preparing the fourteenth five-year plan. Although the notion that all its state-owned enterprises were public bodies contradicted both the facts and the rules, China was still stepping up the formulation of a three-year action plan for the market-oriented reform of state-owned enterprises.

12.17. In the current world, being loud would not make one right. China had heard so much about subsidies but asked who the main supplier of subsidies was in the world. It could be natural that China popped up in someone's mind because it had been bombarded with the rhetoric about its massive subsidies. However, according to the Global Trade Alert database of the University of Saint Gallen, in May 2019, of all non-agricultural imports into the United States, 45% had to compete with products produced by companies receiving subsidies from the US government. Those subsidies included financial aid, state loans, and reduction or waiver of taxation or social insurance. Even that 45% did not represent the full picture of the US subsidies because it only took into account domestic subsidies to the manufacturing companies but did not include agricultural subsidies and export incentives. One could wonder what the percentage was for China. It was 23.9% which was roughly half of that of the United States. China asked again who the largest subsidizer was in the world.

12.18. The United States had also mentioned about the recent Global Forum on Steel Excess Capacity. The Forum could have served as a communication and cooperation platform for relevant countries to address the excess capacity issue. But regretfully, it had been hijacked by some countries as a tool to pressure and attack China, the biggest contributor to global capacity reduction, and ventured into a dead-end. China clarified that the Forum's mandate had been set by all participating countries for three years which expired in December 2019. Therefore, its end was not a question of minority versus majority but a natural course of expiration. That question however arose in the current Appellate Body crisis where Members had a situation of 1 versus 163 – where a single Member's blockage had failed all other Members' obligation to fill the Appellate Body and had jeopardised the whole multilateral trading system.

12.19. That being said, it did not necessarily prevented Members from reaching possible agreements in the process of WTO reform. For example, China asked whether Members should or could improve rules on subsidies – to which it responded on the affirmative. The massive agricultural subsidies provided by developed countries including the United States had been distorting trade in agricultural products for decades which should have been eliminated long ago. What else was urgently needed was putting a stop to the abuse of trade remedies and restoring Article 8 of the SCM Agreement to allow non-actionable subsidies to the disadvantaged regions and for education, research and environmental purposes. China would however firmly oppose any proposal of new subsidies rules that were discriminatory in nature.

12.20. China wanted to be open-minded about all trade-related issues but made it clear that the WTO's mandate was to regulate international trade, not to dictate any Member's model for development. The only linkage between trade policies and economic models was that if a Member's economic system was coordinated and adapted to its international trade obligations, it could better facilitate its economic development.

12.21. China's accession into the WTO was a good example. On its accession, China had adopted extensive reforms to align its trade laws and regulations with the multilateral trade rules that embodied some general requirements of the market economy such as non-discrimination, transparency and national treatment. At the same time, China had also adopted a series of market-oriented initiatives in many other areas autonomously to promote the overall economic reform. Those reforms had put China onto a path of rapid and sustained economic growth which had also contributed significantly to the development of the global economy.

12.22. One could ask whether China should continue to take reference of the international rules and norms on its course of further reforms – to which China responded on the affirmative. What China had however heard that day was nothing like that. What the previous statement aimed to advance was not international rules representing the general interest of Members but rather a set of biased and discriminatory requirements based on the self-interest of a small group of Members. It went against the principles and purposes of the WTO and would lead to nothing but discrimination and disruption.

12.23. The greatness of the sea lied in its capacity in taking in all the rivers. The multilateral trading system was also expected to be as inclusive to embrace Members with different economic systems and models where they could coexist and learn from one another. China wanted to cooperate with other Members on the basis of mutual respect and on equal footing and work together to improve international economic governance. Nevertheless, China did not want any hat to be thrown onto its head for things it had never done. In the reform of the WTO rules, China would never let anyone put a straitjacket on it and give it a stick.

12.24. The difference between the United States and China was not on whether the WTO should update the rules on subsidies but rather on the underlying assumption that was fundamentally flawed. The assumption the United States was trying to establish was that the cause of the current tension in international trade was the so-called non-market economy of China and the so-called trade distortive industrial subsidies. Hence, there was a need to target China with a set of tailored multilateral rules to constrain those subsidies.

12.25. Looking back at the past decades, it was true that developing Members, including China, had increased their share in global trade. Two factors had played fundamental roles in the process: innovation and dissemination of technologies and development of global value chains of the multinational companies. The two factors combined had enabled developing Members to participate in the economic globalization and become part of the supply chain of the multinational companies. The significance of developing their own development strategy and implementing relevant industrial policies for developing Members was to seize the opportunity of integration into the global value chain and create necessary conditions for such integration.

12.26. However, the membership should also see that developing Members were at the lower end of the value chains. What they could gain and how they could make an impact were limited. Developing Members had legitimate rights and tools to support their domestic economic growth but compared with the developed ones their capacity to provide support to domestic industries and effectiveness of those supports were simply dwarfed. China was no exception.

12.27. The root of the social tension in some developed Members that day was that the governments had failed to adjust domestic policies to keep up with the pace of economic globalization. Corporations were gaining tremendous profits from globalization while the costs of globalization were borne by the working class, and governments were not providing sufficient redress to those negatively impacted by globalization.

12.28. That domestic tension made its way into the multilateral system and was threatening to collapse it. Therefore, the greatest risk Members faced that day was not subsidies, not insufficiency of rules, but rather trade-bashing by some Members to ease their domestic tensions. The primary

objective of WTO reform should therefore be to fight against trade protectionism and to uphold the basic principles and core values of the WTO – and Members should not waste their time on scapegoating, trade-bashing and fence-building.

12.29. Delegations in the Council Room that day were not the only ones in the world concerned about the reform of the WTO and they were not the only ones who knew about the reform. With regard to China's economic model and the WTO, China had had a thorough debate with the United States in July 2018 on the matter. China then referred to an article published in the Financial Times entitled "The WTO has become dysfunctional: Trade rules must acknowledge the benefits of divergent economic models such as China's" authored by Professor Danny Rodrick from Harvard University, a prominent development economist well-known in the trade circle.

12.30. In that article, Professor Rodrick had provided an insight worth contemplating in Members' efforts to improve the WTO system. He said that, "[a] fair world trade regime would recognize the value of diversity in economic models. It should seek a modus vivendi among these models, rather than tighter rules". On 18 October, Professor Rodrick along with thirty-five prominent Chinese and US economists, including five Nobel Prize winners, had released a Joint Statement of the US-China Trade Policy Working Group. They had argued that neither decoupling nor forced convergence were options to address the differences in the economic policies and economic models. Only by respecting the differences, consultation on equal ground and coexistence with competition could they find a way out.

12.31. On the path to reforming the WTO, before they sparring themselves to the edge of the cliff, Members should remember the advice that if the WTO had become dysfunctional it was because the trade rules had over-reached.

12.32. The representative of the European Union thought it was important that businesses operated under market-oriented conditions and had repeatedly expressed its concerns with non-market-oriented policies and practices that had resulted in damage to the world trading system and a lack of a level-playing field. Market-oriented conditions were fundamental to a free, fair and mutually advantageous global trading system, ensuring a level-playing field for all market participants.

12.33. As Members were aware, in the context of the EU-US-Japan trilateral cooperation process, the European Union had already identified a list of market-oriented conditions as those had been expressed in a Joint Ministerial Statement in May 2018. The European Union had been working towards identifying where there were gaps in the rules of the WTO to address non-market-oriented practices and had called for an update of the rulebook in that respect.

12.34. The representative of Japan welcomed the statement made by the United States and shared the recognition that market-oriented conditions were fundamental to a fair, mutually advantageous global trading system and therefore non-market policies and practices should be addressed. Japan would actively contribute to the discussion to address those challenges.

12.35. The representative of Chinese Taipei recalled that the WTO had been built to ensure fair and free trade as indicated in the Marrakesh Declaration. Sustaining a level-playing field and fair and free trading environment was not only the purpose the organization but also essential for the business world. Without a level-playing field, there was no certainty for businesses to make continuous investments in new technology or in innovation which was crucial for creating and sustaining employment. It was therefore important that Members recommitted to those principles as they were well-aware that the WTO needed necessary reform. It was essential to enable the WTO to carry its primary role of ensuring a level-playing field and fair trade for all its Members.

12.36. The representative of the United States thanked all delegations including China for their interventions and looked forward to continuing that discussion the following year.

12.37. The representative of China said that the purpose behind that agenda item was to set the scene for a future proposal on industrial subsidies – like thunder before a storm. Although everything took its time to ripen, he was curious as to why, after two whole years, the proposal had not yet been unveiled. He had not been sleeping well lately perhaps because the wait for the other shoe to drop was simply too long. He had prepared himself for a civilised debate and if the proponent was convincing enough, he could be persuaded. He asked the proponents to not leave him hanging.

12.38. The General Council took note of the statements.

13 PROCEDURES TO STRENGTHEN THE NEGOTIATING FUNCTION OF THE WTO – COMMUNICATIONS FROM THE UNITED STATES (WT/GC/W/757/REV.1 AND WT/GC/W/764/REV.1)

13.1. The Chair said that the item was included in the agenda by the delegation of the United States with the document WT/GC/W/757/Rev.1 and the revised communication in WT/GC/W/764/Rev.1.

13.2. The representative of the United States said that his delegation was pleased to continue the discussion of that important reform initiative. The United States in January had submitted a paper on the lack of differentiation at the WTO and why that was damaging the WTO's negotiating function. On that factual and analytic basis, in February, the United States had submitted to the General Council a proposal to resolve the differentiation problem through a pragmatic approach that recognized the complexity of the issue.

13.3. The US proposal established objective criteria for determining whether a WTO Member could continue to avail itself of blanket, open-ended S&DT in current and future WTO negotiations. The four criteria were: (i) a WTO Member that was a member of the OECD, or a WTO Member that had begun the accession process to the OECD; (ii) a WTO Member that was a member of the G20; (iii) a WTO Member that was designated as a high income country by the World Bank; or (iv) a WTO Member that accounted for no less than 0.5 percent of global merchandise trade.

13.4. Since the General Council had last met in October, the United States had deepened its conversations with Members across the development spectrum. He noted that the United States was engaging Members who would meet at least one of the four criteria in the US proposal. The United States was also engaging other Members such as the LDCs who would benefit if the more advanced, wealthy, and influential economies among the Membership finally accepted responsibilities commensurate with their role in the global economy.

13.5. Those conversations had been candid, thoughtful, and detailed. Members were listening to the United States and the United States was listening to them. For example, a growing number of Members recognized that S&DT reform was necessary for the WTO to be a viable forum for meaningful negotiations. Many Members shared the goal of reserving blanket S&DT provisions for those that were the relatively less developed of the over 100 Members claiming developing country status. Many Members had confirmed that the current situation did not lead to equitable outcomes. An increasing number of Members indicated they were giving serious thought to the US proposal.

13.6. Importantly, in late October, Korea had committed to not seek S&DT in ongoing and future WTO negotiations in line with the US proposal. Korea had noted the importance it attached to maintaining the WTO's key role in creating rules that led to increased trade and prosperity. In taking that step, Korea had stated that its access to S&DT in existing WTO Agreements remained unchanged and that it retained the ability to negotiate priority interests such as flexibilities for agricultural goods that Korea considered sensitive. The United States fully agreed and applauded Korea for demonstrating sorely-needed leadership to reform the WTO's negotiating arm.

13.7. In its many conversations with Members that fall, the United States had heard several suggestions on how to improve its proposal. To its ears, those suggestions had been offered in a true spirit of reform. The United States had reflected on those suggestions and had made several changes to its proposal in light of them.

13.8. As found in WT/GC/W/764/Rev.1, the United States outlined the changes made. First, several Members had asked that the United States made explicit in the text a point that it had emphasised all along. That was that the US proposal did not preclude any Member from negotiating the flexibilities it needed in current and future WTO negotiations. Rather, the proposal required that certain Members forewent blanket S&DT provisions in those negotiations.

13.9. The United States agreed that the clarification would be helpful so it had added the following sentence: "Nothing in this Decision precludes a Member seeking to address particular needs during a current or future WTO negotiation". To say it another way, any Member that forewent blanket S&DT

provisions in a future WTO Agreement still retained the ability to negotiate into the agreement text the flexibilities it needed to defend and advance its interests.

13.10. Second, several Members had observed that, according to the language in the US proposal, if a Member had met the high income criteria or the share of global merchandise trade criteria one year but had not met that criteria the next year, that Member would still have to forego S&DT in current and future WTO negotiations. In other words, the proposal had not accounted for the possibility that a Member could fall below a criteria threshold.

13.11. That had been a helpful observation. To address that concern, the United States had clarified that a Member would need to meet the relevant threshold for either of those criteria for three consecutive years immediately prior to the date of decision, or for a third consecutive year or any three consecutive years after the date of decision. In practical terms, that change meant that the United States had eliminated the possibility of unwelcome surprise. To meet the criteria, a Member should exceed the relevant threshold for a sustained period. If a Member fell below the threshold for either criteria, it would not meet the criteria again until the Member had exceeded the threshold for a sustained period.

13.12. Importantly, those changes to the US proposal ensured that eligibility for blanket, open-ended S&DT in current and future WTO negotiations would stay current with the times. The criteria would reflect the world Members lived in at the moment, not the vanished world of decades past. That would be an important step forward from where Members were that day.

13.13. The United States said it would provide a few examples of how that would work in practice for a hypothetical Member – Member A. For that discussion, the United States had stipulated that the date of the decision for the US proposal was 8 June 2020. To meet the high income criteria as of the date of the decision, Member A would need to have been classified by the World Bank as high income on 1 July 2017, 1 July 2018, and 1 July 2019.

13.14. If Member A had been classified as high income on 1 July 2019, but not on 1 July 2018, Member A would need to be classified as high income on 1 July 2020 and 1 July 2021 to meet the high income criteria. If Member A had been classified as high income on 1 July 2017 and 1 July 2018, but it had been classified as upper middle income on 1 July 2019, Member A would not meet the high income criteria as of the date of the decision. The earliest possible date that Member A could meet the high-income criteria was 1 July 2022, if Member A had been classified as high income on 1 July 2020, 1 July 2021, and 1 July 2022. To meet the share of global merchandise trade criteria as of the date of decision, Member A's share would need to be no less than 0.5 percent for 2017, 2018, and 2019, according to WTO data. If Member A had met the share threshold for 2019 but not 2018, Member A would need to meet the threshold in 2020 and 2021 to meet the criteria.

13.15. If Member A had met the share threshold in 2017 and 2018 but had not met the threshold in 2019, Member A would not meet that criteria on the date of the decision. The earliest possible date that Member A could meet that criteria was early 2023 when WTO data would show that Member A had met the share threshold for 2020, 2021 and 2022.

13.16. He stressed that the United States stood ready to continue its discussions with Members and answer any questions they could have. The United States appreciated Members' engagement and their willingness to consider how they could show leadership in improving the organization for the good of all.

13.17. He further noted that the United States would also provide an update on the memorandum to the USTR from the President of the United States in July. The President had instructed the USTR to no longer treat as a developing country for the purposes of the WTO any self-declared developing country that, in the USTR's judgment, could inappropriately seek S&DT in current and future WTO negotiations. Some Members had asked how the USTR would carry that out.

13.18. The USTR had consulted with the interagency Trade Policy Staff Committee on the issue. The interagency had agreed that if an S&DT provision was introduced in a WTO negotiation, the United States would indicate that it would not agree to that provision unless certain Members forewent use of that provision. The United States would also use the TPR process to continue to

press countries that it believed should not be claiming blanket S&DT in future agreements. In addition, the USTR was continuing to review additional steps that could be taken.

13.19. The President had issued two other instructions to the USTR. The USTR would not support the application for OECD membership of any self-declared developing country that, in the USTR's judgment, could inappropriately seek S&DT in current and future WTO negotiations. Also, the USTR should publish on its website a list of all self-declared developing countries that the USTR believed could inappropriately seek S&DT in WTO negotiations. Members had asked when the USTR would publish the list. The USTR was consulting on that issue. The memo had not required the USTR to publish the list by a specific date.

13.20. The United States wished to emphasise two important aspects about the memo and the US proposal that it would like Members to keep in mind. First, the President's memo had not instructed the USTR to ask any Member to change its self-declared development status. The US proposal did not ask that of any Member either. Second, the President's memo had not instructed the USTR to ask any Member to forego S&DT in existing WTO Agreements. The US proposal did not ask that of any Member either. In closing, the United States thanked Members for their constructive dialogue with it. That work was important as that issue and the US proposal would not go away. The United States looked forward to continuing to engage with Members and to making new progress on that reform effort.

13.21. The representative of China said that by revising its proposal, the United States had at least met the procedural requirements of the General Council which was to not discuss the same document repeatedly. With regard to substance, direction was more important than effort. In 2018, Canada had made a good movie named The Hummingbird Project. It took the hummingbirds about sixteen milliseconds to wave their wings once. If one reduced the network delay of the financial exchange by sixteen milliseconds, one could make a lot of money. So, two operators had begun to dig trenches and build fibre optic cables. But due to the wrong technology direction, the market had already adopted more advanced technology when they had achieved the expected reduction in delay. Their efforts had been in vein.

13.22. Coming back to the revised US proposal, the World Bank's high-income standards were not necessarily linked with a country's stage of development. For example, Antigua and Barbuda had only 100,000 people. If there were one or two billionaires on the island, that country could be counted as a high-income one even if everyone else was poor. But it was by no means a developed country. Some Middle Eastern countries mainly relied on the single product of oil. Due to climate issues and the fact that almost all agricultural products needed to be imported, fluctuations in international markets would have a huge impact on the single-structured and vulnerable economy. It was hard to label them all as developed. In addition, the G20 was not a measurement of a country's level of development, but only a platform for developed and developing Members to jointly cope with the global crisis. To sum up, some artificially formulated standards could not solve the numerous challenges and problems facing the developing Members. The right direction was to respect each country's right of self-declaration based on their own development situation and encourage them to make international contributions within their capabilities.

13.23. He said that recently China had submitted its indicative draft schedule of Specific Commitments in the Domestic Regulation JSI negotiations which covered all the committed sectors. China had not claimed any special and differential treatment, including the transition period, although it believed that S&DT was an integral part of domestic regulation negotiations and was vital to some other developing Members. In other WTO negotiations in the future, China would continue to deal with S&DT in a pragmatic and responsible manner without pursuing flexibility it did not need. But China would not give up its due institutional rights in advance.

13.24. The representative of Uruguay, on behalf of Argentina, Brazil, Chile, Colombia, Panama, Paraguay, Peru and Uruguay, recalled their past interventions at the General Council on the same topic reiterating once again that development was a multifaceted phenomenon that Members had incorporated in the WTO Agreements seeking to promote trade translating itself into a true engine for inclusive economic development for their people.

13.25. Special and differential treatment was one of the tools that developing countries had to achieve a swifter and better integration into the multilateral trading system. He said that those Latin

American Members reiterated their call for reflection which would allow for the implementation of special and differential treatment in a pragmatic way according to the needs of each Member and the specific issue under negotiation. The Latin American Members endorsing the statement understood that at that critical stage that the WTO was going through, open, respectful multilateral dialogue was required. It should be reflective and constructive looking into development and S&DT. That was a dialogue that would revitalise, unite and strengthen the organization, protecting it towards the future, seeking the benefits that greater liberalization of trade in goods and services offered.

13.26. The representative of the European Union confirmed that development was a central pillar of the organization. The current distinction between developed and developing country Members no longer reflected the reality of the rapid economic growth in some developing countries. Members should therefore continue to work on special and differential treatment with a view to ensuring that flexibilities were made available to those Members who actually needed them to enable them to fully benefit from their membership.

13.27. He stated that, if the organization was to prosper, special and differential treatment should become much more granular, in function of an individual Member's demonstrated needs and capacities. Future differentiation should be designed in terms of specific individual country needs at the sectoral or activity level rather than calling for a block exemption of a large category of Members. Furthermore, each developing country Member's need for S&DT should be assessed on a case-by-case basis and be evidence-based. The notable exception should be the LDCs who deserved particular treatment and who in any case had graduation mechanisms.

13.28. The European Union was open to looking into special and differential treatment provisions in future agreements such as the ongoing negotiations in fisheries subsidies. The European Union expected to have a discussion with Members as to what development concern was raised by the provisions under discussion and what flexibility was necessary in order to eventually allow the affected Members to fully implement the agreement. It was only where special and differential treatment responded to a specific need that it could be truly effective. In that context, the European Union called on advanced WTO Members claiming developing country status to undertake full commitments in ongoing and future WTO negotiations. The European Union welcomed the clarifications added by the United States that linked S&DT to needs. The European Union would be interested to get clarifications about the meaning of "particular needs" in the following phrase: "Nothing in this Decision precludes a Member seeking to address particular needs during a current or future WTO negotiation".

13.29. The representative of Barbados took note of the revised proposal that had been circulated in WT/GC/W/764/Rev.1 and that was the subject of the current discussions. The heightened interest surrounding development and therefore the continued placement of the item on the agenda of the General Council reinforced the centrality of development in the WTO.

13.30. At the risk of sounding repetitive in those discussions, Barbados wished to remind Members that per capita income as a measure did not adequately take into consideration the special needs and vulnerabilities of small island developing States like Barbados and those in the Caribbean and the Pacific regions. Barbados therefore reiterated the need for serious consideration to be given to environmental and economic vulnerability indices when assessing the development status of those Members.

13.31. Barbados took note of those Members who, while maintaining their right to self-designate as developing country Members, had committed to not availing themselves of special and differential treatment in current and future WTO negotiations. Barbados commended those delegations as it was their prerogative to make such commitments – which should however remain voluntary.

13.32. The representative of South Africa recalled the submission that South Africa had co-sponsored with China, India, and the Bolivarian Republic of Venezuela in document WT/GC/W/765 – which continued to be its response on the issue.

13.33. South Africa noted the amendments which did not however address its fundamental concerns. The core elements of the original US proposal still remained as the proposal still maintained the arbitrary criteria for determining which Members should continue to access S&DT.

The proposal did not clarify the basis for the criteria except to highlight that Members that fell within any of the following categories would not avail themselves of special and differential treatment in current or future WTO negotiations. It further added that Members that fell within any of the categories would not avail themselves of S&DT in the WTO Agreements resulting from current and future negotiations.

13.34. While South Africa noted the additional clause that "Nothing in this Decision precludes a Member seeking to address particular needs during a current or future WTO negotiation", the proposal changed the architecture of S&DT from a treaty-embedded right to an issue to be negotiated and to be granted on a case-by-case basis. S&DT was a hard worn right that was part of the architecture of WTO rules to calibrate trade agreements in accordance with the level of development of Members. It should continue to underpin existing rules as well as current and future negotiations if Members were to strengthen the negotiating function of the WTO. All developing country Members were entitled to S&DT and could not be excluded upfront from claiming the flexibilities that they were entitled to even before negotiations began. The US Proposal still maintained the ineligibility of other Members in sector-specific negotiations for S&DT which meant that even Members that did not fall within any of the four criteria were not guaranteed S&DT.

13.35. She said that South Africa did not support any attempts that aimed to introduce differentiation in the WTO and limited the flexibilities available to developing countries. Such attempts aimed to alter the balance of rights and obligations of developing country Members in the WTO and reversed the earlier gains made by developing country Members which were an outcome of long and hard negotiations which had resulted in Part IV of the GATT recognising differences between developed and developing country Members. The S&DT flexibilities were critical to achieve SDGs and to deliver on the Doha Development mandate.

13.36. The Doha Ministerial Declaration had provided a clear mandate in Paragraph 44 to review all S&DT provisions with a view to strengthening them and making them more precise, effective and operational. The mandate of the CTD SS remained important and had not been concluded. It was the proper forum for S&DT negotiations. It was for that reason that the G-90 had tabled a room document that outlined the rationale for the ten specific S&DT proposals entailed in documents JOB/GC/160/ - JOB/TNC/65 in the form of a draft Ministerial Decision. The room document was a discussion document that served as a basis for a structured discussion with Members.

13.37. The ten proposals did not give the Members a blanket approach to opt out of commitments but provided policy space within clearly defined parameters to promote industrialization, diversification and to achieve developmental objectives. In addition, where there were requests for deviations, those were temporary to allow developing and LDC Members to build the necessary capacity and take into account the objectives of the covered Agreements.

13.38. South Africa appreciated the constructive engagement in the consultative process they had initiated with Members as the revision of those proposals required input from WTO Members. South Africa encouraged Members to make specific proposals on amendments or improvements they would like to see for consideration by the G-90. Such a process would provide a firm basis for a meaningful outcome towards MC12 that delivered on the mandate of Paragraph 44 of the Doha Ministerial Declaration.

13.39. The representative of India referred to the submission in document WT/GC/W/765 which had dealt with some of those issues and had underlined that S&DT was a treaty embedded right and entitlement for which Members had paid and it could not be taken away from them.

13.40. The draft decision by the United States used arbitrary parameters – many of them unrelated to development and targeted certain Members. While some developing Members could have made progress, old gaps in the levels of development were far from being bridged and in some areas had even widened. Further, new divides, especially in the digital and technological spheres, were becoming more pronounced.

13.41. In the case of a country like India which was home to about 35.6% of the global poor and 24% of global under-nourished, was ranked at 102nd among 117 countries in 2019 Global Hunger Index and 130th in the 2017 United Nations Human Development Index, had less than 36% of the population having access to internet, had 81 times more farmers per hectare and less than 0.4%

domestic support per farmer as compared to the United States and had per capita income of about USD 2,500 – India could not be placed in the same development category as the United States with a per capita GDP of more than USD 70,000.

13.42. The draft decision by the United States recognized that reserving flexibilities for those Members with the greatest difficulty integrating into the multilateral trading system could open new export opportunities for such countries. However, what it failed to accept was that developed country Members, including the United States, needed to consider foregoing flexibilities available to them under various existing Agreements and Decisions, including AMS and green-box subsidies, Special Safeguard Mechanism and flexibilities under the Nairobi Decision on Export Competition, which provided reverse S&DT – none of which were generally available to developing country Members and hurt exports from developing country Members.

13.43. Depriving developing country Members like India of their rightful policy space in future agreements, a policy space that had been enjoyed by developed Members in their process of structural transformation and economic growth, would be a gross violation of the basic tenets of equity and justice, and would strike at the very legitimacy of the rules-based system and delay the achievement of the SDGs. That would compound the wrong resulting from non-completion of the Doha Work Programme which had sought to mainstream development in the multilateral trading system and make S&DT provisions of the Uruguay Round Agreements more precise, operational and enforceable.

13.44. He said that India could agree with the premise that developing country Members who considered themselves in a position to do so could voluntarily decide to forgo S&DT in current and future negotiations. However, a so-called case-by-case approach dependent on providing evidence of the need for S&DT, sector wise to start with, which would soon expand to requesting for and seeking S&DT, product-by-product or line-by-line, would be so burdensome and impractical as to make S&DT for developing and LDC Members a part of history of the WTO and was therefore not acceptable.

13.45. The representative of Ecuador welcomed the slight modification of the original US proposal but was disappointed to see that the criteria originally proposed for determining which WTO Members were not developing countries and therefore not entitled to special and differential treatment remained essentially the same. Upon the creation of the WTO, the principle of special and differential treatment had been included as a central element of the multilateral trading system, one forming part of the balance of obligations and rights that Members accepted when joining the organization. Any change to that principle could upset the balance of the entire system.

13.46. Ecuador was a developing country with an economy that had not yet achieved a sufficient level of diversification. Its economy was highly concentrated on primary products with a low level of industrialization and was therefore still very vulnerable. For countries such as Ecuador, not being entitled to special and differential treatment would, to all intents and purposes, turn the current and future negotiations into a new accession process.

13.47. Such would lead each developing Member to individually negotiate the flexibilities to which it would have access, with uncertain outcomes that would perhaps have less to do with the true needs of each Member and more to do with their individual political weight. That would undoubtedly constitute a substantial change to the system that had been promised to it when it had joined the WTO in 1996.

13.48. The elimination of special and differential treatment would not energise current and future negotiations. On the contrary, it would exacerbate the current climate of mutual distrust between Members which caused some to take refuge behind rigid red lines that distanced them from convergence and consensus. Special and differential treatment was one of the basic tenets of the multilateral trading system and should be maintained.

13.49. The representative of Jamaica, on behalf of the ACP, noted that the Group was internally reviewing the proposal with the view to assessing whether the revised text adequately addressed the needs of its members. So far, the ACP Group regarded the revisions put forward by the proponent as a work in progress and was pleased that comments from Members were being taken into consideration. That was an important aspect of their work. There were concerns expressed by the

ACP Group in previous statements in the General Council on other versions of the proposal which remained valid for its members.

13.50. The ACP Group was particularly concerned about any movement of the WTO in a direction that sought to classify Members based on pre-defined criteria conceptualised outside the WTO without a thorough assessment and accommodation of the realities that lied behind those numbers. It could create unintended consequences if some developing country Members were arbitrarily excluded upfront from S&DT in WTO Agreements when internal conditions required those flexibilities. Additionally, a preliminary analysis of the proposal suggested that, if adopted, it could inadvertently produce the effect of deviating from and contradicting the agreed principle of S&DT which was enshrined in the Marrakesh Agreement and formed an integral part of the WTO Agreements.

13.51. In the interest of progress on the issue, the most appropriate way forward would be to create a conducive environment in which Members who so wished could voluntarily opt out of S&DT in current and future WTO Agreements and if their internal policy assessments led to that decision. Any discussion on S&DT going forward should preserve and promote adherence to the basic principles of inclusivity, transparency, development and particularly S&DT for developing and LDC Members. The ACP Group reiterated the S&DT principle embodied in Paragraph 44 of the Doha Declaration which formed an integral part of the WTO Agreements. S&DT in the WTO should seek to further the mandate of Paragraph 44 of the Doha Declaration.

13.52. The representative of Turkey said that his delegation had been clear from the very beginning on its position regarding the use of macro-economic data to determine the level of development. The approach of determining the level of development by a mere interpretation of some selected macro-economic data was arbitrary. Development was multi-dimensional and was greater than the sum of its parts.

13.53. On the other two criteria of the United States – membership to the G20 and OECD – Turkey said that the aim of establishing the G20 was in fact to include developing countries more into global economic governance. As for the OECD, it was a policy research organization to determine policies for ensuring and with the aspiration of sustainable economic growth and development. Turkey saw no reason why membership or bid for membership to those organizations should constitute a rationale behind being deemed a developed country.

13.54. Turkey understood that the motivation behind the US proposal was to reinvigorate the negotiating function of the organization. Like most of the Members, Turkey recognized the need to take action on that matter. Members could not however improve any function of the WTO at the expense of development concerns of certain Members. The WTO was genuinely significant for developing Members as it stood out as an organization giving equal say to its Members. The WTO owed its ground-breaking achievements of trade liberalization in the past to its utmost adherence to the delicate balance among the concerns of Members at different levels of development.

13.55. As in the past, Turkey remained ready to discuss any reform proposal including those that would necessitate broader undertakings. That did not mean however that Turkey was ready to hand in the right of designating its development status to other Members. Development was an entrenched principle and objective of the WTO. And as integral and indispensable parts of the system, S&DT provisions should be maintained. Turkey stressed its readiness to work with all Members to strengthen the multilateral trading system.

13.56. The representative of Benin, on behalf of the African Group, once again urged Members to act in order to ensure substantive outcomes at the Twelfth Ministerial Conference. Members should be guided, during their negotiating work, by the primary objective of succeeding in introducing the development aspect into the desired outcomes. The African Group therefore recommended that, under the terms established in Paragraph 44 of the Doha Ministerial Declaration of 20 November 2001, the S&DT provisions should be made more precise, effective and operational. Existing and future agreements should heed the reality of the situations, constraints, needs, priorities and specificities of developing and LDC Members.

13.57. The representative of the United States thanked delegations for their sincere engagement and strongly supported automatic as of right S&DT for LDCs and other developing countries that

truly needed it. The United States did not seek to reopen S&DT in existing agreements. Its proposal would only apply to current and future negotiations.

13.58. He said that nothing in the proposal would prevent any Member from negotiating for flexibilities in current and future negotiations. Yet it was apparent to the United States that the negotiating arm of the WTO would continue to underproduce as long as more than two-thirds of the Membership could claim automatic as of right S&DT. It was also apparent to the United States that there was a group of advanced economies who were fully capable of negotiating flexibilities on their own behalf without claiming automatic S&DT.

13.59. The General Council took note of the statements.

14 LDCS' VIEWS ON WTO REFORM DISCUSSIONS AND PROPOSALS – STATEMENT BY CHAD ON BEHALF OF THE LDC GROUP

14.1. The Chair recalled that the item was requested to be included in the agenda by the delegation of Chad on behalf of the LDC Group.

14.2. The representative of Chad, on behalf of the LDCs, reiterated the LDC Group's engagement at that critical time for the WTO to encouraging discussions and proposals relating to WTO reform. The crisis of the Appellate Body was the most visible symptom of the need for WTO reform but Members had identified other areas which required urgent attention.

14.3. With the questions linked to the Appellate Body, the LDC Group would also like to express its opinion on that and other matters such as transparency and notifications and the new and strengthened procedures for WTO Councils and Committees. The proposal of the LDC Group on those three areas had been submitted in document JOB/GC/223 dated 6 December 2019 and a corrigendum circulated that day in document JOB/GC/223/Corr.1. The LDC Group intended to place that submission on the agenda of the first General Council meeting of 2020 for a comprehensive discussion by Members. Given the crucial importance of those issues, the LDC Group wished to present the main points of its submission.

14.4. Two fundamental principles should be observed in any progress made in terms of WTO reform. Any reform should (i) take fully into consideration the extent of the capacity constraints of LDCs in determining the level of obligations and requirements for the implementation required of those Members; and (ii) ensure that the negotiating and decision-making process remained inclusive and consensus-based at all times.

14.5. Concerning Appellate Body reform, the LDC Group recognized that an equitable and effective process for dispute settlement was essential for the proper functioning of the WTO. A dispute settlement system that was based on rules also benefited the LDCs. The LDC Group urged all Members to continue with their efforts to allow the Appellate Body to come out of the impasse and to immediately launch the Appellate Body Selection Process through a General Council Decision. Having said that, with regard to possible amendments to Appellate Body procedures, the LDC Group recalled the importance of not creating rules which would lead to disproportional administrative burden for LDCs – if they had been party to a dispute or involved as third party. With regard to the envisaged temporary stoppage of work in the Appellate Body, the LDC Group drew attention to the opportunity for fully considering candidates from LDCs in the appointment of Appellate Body members.

14.6. Considering the proposals aiming to improve notifications and transparency, the LDC Group admitted that current requirements for notifications were very important and that all Members, including developed ones who should lead by example, should improve their practices for proper implementation of those requirements.

14.7. The LDC Group was not in favour of adding transparency and notification requirements which would pose additional burdens for LDCs. Those new obligations did not duly take into consideration the capacity constraints of the LDCs which for the majority could not be resolved through simple technical assistance in the short term from the Secretariat. Furthermore, the LDC Group was opposed in all circumstances to the implementation of punitive measures for LDCs. Other

encouraging measures should be envisaged such as the simplification of notification forms or the extension of implementation time scales.

14.8. Finally, on the reform of procedures in Councils and Committees following the submission of the European Union, the LDC Group recognized the potential benefits which would stem from improving the meeting procedures which would be better adapted and better structured. The LDC Group was not however in favour of more stringent timeframes and written exchanges for information between Members on measures linked to trade and associated process with regard to consultations with the respective Chairs. Those amendments would lead to a proportionally greater burden for LDCs.

14.9. The LDC Group nevertheless could support the practical proposals such as strengthening transparency, avoiding scheduling conflicts between various Committees and Councils, limiting the proliferation of open meetings which did not have written minutes and ensuring that an annotated agenda be circulated before the meetings of the Council for Trade in Goods. Given the linguistic profile of a number of LDCs, the LDC Group also attached great importance to ensuring complete translation and interpretation services. With regard to Ministerial Conferences, the LDC Group was in favour of total transparency and real inclusivity in their preparation and organization.

14.10. The representative of Canada said that as Members continued to work together to strengthen and modernise across the deliberative, dispute settlement and negotiating areas of WTO work, it was important that Members provided their views on how best to achieve that objective. Canada thanked the LDC Group for its communication and shared many of the principles outlined in the document – from the simplest efforts of avoiding scheduling conflicts between various Councils and Committees to the long-held support for inclusive negotiating processes and consensus-based decision-making to the foundational aspect of the two-stage review process of the WTO dispute settlement system.

14.11. Many of the principles set out in the communication also found common cause with elements included in Canada's two discussion papers on WTO reform – JOB/GC/201 and JOB/GC/211. Canada would seek early engagement with the LDC Group on its communication and on ways they could collaborate with each other to address the challenges facing the multilateral trading system.

14.12. The representative of the European Union welcomed the contribution of the LDC Group to the ongoing discussions about WTO reform. It was important that the LDCs made themselves heard in that debate. Quite understandably, the challenges of capacity constraints and the necessity to mitigate them through technical assistance were vital for LDCs. In its own deliberations about WTO reform, the European Union was fully cognisant of how capacity constraints limited in particular LDCs from fully benefitting from WTO rules. Technical assistance was not a panacea, but it could mitigate capacity constraints and help LDCs meet their WTO obligations as well as benefit from opportunities.

14.13. As several of the issues raised in the LDC statement were the subject of individual agenda items of the meeting, the European Union would not go into details on those but would thank the LDC Group for its constructive engagement in various informal discussions. As co-sponsors of the proposals on notification compliance and guidelines for trade concerns, for example, those discussions were helpful for better devising ways to finetune the proposals.

14.14. The European Union encouraged the LDC Group to view WTO reform from a wider perspective than just the current proposals on the table. For keeping the WTO effective and relevant, WTO Members would need to do more than restore the functioning of the Appellate Body and improve the way they worked in Councils and Committees. Most importantly, Members would have to come up with ways to reinvigorate the negotiating function of the WTO in order to adjust the rulebook to the current economies and challenges.

14.15. The representative of South Africa appreciated that the LDCs were proposing a detailed discussion on WTO reform in the General Council in 2020 and welcomed constructive discussion on the issues raised. WTO reform discussion had to take into account differences in levels of development. WTO reform should fundamentally promote development and inclusivity and the negotiations should take into account capacity constraints.

14.16. On transparency, the sentiments shared by the LDC Group were entailed in the paper entitled "An inclusive approach to transparency and notification requirements in the WTO" circulated in document JOB/GC/218 – a communication from the African Group, Cuba, India and Oman advancing a developmental and cooperative approach to transparency and notification obligations in the WTO. South Africa looked forward to further engagements with the LDC Group on the issues raised.

14.17. The representative of Afghanistan associated with the statement made by the LDC Group. As the global economy was undergoing unprecedented changes and the multilateral trading system had come under pressure, there was a growing need to improve and adopt the rules and operation of the WTO accordingly. Being mindful of the existence of the unprecedented changes facing the WTO and with a general overview of ongoing WTO reform discussions including transparency, notification obligations, differentiation and S&DT and the functioning of the dispute settlement system, Afghanistan welcomed efforts to improve WTO functionality and positive measures to address current global trade challenges. WTO Reform should aim at the development and economic growth of Members particularly of LDCs and most vulnerable economies who were left behind.

14.18. Against that background, Members should take into account several matters as they engaged further into WTO Reform discussions. During WTO reform discussions, the fundamental principles of the Marrakesh Agreement should be preserved, and development should be at the centre of any reform discussions and possible measures. WTO reform should not replace the priority programmes which were focusing on LDCs' mandated works and programmes, fisheries, S&DT, market access, waivers and the Appellate Body issue. Members particularly the LDCs should not be marginalised as a result of any reform measures. Flexibility should be at the core of WTO reform and should strengthen S&DT for LDCs. Reform should address the capacity constraints that kept Members especially LDCs from raising their global trade share both in goods and services.

14.19. In the area of creating new obligations and implementation of new measures as a result of any reform, capacity constraints of LDCs should be properly considered. Proposed reform measures should help LDCs to address their capacity constraints to enable them to meet their WTO commitments. Discussions on WTO reform should be inclusive, transparent and open to all Members and any possible discussion and decision should be made based on consensus. Afghanistan offered its full support and readiness to positively and meaningfully contribute to the WTO Reform discussion to achieve concrete and positive outcomes and results.

14.20. The representative of Cambodia associated with the statement made by the LDC Group and urged Members to seriously take into account the concerns that the LDCs had raised in the proposal. On the reform of the negotiating function, the reforms process should basic WTO principles including providing S&DT and it should address the challenges and difficulties faced by the LDCs in integrating into the multilateral trading system. On Appellate Body reform, Cambodia called on Members to establish rules and procedures which would allow LDCs to easily use and defend their interests by fully accessing the system.

14.21. On the reform of notification and transparency, Cambodia supported making necessary reform in those areas as it was Members' obligation to ensure transparency and predictability. Such reform should however seriously take into account the capacity constraints and ability of LDCs to fulfil the notification requirements. Reform should avoid any restriction and administrative measure to be imposed to LDCs. To make WTO Reform successful, the LDCs should be granted the financial and technical assistance to help improve the capacity for notification.

14.22. With regard to the procedural guidelines for Councils and Committees, Cambodia joined others in supporting the initiative to make better and more structured meeting procedures. Since Cambodia had a small delegation, it was however concerned on its ability to respond to the questions and issues raised by Members. Any conditions in that regard including deadlines should therefore be removed. Cambodia wished to further consult with Chairs and get the Secretariat's full assistance on the matter.

14.23. The representative of the United States noted that Chad and the United States shared common ground in striving for improved WTO transparency. The notification process was central to the effective functioning of the WTO as an institution since it provided the information about Members' trade regimes that allowed them to engage productively in the WTO's core work areas. While compliance was currently quite poor, the United States wanted it to be better.

14.24. The United States recognized that all Members faced compliance challenges none more so than the LDCs which needed special consideration. The United States therefore encouraged the LDCs to take advantage of capacity building resources available to Members and make suggestions for ways to better target assistance to meet deficiencies which hindered their ability to provide notifications in a timely manner.

14.25. The United States was a co-sponsor of the proposal on "Procedures to Enhance Transparency and Strengthen Notification Requirements under WTO Agreements" circulated in JOB/GC/204/Rev.2. The proposal recommended tools, resources and assistance to enable Members to meet their existing notification obligations and focused on existing obligations, not the imposition of new ones. The United States had appreciated the opportunity to meet with many LDC Members to better understand the challenges LDCs faced and hear their ideas for improving the functioning of the institution – and welcomed future opportunities to do so.

14.26. The representative of India welcomed the decision of the LDC Group to put forward a WTO reform proposal. India hoped it would help to contribute to a balanced reform agenda at the WTO – which could lead to strengthening the WTO to promote development and inclusivity. India looked forward to working with them on that important subject.

14.27. The representative of Benin, on behalf of the African Group, stressed the importance of the discussions and proposals on WTO reform. As several LDCs were members of the African Group, the Group thought that it was important to take into account the needs and concerns of the LDCs. The African Group would continue to interact with the LDC Group to make things move forward.

14.28. The representative of Jamaica, on behalf of the ACP, said that the proposal was a valuable contribution to the discourse on WTO reform and a strong signal from the LDC Group of its desire to engage on the important issues under consideration within the WTO. Naturally, a number of the points raised by the LDCs resonated with the full membership of the ACP Group which included taking into account capacity constraints and the different and varying levels of development. The ACP Group was studying the submission and would engage with the LDCs very shortly with the view to working together to see how best the WTO could work better for all its Members.

14.29. The representative of Chad, on behalf of the LDCs, thanked all the delegations who had reacted on the LDC proposal as they had all provided useful comments. The LDC Group remained open and ready to hold discussions with Members to be able to help the LDCs to better and more fully integrate into the multilateral trading system.

14.30. The General Council took note of the statements.

15 STATEMENT IN SUPPORT OF THE RULES-BASED MULTILATERAL TRADING SYSTEM – STATEMENT BY SWITZERLAND

15.1. The Chair recalled that the item was placed on the agenda of that day's meeting at the request of the delegation of Switzerland.

15.2. The representative of Switzerland, on behalf of Afghanistan; Argentina; Australia; Bangladesh; Benin; Brazil; Brunei Darussalam; Burundi; Cambodia; Cameroon; Canada; Chad; Chile; Colombia; Costa Rica; the Dominican Republic; Egypt; El Salvador; Grenada; Guatemala; Guyana; Hong Kong, China; Iceland; Jamaica; Kenya; the Republic of Korea; the State of Kuwait; Lao People's Democratic Republic; Liechtenstein; Malawi; Malaysia; Mali; Mauritania; Mexico; the Republic of Moldova; Mongolia; Montenegro; Myanmar; New Zealand; Nigeria; North Macedonia; Norway; Pakistan; Panama; Paraguay; Peru; Qatar; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Senegal; Singapore; Switzerland; Thailand; Trinidad and Tobago; Turkey; Ukraine; Uruguay; Vanuatu and Viet Nam, said²² that a group of 60 developing and developed Members were concerned about the challenges that the WTO was facing.

15.3. They greatly valued the WTO and reaffirmed the central and indispensable role of the institution within the rules-based multilateral trading system. They remained committed to full participation in the important ongoing, regular work of the WTO. They would continue working

²² The statement was subsequently circulated in document WT/GC/203.

together with all Members towards delivering meaningful outcomes, including through the WTO's negotiating function. They would intensify their efforts to ensure that the Twelfth Ministerial Conference was a success.

15.4. They reaffirmed their commitment to abide by the WTO's binding rules in the conduct of their trade relations which had helped to foster international trade and development, had provided predictability, had facilitated the effective settlement of trade disputes and had served as a bulwark against protectionism. That had contributed to the strength and stability of the global economy.

15.5. The dispute settlement system of the WTO was a central element in providing security and predictability to the multilateral trading system. They therefore deeply regretted that as of 11 December 2019, the Appellate Body was no longer able to perform its full functions.

15.6. They reaffirmed their strong commitment to the fundamental principles of the WTO dispute settlement system, notably the adoption of reports by negative consensus and the two-tier nature of the system. They noted that the WTO's dispute settlement system continued to offer mechanisms for the settlement of disputes among Members. They reaffirmed their commitment to resolve their trade disputes in accordance with the Dispute Settlement Understanding. They called on all Members to engage in dispute settlement proceedings in good faith and to act in a manner conducive to the prompt and final settlement of disputes.

15.7. They recalled their strong resolve to finding concrete solutions, to identified concerns, under the auspices of the WTO's General Council and stressed the urgency of filling all current vacancies on the Appellate Body.

15.8. The representative of Mongolia associated with the statement made by Switzerland on behalf of a number of Members. As a developing country with a small economy, Mongolia had been and continued to be a strong supporter of the multilateral trading system. The rules-based multilateral trading system was an institution and fora which was used to level the playing field for all Members, big and small, and fostered development in all countries.

15.9. Mongolia regretted the current situation that the multilateral trading system currently faced putting it in an uncertain condition and constraining the smooth operation of the WTO. That situation was becoming a stumbling block which hindered the potential development of all Members. Members were wasting time. Mongolia had one of the most liberal trade and economic regimes with comparably open commitments and had not been a party to any trade dispute so far. Mongolia however remained concerned about the impact of the Appellate Body impasse on the whole system including Members' beliefs in it. Mongolia remained committed to the multilateral trading system. For the sake of achieving greater objectives and development for all, Members should work together in good faith to resolve the impasse.

15.10. The representative of Trinidad and Tobago said that it was no secret that the predictability of a rules-based multilateral trading system was of particular importance and value for small and vulnerable economies like Trinidad and Tobago, as they sought to leverage trade in their pursuit of sustainable development. It was their certainty regarding the value of the WTO that drove their efforts to engage meaningfully with Members in that context. Trinidad and Tobago was resolute and committed in that regard notwithstanding the fact that, like many other SVEs with representation in Geneva, its mission was small and its resources were limited.

15.11. In the context of some critical challenges facing the WTO, Trinidad and Tobago reaffirmed its commitment to the institution and had every intention to continue to engage meaningfully with the work of the WTO despite its resource constraints. Trinidad and Tobago remained committed to working in good faith alongside other Members to devise solutions to the challenges that threatened key WTO mechanisms such as the dispute settlement mechanism. As on other occasions, Trinidad and Tobago expressed concern regarding the delay in the launch of the process for filling vacancies in the Appellate Body.

15.12. In light of the centrality of the WTO to the rules-based multilateral trading system and, in turn, the centrality of the WTO dispute settlement system to the effective functioning of the WTO, Trinidad and Tobago urged all Members to engage, urgently and in good faith, in the effort to arrive at a concrete solution to what was an untenable and undesirable situation.

15.13. The representative of Chinese Taipei commended the WTO on its vital role in the world economy and in the economy of every single Member since its inception in 1995. At the same time, Chinese Taipei shared the concerns voiced on 6 December at the Informal TNC and Informal HODs meetings on the growing crisis affecting the multilateral trading system. The organization would continue to function as long as Members remained committed to it.

15.14. Chinese Taipei was pleased to see that that was the case as far as the Members in the room were concerned. More importantly however was the fact that the WTO urgently needed to adapt to the global challenges that they were all currently facing. At that critical point in time, Chinese Taipei therefore welcomed all possible and credible efforts dedicated to make the WTO more relevant and effective and stood ready to work with fellow Members to that end.

15.15. The representative of Japan recognized that the WTO played a central and indispensable role in the rules-based multilateral trading system and supported the joint statement by Switzerland and other Members. It was important for all Members to share a sense of urgency to address the concerns that the Appellate Body should improve and restore its proper function in order to ensure a prompt and positive settlement of disputes and to fill its vacancies. Japan continued to work closely together with all Members who shared those concerns. Japan echoed the joint statement in reaffirming the commitment to fundamental principles of the WTO's dispute settlement system and in intensifying the efforts to deliver meaningful outcomes at MC12.

15.16. The representative of the European Union concurred with Switzerland and the group of co-sponsors on the central and indispensable role of the WTO as the centre of the rules-based multilateral trading system. The WTO was at the centre stage of the global governance of economic relations and the European Union was determined to ensure that the WTO maintained that position. To reinforce that role, and in light of the recent developments, the European Union called upon Members to consider a thorough review with a view to reinforce the monitoring, negotiating and dispute settlement functions of the WTO. As a next step, the European Union agreed that Members should gear all their efforts towards ensuring that MC12 was a success.

15.17. The representative of Uruguay associated with the statement made by Switzerland on behalf of a number of Members. Members already had the opportunity during the meeting to hold a lengthy discussion on the situation of the Appellate Body. The setting up of the Appellate Body had been the main novelty of the dispute settlement system that had stemmed from the negotiations of the Uruguay Round twenty-five years ago. Members could not lower themselves.

15.18. The impasse that the Appellate Body would be falling into in the coming hours was a very harsh blow to the organization – it was not however a deathblow. Work would continue in the regular bodies of the organization and in the negotiations. Members would continue to seek to solve their disagreements through dialogue and negotiations. They would resort to the other instruments of the Dispute Settlement Understanding when necessary. Law should continue to underpin relations between nations and would help overcome the conflicts and conflicts of interest which could arise. Otherwise, Members could run the risk of becoming exclusively subjected to the desires and wishes of the most powerful. It was Members' collective obligation to stand firm in the face of the threatening winds that blew in their faces and to commit themselves in words and facts and to show that they were fully committed to the multilateral trading system based on rules enshrined in the organization.

15.19. The representative of Thailand associated with the statement made by Switzerland on behalf of a number of Members. Thailand reaffirmed its support to the rules-based multilateral trading system and to the WTO and reiterated its commitment to WTO rules with a view to providing continuous stability and flexibility as well as ensuring the promotion of inclusiveness in global trade. Thailand would continue to exert effort to find concrete solutions that would strengthen the dispute settlement system and to expeditiously resolve the Appellate Body impasse.

15.20. In the meantime, numerous WTO work should continue including ongoing regular work, negotiations and further strengthening the WTO which would require strong commitment from all Members. Thailand remained committed to constructively engage in all areas to ensure meaningful progress and outcomes including at MC12.

15.21. The representative of Hong Kong, China commended Ambassador Walker for his dedicated work in leading the consultations under the informal process on the functioning of the Appellate Body. Hong Kong, China was likewise appreciative of Members' contributions to the discussions which had led to the draft decision presented to the General Council. The draft decision had demonstrated Members' resolution in finding ways to end the current impasse in the Appellate Body.

15.22. It was therefore regrettable that Members were unable to reach a consensus on preserving that important function after months of intensive discussions earlier that year, and as a result, the Appellate Body would soon be unable to perform its full functions for an indefinite period of time. That would inevitably undermine the dispute settlement system of the WTO and pose a serious challenge to the multilateral trading system.

15.23. The world would be watching closely how Members would respond to the uncertainties associated with the non-operation of the Appellate Body. It was therefore timely for Switzerland to put forward the statement under that agenda item to reaffirm Members' strong commitment to supporting a properly functioning WTO. The statement sent a clear message to the public that Members were serious and determined in upholding the rules-based multilateral trading system. Hong Kong, China fully supported Switzerland's statement and thanked Switzerland for its initiative. Hong Kong, China encouraged other Members to support the statement and reaffirmed its commitment to abide by the WTO's binding rules in the conduct of its trade relations.

15.24. While the Appellate Body would stop to operate soon, constructive dialogues on its reform should continue. Nevertheless, reform would not be achieved through creating an impasse in the appointment of members in the Appellate Body. Hong Kong, China therefore urged Members to commence actions to fill the vacancies in the Appellate Body without further delay.

15.25. The representative of Malaysia associated with the statement made by Switzerland on behalf of a number of Members. Malaysia reiterated its position as a strong advocate of the multilateral trading system and the WTO. The WTO had been effective in ensuring an open, predictable, and transparent global trade governance which benefited developed and developing countries particularly the LDCs. The effective functioning of the dispute settlement system was a fundamental aspect of the WTO. It was therefore crucial that Members continued to engage and exercise flexibilities to enable the unblocking of the Appellate Body Selection Process expeditiously.

15.26. The representative of Cambodia joined other Members in voicing out against protectionism and unilateralism as they would cause more uncertainty and unpredictability in the WTO and in global trade. Since its accession to the WTO in 2004, Cambodia was a great supporter of the multilateral trading system and trade liberalization. Although the system was not perfect, it had been fostering the growth of the global economy.

15.27. Cambodia joined other Members in their intent to preserve and defend the multilateral trading system. It was regrettable that the Appellate Body which had been in place since 1995 would temporarily stop operating soon. Cambodia once again supported the informal process led by Ambassador Walker and urged Members to compromise and find the best way to unblock the Appellate Body impasse.

15.28. The representative of Norway recalled the Norwegian saying – there was no such thing as bad weather, only bad clothing. The implication being that it was possible to survive and thrive even in wintery conditions. Every metaphor had its limits and that one was not an exception. In that regard, Norway referred to the "The WTO Agreements: The Marrakesh Agreement Establishing the World Trade Organization and its Annexes".

15.29. Norway was deeply concerned by the Appellate Body crisis especially since that crisis could easily have been avoided if one Member had agreed to the launching of the nomination process. Nevertheless, Norway remained committed to address the various concerns raised with the view to restore the full functioning of the Appellate Body. The deliberate crippling of the dispute settlement system meant that one extremely valuable tool had been removed from Members – and nobody knew how long that situation would last. The long-term consequences could be severe but what the book reminded Members was that a toolbox was far from empty. The rules which Members had negotiated and had agreed to for more than seventy years remained in place.

15.30. Relevant laws and regulations adopted by governments around the world were based on principles embedded on that book. Businesses around the world trusted that those principles were upheld, adhered to and responsible governments across the world knew that predictability and stability in the policy framework was required for businesses to invest and grow as a basis for sustainable social and economic development. The rules-based multilateral trading system was a public good that was in the long-term interest of all – big and small. At the end of the day, it was up to the Members to hold on to, to live by and to protect the fundamental principles and values underpinning the organization. Norway was honoured to be associated with the statement made by Switzerland on behalf of a large group of Members in support of the rules-based multilateral trading system.

15.31. The representative of South Africa expressed support for a rules-based multilateral trading system with the WTO at its centre to promote predictability in trade. The WTO was clearly at an important moment in its evolution as it faced many challenges. At the top of the list was the impasse in the Appellate Body. In the absence of a resolution of that issue, the Appellate Body, a cornerstone in the WTO's enforcement function, would be entirely disabled. If the impasse continued, the underpinnings for multilateral rules would fray and there was little basis to consider new rules.

15.32. In supporting the multilateral trading system, Members should resolve unilateral and protectionist measures that had resulted in the rise in trade tensions between Members. Those measures undermined the core principles of the WTO, including the principle of non-discrimination and MFN. Coupled with that was a rise in bilateral agreements – some of which did not meet WTO standards.

15.33. In supporting the multilateral trading system, Members should preserve the core principles of the WTO including consensus decision-making and S&DT. South Africa was concerned by the implications of the Joint Statement Initiatives. The claim that those initiatives were transparent, open-ended and that outcomes would be extended to all did not bridge the substantive policy divergences amongst Members. In that regard, plurilateral agreements should follow the established rules set out in the Marrakesh Agreement and S&DT should be strengthened in line with Paragraph 44 of the Doha Declaration.

15.34. S&DT was one of the cornerstones of an inclusive and development-oriented multilateral trading system and was not the main or only reason for Members' negotiating difficulties. Recent proposals to narrow its scope, irrespective of objective differences in levels of economic development between developed and developing countries would only compound their negotiating difficulties. Attempts to alter the Marrakesh Agreement architecture seemed to be futile, and South Africa recognized that future commitments on any issue would be an outcome of negotiations.

15.35. A meaningful and constructive discussion on the future of the WTO was required. The US-China Trade Policy Working Group Joint Statement could offer some thoughts in that regard. Members needed a system that preserved a rules-based system and at the same time allowed countries policy space to design the policies and institutional arrangements that best fit their circumstances. That included the right to make what other nations could consider policy mistakes. On the other hand, individual nations should also acknowledge how their choices could entail adverse implications for the well-being of other nations. A one size fits all approach was not always ideal in all circumstances and on all issues.

15.36. At the centre of that was that technological advancement was taking place in the context of an economic system that had not promoted inclusion and Members were witnessing a rise in inequality and anti-globalization sentiments. Trade policy had also become more political as countries faced increasing pressure from the electorate arising from the need to balance an open economy with the needs of the domestic economy.

15.37. The solution lied in a multilateral trading system that promoted development and inclusivity. That required that Members respected mandates and previous Ministerial decisions, especially those that were embedded in the developmental objectives entailed in the Doha mandate. Support for the multilateral trading system should not imply simple defence of current rules as they stood. Members needed more multilateral dialogue and negotiations on addressing the historical imbalances in the covered agreements that resulted in the marginalization of developing countries in global trade.

15.38. Discussions on the WTO should address the long-outstanding issues and take into account the interests of all Members. The core objective should be to promote development and inclusivity. For Africa, policy space for industrial development was paramount. South Africa was particularly concerned at proposals that would further narrow space for industrial policy, S&DT, including disciplines on SoC and industrial subsidies. Those were vital developmental areas of interest that were critical to advancing inclusive growth and sustainable development.

15.39. Members should also assess the impact of the shift from a package approach in negotiations and a single undertaking. Having a package facilitated trade-offs among Members. Harvesting what they could or issues-based negotiations could not give Members enough room for meaningful trade-offs and could constrain the negotiating function of the WTO. Members also needed to foster an appreciation and understanding that respected 'difference': difference in economic policies, policy imperatives, economic history, culture and institutions, as well as levels of economic development. Those should not be seen as problems but realities that could be a source of economic resilience.

15.40. The representative of Chad associated with the statement made by Switzerland on behalf of a number of Members. Chad co-sponsored the statement as it sought to improve the multilateral trading system. The truly multilateral nature of the WTO could be explained through the principle of consensus in the development of regulations for global trade and the best forum in which to express Members' concerns was the WTO. Chad therefore called on all Members to preserve and to improve the efficacy of the multilateral trading system in the interest of all Members.

15.41. The representative of the United States understood that Switzerland and its co-sponsors had intended their statement to be one of hope for the institution so the United States focused on that aspect. The United States had made clear through words and actions – the WTO had enormous value and could serve as a helpful negotiating forum. What the United States hoped for was change to ensure that Members could actually use that negotiating function successfully. Members could not negotiate successfully when the WTO had lost its essential focus on making agreements and had instead become a litigation-centred organization.

15.42. Members could not negotiate successfully in a situation in which new rules could only apply to the few and that others would be given a pass in the name of self-proclaimed development status. Members could not negotiate new rules without transparency on current practices. And Members could not create effective rules absent a shared understanding of and commitment to the market-oriented conditions necessary for free, fair and mutually advantageous global trading system.

15.43. The United States hoped to continue to work with all Members who shared its goal of using the WTO to create market-oriented rules that would lead to more efficient markets, more trade and greater wealth for their citizens. Such outcomes would build public support not only for open markets but for the WTO itself.

15.44. The representative of Israel said that it was Israel's interest to have a healthy and well-functioning WTO – one that was able to deliver outcomes that were beneficial to all Members and that promoted liberalization and certainty in world trade. A functioning dispute settlement mechanism was an important element of the multilateral rules-based trading system. Israel therefore continued to hope that a solution to that matter that satisfied the needs of all Members would be reached in the not too distant future.

15.45. Israel attached great value to the WTO and reaffirmed its commitment to the rules-based multilateral trading system. Israel remained committed to full participation in the important ongoing work of the WTO to the multilateral negotiations as well as to those that were conducted under the joint initiatives. Israel looked forward to continuing working with all Members towards delivering meaningful outcomes including through the WTO's negotiating function and towards MC12.

15.46. The representative of Jamaica associated with the statement made by Switzerland on behalf of a number of Members. Jamaica reaffirmed the primacy of a fully functioning and effective multilateral trading system. In that context, the dispute settlement mechanism represented the badge of enforceability while undertaking to implement current rules and negotiate new ones. That was particularly true for small, vulnerable economies like Jamaica whose sole comfort and protection was to be found in a fully functioning dispute settlement mechanism as embodied in the DSU.

15.47. Jamaica was profoundly disappointed that Members had neither been able to unblock the appointment of Appellate Body members nor at a minimum agreed to an arrangement for a functioning Appellate Body pending completion of the appointment process. What was further concerning was the fact that small and vulnerable economies were exposed to serious systemic risks that were not of its own volition.

15.48. Small economies like Jamaica did not have the financial, political and other resources that could be deployed to settle trade disputes through alternative arrangements including through arbitration. Alternative arrangements such as arbitration could create issues of inclusivity, access and confidence in the delivery of equity and fairness especially as it related to guarantees of third-party rights. Those were real concerns especially from smaller economies.

15.49. Jamaica would not belittle any concern raised by any Member in respect of the functioning of the Appellate Body or indeed of any Committee of the WTO. There were however viable alternative approaches that had been raised that would not create potentially irreparable damage to the heart of the multilateral trading system. Undoubtedly, the multilateral trading system had bestowed benefits to all Members – small and large alike.

15.50. Members still had the opportunity to correct course. Jamaica urged all Members to continue their engagement to that end – which should begin with the unblocking of the appointment process. It was also not too late to have a frank, open, transparent and constructive discussion on how to go about conducting the diagnosis of the problem and how to do so without creating unintended consequences.

15.51. Time was of the essence. Jamaica stood ready to continue playing a constructive role and in contributing to the efforts aimed at restoring the WTO's dispute settlement mechanism as envisaged by the DSU. The highest duty of the WTO was to protect its Members who relied on its rules. Small and vulnerable economies such as Jamaica were particularly dependent on a strong, rules-based, predictable, fair, inclusive and transparent multilateral trading system.

15.52. The representative of Afghanistan said that a well-functioning Dispute Settlement System was imperative to the multilateral trading system and to the WTO itself to ensure a full and fair enforcement of rules and obligations by Members. Afghanistan reiterated the importance of the dispute settlement system in promoting rules-based, open, transparent, inclusive, non-discriminatory and equitable international trade. Afghanistan therefore thanked Switzerland and all co-sponsors for placing that item on the agenda and providing a statement to support the rules-based multilateral trading system and to find concrete solutions to the current Appellate Body impasse and immediate launch of the selection process.

15.53. Afghanistan joined the co-sponsors who supported the statement and called upon all Members to engage constructively and find a pragmatic solution to the Appellate Body impasse to prevent the possible unpleasant damages to the dispute settlement system. Afghanistan was ready to engage with all Members to work on that challenge without further delay.

15.54. The representative of Argentina associated with the statement made by Switzerland on behalf of a number of Members. WTO Membership and participation was not simply based on attending a sort of "ritual without mass" but that with the right amount of resolve, prudence, imagination and courage, Members would overcome all existing and any impending obstacles. Argentina was reluctant to believe that they were limited to managing the stalemate as efficiently as possible.

15.55. Members aimed to further the organization's modernization but they did not need to put it on ice in order to do so. They should harness the legendary skill of those who once had the vision to create the organization so that it met their objectives while working together to improve people's lives because that was what was most important on the basis of the principles, rules and values that inspired the organization's foundation.

15.56. The representative of India found resonance with the words and sentiments expressed by Switzerland and other co-sponsors in their statement in support of the rules-based multilateral trading system. India placed great value on the WTO and the central and indispensable role of the institution within the rules-based multilateral trading system. The dispute settlement system of the

WTO was a central element in providing security and predictability to the multilateral trading system. India therefore regretted the withering away of the Appellate Body.

15.57. India reaffirmed its support for all the pillars of the rules-based multilateral trading system with the WTO at its centre. Principles like non-discrimination, decision by consensus and S&DT for all developing countries and LDCs and mandates needed to be respected and supported by all. India hoped that at MC12, Members would see the WTO multilateral negotiating system deliver outcomes which were balanced, development-focused and inclusive and by they would also be able to see the resurrection of the Appellate Body.

15.58. The representative of Honduras noted that Members were facing a very complex period for the multilateral trading system and had the responsibility to address those issues. It was in the interest of all Members to ensure effective modernization which took into account the various levels of development. Honduras therefore reaffirmed its full commitment to the multilateral trading system and to the principles which governed it particularly as it was a small, vulnerable economy.

15.59. The WTO gave small, vulnerable economies the opportunity for better integration into the international trading system. Honduras therefore reiterated its willingness and readiness to work together with all Members with the aim of achieving concrete outcomes and a solution to the current situation at the next Ministerial Conference.

15.60. The representative of Qatar associated with the statement made by Switzerland on behalf of a number of Members. Qatar reaffirmed its commitment to the multilateral trading system and the core pillars which preserved that system that existed within the rules-based organization. Qatar firmly believed in the importance of having a properly functioning dispute settlement mechanism which provided an avenue to resolving trade disputes. In that regard, it was imperative that Members found a concrete solution to the dire situation facing the Appellate Body's functioning.

15.61. Qatar commended Ambassador Walker and the process that he had undertaken and would continue to support that process and build up on the work achieved thus far. The State of Qatar was a firm believer in the international rule of law. Since its establishment, the DSB had proven to be a reliable and effective mechanism for resolving disputes. Qatar would therefore work tirelessly with all Members to resolve the current impasse with the aim of restoring the full functioning of the Appellate Body.

15.62. The representative of Cameroon associated with the statement made by Switzerland on behalf of a number of Members. Members had seen the questioning of the decision-making process which sought to find a consensus-based solution to the Appellate Body impasse. The multilateral trading system and the WTO were progressively being eroded and it was getting worse.

15.63. The Appellate Body impasse had arisen in an organization where attempts by numerous Members especially those from developing countries had been regrettably set aside from the objectives pursued. The African Group proposals in TN/DS/W/42 and TN/DS/W/92 included a fair focus which should allow Members to increase the rule of law in the organization because Members needed a fair system to ensure that the parties concerned were able to access necessary justice.

15.64. Since the establishment of the organization, the world had seen unprecedented growth in terms of international trade and liberalization of economies of developing countries. Cameroon, like many Members, had committed to reforms to adopt its economy to WTO rules with the hope of achieving an appreciable level of competitiveness.

15.65. The resistance to observe the reduction of domestic support measures, the multiplication of technical barriers to trade, the questioning of S&DT and the Appellate Body impasse were all causing the multilateral trading system to become ever more fragile. Those were various issues which were of interest to Cameroon and required satisfactory results. It was therefore high time to address those concerns and reinforce the rule of law through multilateral dispute settlement and ensuring that consensus was fully employed.

15.66. Cameroon remained attached to a fair and equitable rules-based multilateral trading system and Members should avoid its crumbling. At the same time, the Appellate Body which was the legal pillar that bound everything together through Members' commitments should be made functional in

the days to come. In doing so, Members should encourage multilateralism and ensure that it remained the *raison d'être* of the organization.

15.67. Members should take into account the expectations especially of developing and LDC Members to ensure that all decisions were inclusive and that international trade was fairer. Members should ensure that their decisions had a human face and were taken timely. Members should likewise bear in mind that Africa and Africans had a right to development and that was worthy of just consideration in a multilateral system.

15.68. Cameroon reiterated its attachment to respecting WTO rules and the rule of law and reiterated its readiness to work in a constructive fashion for the edification of an inclusive multilateral trading system which would provide developing countries a successful solution to their concerns.

15.69. The representative of the Russian Federation supported the statement made by Switzerland and shared the views outlined.

15.70. The General Council took note of the statements.

16 TWELFTH SESSION OF THE MINISTERIAL CONFERENCE – ELECTION OF OFFICERS

16.1. The Chair recalled that the Rules of Procedure (Rule 12) for the Ministerial Conference established that "During the course of each regular session, a Chairperson and three Vice-Chairpersons shall be elected from among the Members. They shall hold office from the end of that session until the end of the next regular session."

16.2. At the October General Council meeting, His Excellency Minister Bakhyt Sultanov of Kazakhstan had been formally appointed as the Chairman of MC12. Regarding the three Vice-Chairs, since the Chair would come from Asia and the Pacific, and in line with customary practice, at that meeting she had invited the representatives of the other three broad groupings – i.e. Africa, Latin America and the Caribbean (GRULAC) and developed countries – to consult with their constituents.

16.3. On 19 November, she had sent a communication to the group coordinators inviting them to inform her, once their consultations had been concluded, of the proposed Vice-Chairs for their respective groupings. She understood that in some cases those consultations were still ongoing, and she urged the Group Coordinators and all delegations to redouble their efforts so that the names could be submitted without delay and that the General Council could appoint the three Vice-Chairs at its first meeting in 2020.

16.4. The General Council took note of the Chair's statement.

17 TRIPS COUNCIL MATTERS

17.1 Annual Review of the Special Compulsory Licensing System – Paragraph 7 of the Annex to the amended TRIPS Agreement and Paragraph 8 of the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health – Report of the Council for TRIPS (IP/C/84)

17.2 Proposal for a Decision on an Extension of the Period for the Acceptance by Members of the Protocol Amending the TRIPS Agreement (IP/C/83)

17.1. The Chair recalled that in August 2003, the General Council had adopted a Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. In addition, the General Council had adopted in December 2005 a Protocol amending the TRIPS Agreement which had been submitted to Members for acceptance. In accordance with Article 10:3 of the WTO Agreement, the Protocol had entered into force on 23 January 2017 upon acceptance by two-thirds of the WTO Members who had accepted it on or before that date.

17.2. Both the amended TRIPS Agreement and the 2003 Decision provided that the TRIPS Council should review annually the functioning of the system and should also report on its operation to the General Council. Those Members who were yet to accept the Protocol amending the TRIPS Agreement currently had until 31 December 2019 to do so. However, since not all Members would

be in a position to complete their domestic procedures by that deadline, the TRIPS Council had agreed to submit to the General Council a proposal for a decision to extend the period for the acceptance by Members of that Protocol for another two years.

17.3. Ambassador Lundeg Purevsuren (Mongolia), Chair of the TRIPS Council, recalled that the Amendment to the TRIPS Agreement entered into force in January 2017. The amendment provided a special compulsory licensing system for the benefit of countries which relied on imports of medical technologies because of insufficient or no domestic pharmaceutical manufacturing capacities. It made permanent the related rules already contained in the earlier waiver decision.

17.4. At its meeting of 17-18 October, the TRIPS Council had completed its annual review of the functioning of the System, pursuant to Paragraph 7 of the amended TRIPS Agreement and Paragraph 8 of the Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.

17.5. The TRIPS Council's report on that review to the General Council had been circulated in document IP/C/84, which was sub-item a of that agenda item. It included information about the implementation and use of the System, as well as on the status of acceptances of the Protocol Amending the TRIPS Agreement. The record of the discussion that had taken place during the Council's review of the System was also attached to the report.

17.6. Pursuant to the General Council's decision in 2017, the Protocol was open for acceptance by the remaining Members until 31 December 2019 or such later date as could be decided by the Ministerial Conference (WT/L/1024). Despite indications that a number of Members were making domestic efforts in that regard, there were still 36 Members that were yet to accept the Protocol.

17.7. The TRIPS Council had therefore agreed to propose to the General Council a decision to extend the period for acceptance by two more years, i.e. until 31 December 2021. That proposal was set out in document IP/C/83 which was sub-item b of that agenda item. On behalf of the TRIPS Council, he was submitting that to the General Council for a decision that day.

17.8. He called upon those Members who had yet to accept the Protocol to expedite action. A practical guide on how to do so had been attached to his letter that he had sent in September, and was also available on the WTO's webpage on TRIPS and public health. He and his Secretariat team, as always, would be happy to provide further assistance if necessary.

17.9. The General Council took note of the report of the TRIPS Council in document IP/C/84 and adopted the draft decision²³ in document IP/C/83 extending the time-period for acceptance by Members of the Protocol amending the TRIPS Agreement until 31 December 2021.

18 REVIEW OF THE EXEMPTION PROVIDED UNDER PARAGRAPH 3 OF GATT 1994 (WT/L/1055, WT/L/1078)

18.1. The Chair recalled that Paragraph 3(a) of GATT 1994 provided an exemption from Part II of the GATT 1994 for measures under specific mandatory legislation – enacted by a Member before it became a Contracting Party to the GATT 1947 – which prohibited the use, sale or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or waters of an exclusive economic zone.

18.2. In 1994, the United States had invoked that provision with respect to specific legislation that had met the requirements of that paragraph. Paragraph 3(b) of the GATT 1994 called for a review of that exemption five years after the date of entry into force of the WTO Agreement – and thereafter every two years for as long as the exemption was in force – to examine whether the conditions for the exemption still prevailed.

18.3. She recalled that the General Council had last considered the matter at its meeting in February. Statements, questions and responses from interested delegations and the United States, together with the annual reports provided by the United States circulated in documents WT/L/1055 and WT/L/1078 were the basis for the 2019 review. The General Council had also agreed that it

²³ The decision was subsequently circulated in document WT/L/1081.

would consider the matter again at that day's meeting and that normally the subsequent review would be held in 2021. The exemption was without prejudice to solutions concerning specific aspects of the legislation covered by the exemption negotiated in sectoral agreements or in other fora.

18.4. The representative of the United States welcomed the opportunity to once again participate in the review of the exemption under Paragraph 3 of the GATT 1994. The exemption had been agreed to by all Members. It had been an essential part of the Uruguay Round results and was an integral component of the GATT 1994. As set forth in Paragraph 3(b) of the GATT 1994, the purpose of the review was to examine whether the conditions which had created the need for the exemption still prevailed.

18.5. The United States confirmed the conditions that had created the need for the exemption continued to exist including the US Navy's reliance on commercial shipyards for day-to-day maintenance of naval and surge fleet vessels. It also remained critical for US shipbuilders to build commercial ships for trade in order to ensure the maintenance of viable industrial base to meet future US naval requirements. In short, the United States had very much the same need as it had had in 1994 to maintain its shipyards' readiness to build and maintain naval vessels.

18.6. The United States had continued to provide Members with annual statistical reports pursuant to the requirement of Paragraph 3(c) of the GATT 1994 including the most recent report submitted in November 2019. Those reports provided detailed annual reporting of vessel orders and deliveries from US shipyards. Paragraph 3 of the GATT 1994 was drafted and included in the Uruguay Round package to deal with non-conforming provisions of domestic legislation of a non-discretionary character in a specific area addressed by the exemption.

18.7. Under Paragraph 3(a), as long as the legislation that the United States had notified had remained in force and had not been modified to reduce its conformity with Part II of the GATT 1994, the US legislation had remained exempt and Part II of the GATT 1994 had not applied to it. Since the United States had invoked the exemption in 1994, there had been no amendments or measures adopted by the United States that would alter the US position in conforming to cover the exemption.

18.8. The legislation covered by the exemption had remained in force and its conformity with Part II of the GATT 1994 had not decreased. The United States thanked the Members who had participated in its consultations and stood ready at any time to continue to answer Members' questions on the topic as needed.

18.9. The representative of Norway noted that the exemption from the GATT 1994 rules was an important subject and thanked the United States for having been invited to informal consultations on the Jones Act. Norway had voiced its concerns as in previous reviews as its focus was as always on the salient point of Paragraph 3(b) of the GATT 1994 on whether the conditions which had created the need for the exemptions still existed. Norway took note of the United States' emphasis in the consultations on national security and humanitarian emergency reasons, that the Jones Act was critical for US shipbuilding and military vessels and for maintaining enough qualified American mariners. It was however not clear whether the United States had considered alternative measures for stimulating activity in the US shipbuilding sector.

18.10. The representative of Japan noted that exemption was a deviation from the fundamental WTO principle and attached great importance to its periodic review. Japan expected that the United States duly shared the information and clarified any relevant updates. Japan understood that the United States was currently looking into the possibility of modifying its interpretation and implementation of the Jones Act. It would be important that such modification would not affect fair competition. Japan further expected that the review process provided an opportunity to conduct a substantial examination to address whether the exemption was still necessary.

18.11. The representative of China noted that the exemption had been reviewed for a long time. The review should focus on examining whether the conditions creating the need for the exemption still prevailed rather than a purely data sharing process. China joined others in expressing strong commercial and systemic concern with that unjustified exemption and looked forward to further clarification and justification by the United States on the necessity and rationale of the exemption.

18.12. The representative of the Republic of Korea noted that Korea continued to have systemic and commercial concerns regarding the US exemption under Paragraph 3(a) of the GATT 1994. The exemption was a deviation from the fundamental principle of the WTO restricting fair competition on shipbuilding and shipping market. The United States needed to provide reasonable and updated explanation on the necessity to continue the exemption with the focus on whether the conditions which had created the need for such exemption still prevailed. Korea looked forward to participating in any further discussion on the issue.

18.13. The representative of Hong Kong, China was disappointed that the eleventh review of the Jones Act exemption conducted under Paragraph 3 of the GATT 1994 again did not lead to any meaningful results. Hong Kong, China's concerns remained that the exemption which had been in existence since the establishment of the WTO was a major derogation from the fundamental principle of national treatment and was not conducive to open trade.

18.14. Hong Kong, China all along supported the liberalization of maritime transport which was a major mode of transport for trade and a crucial part of the logistics supply chain. Hong Kong, China was concerned that the exemption would represent a major impediment to the Member concerned in making market access commitments in the maritime transport services.

18.15. The purpose of the review was to examine whether the conditions under which the exemption had been introduced in the first place still prevailed. Hong Kong, China encouraged the United States to critically consider whether the Jones Act would still serve its original purpose that day and the possible benefits that its abolishment could bring. Hong Kong, China looked forward to more positive outcomes in the next review.

18.16. The representative of the European Union took note of the US notification and shared the view expressed that the examination should focus on whether the circumstances that had given rise to the exemption were still applicable. The European Union asked how the United States saw those exemptions in light of ongoing efforts to propose policies that contributed to sustainable fishing, in particular in the context of the negotiations.

18.17. The representative of Australia appreciated the information provided by the United States as part of the review. While Australia recognized the particular sensitivities of the United States in relation to cabotage and coastal shipping, there were potential economic benefits to US businesses and consumers of liberalising that sector. Australia understood US Customs and Boarder Protection was considering amendments to its guidance on application of certain aspects of the Jones Act and encouraged the United States to consider as part of that review whether the liberalization of aspects of the Jones Act could occur in whole or in part.

18.18. The representative of Panama thanked the United States for the report it had submitted and for the further consultations it had held bilaterally. As it continued to be an issue of interest for Panama, it would want to continue to be taken on board in future consultations.

18.19. The General Council took note of the statements made in the course of the review in 2019 and also that the subsequent review under the two-yearly cycle provided in Paragraph 3(b) of the GATT 1994 would be held in 2021.

19 WAIVERS UNDER ARTICLE IX OF THE WTO AGREEMENT**19.1 Introduction of Harmonized System 2002 changes into WTO Schedules of Tariff Concessions – Draft Decision (G/C/W/768)****19.2 Introduction of Harmonized System 2007 changes into WTO Schedules of Tariff Concessions – Draft Decision (G/C/W/769)****19.3 Introduction of Harmonized System 2012 changes into WTO Schedules of Tariff Concessions – Draft Decision (G/C/W/770)****19.4 Introduction of Harmonized System 2017 changes into WTO Schedules of Tariff Concessions – Draft Decision (G/C/W/771)**

19.1. The Chair said that the draft waiver decisions listed in sub-items (a) to (d) of the current agenda item had been taken up for consideration by the Council for Trade in Goods at its November meeting. For those items, the Chairman of the Goods Council was required to report to the General Council.

19.2. Ambassador José Luis Cancela (Uruguay), Chair of the Goods Council, reported that the Goods Council, at its meeting on 14 November had approved four collective requests for extension of waiver related to the introduction of changes to the Harmonized System of 2002, 2007, 2012 and 2017, respectively, in the WTO schedules of concessions. The Goods Council had also recommended that those draft decisions be referred to the General Council for adoption.

19.3. The draft decisions for consideration by the General Council that had followed the procedures provided for in Article IX (b) of the Marrakesh Agreement were contained in the documents listed in the airgram of that day's meeting and could be found in G/C/W/768; G/C/W/769; G/C/W/770; and G/C/W/771.

19.4. The Chair said that unless delegations wished to comment on the draft decisions, she proposed that the General Council adopted those four draft Decisions referred to by Ambassador Cancela in his report, and which related to the Introduction of Harmonized System 2002, 2007, 2012 and 2017 changes into WTO Schedules of Tariff Concessions.

19.5. The General Council so agreed²⁴.

²⁴ The decisions were subsequently circulated in documents WT/L/1082, WT/L/1083, WT/L/1084 and WT/L/1085.

19.5 Review of waivers pursuant to Article IX:4 of the WTO Agreement

19.5.1 Preferential Treatment in favour of Services and Service Suppliers of Least Developed Countries, granted on 17 December 2011 until 31 December 2030 (WT/L/847, WT/L/982)

19.5.2 Kimberly Process Certification Scheme for Rough Diamonds, granted on 26 July 2018 to 31 December 2024 (WT/L/1039)

19.5.3 Cuba – Article XV:6 – Extension of waiver, granted on 7 December 2016 until 31 December 2021 (WT/L/1003, WT/L/1076)

19.5.4 European Union – Application of Autonomous Preferential Treatment to the Western Balkans, granted on 7 December 2016 until 31 December 2021 (WT/L/1002, WT/L/1077)

19.5.5 United States – African Growth and Opportunity Act, granted on 30 November 2015 until 30 September 2025 (WT/L/970, WT/L/1073)

19.5.6 United States – Former Trust Territory of the Pacific Islands, granted on 7 December 2016 until 31 December 2026 (WT/L/1000, WT/L/1074)

19.5.7 United States – Trade Preferences granted to Nepal, granted on 7 December 2016 until 31 December 2025 (WT/L/1001, WT/L/1075)

19.6. The Chair recalled that in accordance with Paragraph 4 of Article IX of the WTO Agreement, "any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates." There were seven waivers before the General Council for review, and they were listed in the proposed Agenda. Five of the waivers under review provided that an annual report should be submitted by the Member concerned regarding the operation or implementation of those waivers with a view to facilitating their annual review by the General Council. The three reports from the United States and the reports from Cuba and the European Union had been circulated in documents WT/L/1073, WT/L/1074, WT/L/1075, WT/L/1076 and WT/L/1077.

19.7. The General Council took note of the reports contained in documents WT/L/1073, WT/L/1074, WT/L/1075, WT/L/1076 and WT/L/1077 and of the Chair's statement.

20 COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION – REPORTS ON MEETINGS OF APRIL, JUNE, SEPTEMBER, OCTOBER AND NOVEMBER 2019 (WT/BFA/179, WT/BFA/180, WT/BFA/181, WT/BFA/182 AND WT/BFA/183)

20.1. The Chair drew attention to the reports of the Budget Committee in documents WT/BFA/179, WT/BFA/180, WT/BFA/181, WT/BFA/182 and WT/BFA/183.

20.2. Ambassador Dagfinn Sørli (Norway), Chair of the Committee on Budget, Finance and Administration, reported that since his last report to the General Council, the CBFA had met on several occasions, both formally and informally. He had presented the reports of the CBFA for meetings that had taken place in April, June, September, October, November and December. He would be focusing on the items recommended for the approval of the General Council.

20.3. Concerning the 2018 Financial Performance Report and Audited Financial Statements, the Secretariat had presented the WTO Financial Performance Report for the year ended 31 December 2018 and the External Auditor's Report.

20.4. The Committee was submitting the following recommendation to the General Council: "The Committee recommends that the General Council approve the transfers between budgetary sections as outlined in paragraph 2.31 of the document WT/BFA/W/482. The Committee further recommends that the General Council approve the WTO Audited Financial Statements for the year ended 31 December 2018."

20.5. Concerning the 2017 Financial Performance Report and Audited Financial Statements, before the start of the General Council meeting in July 2018, a recommendation related to the 2017 Financial Performance Report and Audited Financial Statements had been taken off the agenda.

20.6. The CBFA had re-endorsed the following recommendation to the General Council and was herewith submitting it: "The Committee on Budget Finance and Administration recommends that the General Council approve the transfers between budgetary sections as outlined in paragraphs 2.29 and 2.34 of document WT/BFA/W/450. The Committee further recommends that the General Council approve the WTO Audited Financial Statements for the year ended 31 December 2017."

20.7. Concerning the Proposed Utilization of the 2018 Budgetary Surplus, in keeping with Financial Regulation 23, a proposal had been presented to the Committee that the Budgetary Surplus for 2018 be transferred to the Working Capital Fund.

20.8. The Committee was submitting the following recommendation to the General Council: "The Committee on Budget Finance and Administration recommends to the General Council that the WTO Budgetary Surplus as at 31 December 2018, amounting to CHF 1.32 million, be transferred to the Working Capital Fund."

20.9. Concerning the Selection of External Auditors, the CBFA had delegated the process for the selection of the next External Auditor to a Working Group. An Invitation to Bid, including a selection criteria, had been sent to all Members in July and the assessment of bids had taken place in September and October. The CBFA had endorsed the recommendation from the Working Group that the Auditor General of France be appointed.

20.10. The Committee was submitting the following recommendation to the General Council: "The Committee recommends to the General Council to appoint the Office of the Auditor General of France as External Auditor of the WTO Secretariat and the WTO Pension Plan as from the audit of the 2020 financial statements and for a period of six years subject to the condition that either party, i.e. the Auditor General of France or the WTO General Council, may terminate the arrangement with a notice period of one-year."

20.11. Concerning the Policy for the Management of the Working Capital Fund, the CBFA had delegated the consideration of how best to manage the Working Capital Fund to a Working Group. The Report from the Working Group had been favourably received by the CBFA.

20.12. The Committee was submitting the following recommendation to the General Council: "The Committee recommends to the General Council that A Policy for the Management of the Working Capital Fund (WT/BFA/W/505) be approved."

20.13. Concerning the WTO 2020-2021 Budget Proposal, as Members were aware, the approval of the WTO 2020-2021 Budget had been the subject of unprecedented differences amongst Members. There had been many informal meetings, consultations with him and the Secretariat, formal meetings and meetings among Members in different formations.

20.14. Some Members had indicated their preference that the outcome of discussions at the Dispute Settlement Body, pertaining to the pending appeals, be received before agreeing a recommendation on the budget. The CBFA had met again on 5 December, following on from the DSB meeting that had taken place on 3 December.

20.15. After further deliberations, the Committee was submitting the following recommendation to the General Council: "The General Council, HAVING CONSIDERED The guidelines on biennial budgeting (WT/BFA/W/105/Rev.1) approved by the General Council through document WT/GC/M/82; and The 2020-2021 WTO Consolidated Budget, which amounts to CHF 197,203,900 for 2020 and 2021, respectively, as set forth in Tables 1, 2, 3, 4 and 5 annexed to the CBFA Report with the reference WT/BFA/183; resolves that the 2020 WTO Consolidated Budget, be financed as follows: (1) Contributions from Members in the amount of CHF 195,500,000; and (2) Miscellaneous Income of CHF 1,703,900 and further, in light of exceptional circumstances in 2019, takes note of the proposed 2021 WTO Consolidated Budget of CHF 197,203,900 which will be subject to finalization in 2020."

20.16. Concerning the ITC Budget Proposal for 2020-2021, the CBFA had reviewed and had endorsed the budget proposal for the ITC for the 2020-2021. The budget was a distinct line item in the budget of the WTO Secretariat.

20.17. The Committee was submitting the following recommendation to the General Council: "The Committee recommends to the General Council that the budget for 2020-21 of the International Trade Centre UNCTAD/WTO be approved in the amount of CHF 36,486,250. The amount to be provided by the WTO to the International Trade Centre UNCTAD/WTO budget for 2020 and 2021, respectively, shall be CHF 18,243,125."

20.18. The General Council was further informed that the amount for the 2021 budget of ITC was noted and would be subject to finalization in 2020.

20.19. Concerning the Biennial Technical Assistance and Training Plan for 2020-2021, the TA Plan incorporated activities geared towards responding to the needs and priorities identified by Members and was to be largely funded from the WTO regular budget, with complementary funding from the DDAGTF and other Trust Funds.

20.20. The Committee was submitting the following recommendation to the General Council: "Pursuant to paragraph 40[1] of the Ministerial Declaration adopted at the Fourth Session of the WTO Ministerial Conference, the Committee recommends to the General Council that: Secure and predictable financing be provided for the implementation of the 2020-2021 Biennial Technical Assistance and Training Plan, as approved by the CTD; The target level of extra budgetary resources intended to fund the TA Plan include CHF 12,580,000 for 2020 and CHF 12,580,000 for 2021 to come from the Doha Development Agenda Global Trust Fund (DDAGTF) and CHF 2,451,000 for 2020 and CHF 2,451,000 for 2021 from other Trust Funds; Members be reminded that, on 19-20 December 2001, the General Council approved the following periodic benchmarks for contribution receipts to the DDAGTF: (i) by December of the year preceding the funds' revolving annual target period, 25 per cent of the annual total should be in the bank; (ii) by 31 March, another 50 per cent for an overall 75 per cent of the total; (iii) by 30 June, 100 per cent of the funds; In this context, Members be informed that the projected year-end balance of the Fund is likely to be sufficient to cover the 25 per cent of the target amount; and Governments be urged to make financial contributions in a manner which would preserve the global nature of the programme and facilitate the management and reporting with a view to greater transparency (i.e. making un-earmarked contributions) and pledge multi-year contributions to create more predictability in terms of financing."

20.21. The General Council took note of the statement of the Chair of the Budget Committee, approved the Budget Committee's specific recommendations contained in paragraph 3.37 of WT/BFA/180; paragraphs 4.6 and 7.3 of WT/BFA/181; paragraphs 1.24 and 2.4 of WT/BFA/182 and paragraphs 3.11, 4.13 and 1.100 of WT/BFA/183 and adopted the five reports as a whole.

20.22. The representative of China said that the tabled budget proposal was the worst one China had ever worked on. It had unfortunately come into being a political tool which had reversed the relation between policy implementation and fiscal guarantee, had affected the Appellate Body's functions and had undermined the independent administrative authority of the WTO Secretariat.

20.23. China had every reason to say no to that budget proposal. China had however no reason to punish the diligent staff of the WTO Secretariat, making them empty-handed and down hearted for the Christmas holidays. If Members could dock the pay of those who had been sabotaging the multilateral trading system, China would be all for it. China's only wish was that the ugly truth behind the budget proposal could raise sufficient alarm and strong aversion so as to avoid falling into the same old trap again.

20.24. The representative of the European Union deeply regretted the developments concerning the Appellate Body despite the efforts of the overwhelming majority of the membership to find a solution and launch the process for appointing new Appellate Body members in line with the rules.

20.25. The EU also firmly believed that the budget process should be kept separate and not used for policy or indeed structural changes to the organization. The European Union trusted that the deplorable process Members had witnessed that year would not be repeated. The European Union

nonetheless supported the adoption of the budget for 2020, as that was indispensable for the organization to continue to function, and urged all Members to work together for its modernization.

20.26. The Director-General thanked the Members for approving the WTO Budget. He recognized that that year's budget exercise had been quite extraordinary – simply meaning not ordinary. The compromise reached had been a product of flexibility and cooperation in Geneva as well as in capitals. It could not be everything each of the Members had been hoping for but he was glad to note that the bulk of the original budget proposal had been approved with no amendments. That ensured that the WTO would continue to implement its mandate as efficiently as before, despite the uncertainties regarding the operation of the Appellate Body.

20.27. Even where the Appellate Body's approved budget included expenditure limitation, there would be adequate funding once Members resolved the questions they had about the appeals stage of disputes. The compromise achieved was a pragmatic solution, one that preserved WTO work at a moment of great turbulence in the wider international order, when the WTO was more fundamental than ever. The Director-General again thanked all Members as well as the Chair of the CBFA for his diligent and successful efforts, and expressed his hope that the same spirit of pragmatism and compromise would mark all of WTO work in the months ahead.

20.28. The General Council took note of the statements.

21 WTO PENSION PLAN MANAGEMENT BOARD – ELECTION OF A MEMBER (WT/GC/W/786)

21.1. The Chair recalled that Article 4(a) of the Regulations of the WTO Pension Plan provided for the election by the General Council of a Chair, four members and four alternates to the WTO Pension Plan Management Board.

21.2. Following a vacancy arisen in the Board, the Management Board Chair had sent out a communication inviting all Members to submit expressions of interest in serving on the Board. He had then consulted with those individuals who had expressed interest in serving on the Board and had subsequently announced that Mr. Rob Cook (United Kingdom) had agreed to have his name put forward. The Chair then had another opportunity for Members to consult on the proposed candidate.

21.3. As a result of the process, document WT/GC/W/786 had been circulated on 18 November, where she had indicated her intention to propose Mr. Rob Cook for election to the Management Board at that day's meeting, and had invited those still wishing to do so to submit any comments they could have regarding the proposed nomination to her by close-of-business on 25 November.

21.4. As she had received no comments or questions, she proposed that Mr. Rob Cook (United Kingdom) be elected to the Management Board as a Member.

21.5. The General Council so agreed²⁵.

22 INTERNATIONAL TRADE CENTRE UNCTAD/WTO – REPORT OF THE JOINT ADVISORY GROUP ON ITS 53RD SESSION (ITC/AG(LIII)/276)

22.1. The Chair recalled that in connection with the item, the Chairman of the CTD provided the General Council with a report on the CTD's consideration of the report of the Joint Advisory Group on the International Trade Centre UNCTAD/WTO.

22.2. Ambassador Chad Blackman, Chair of the Committee on Trade and Development, reported that the ITC's Joint Advisory Group had held its 53rd Session on 2 July. The report on that meeting was contained in document ITC/AG(53)/276.

22.3. The report had been presented to the CTD at its 110th Session on 22 November by the Chairperson of the Joint Advisory Group, Ambassador Terhi Hakala of Finland.

²⁵ The decision was subsequently circulated in document WT/L/1086.

22.4. Ambassador Hakala had informed the CTD that the Joint Advisory Group had reviewed the ITC's Annual Report for 2018. Some of the key results for 2018 included: the generation of 1.1 billion dollars in exports and investment as a result of ITC support; a total of 232 million dollars in extra-budgetary funds secured for 2019 and beyond; and the delivery of 86 percent of country-specific interventions to LDCs, sub-Saharan Africa, landlocked developing countries, small island developing States, small vulnerable economies, and post-conflict and fragile States.

22.5. Appreciation had been expressed by the Joint Advisory Group for several areas of the ITC's work. In that context, some of the areas highlighted concerned the organization's suite of tools and solutions – including the Global Trade Helpdesk and the Rules of Origin Facilitator – as well as the ITC's work on national export strategies and on measuring and addressing non-tariff measures.

22.6. Other elements highlighted included the organization's initiatives in fostering South-South trade; in raising climate resilience and climate adaptation for micro, small and medium-sized enterprises; and in encouraging youth entrepreneurship in fragile contexts. The ITC's advocacy and thought leadership on women's economic empowerment, in particular through the SheTrades initiative, had also been appreciated.

22.7. In terms of financing, the ITC's funders had welcomed the organization's leveraging of its financial resources – as well as its efforts to diversify its funders base, and its continued emphasis on partnerships. To ensure the long-term sustainability of results, it had been recommended that the ITC continued to foster local ownership and to further develop its existing risk management framework.

22.8. The Joint Advisory Group had additionally been presented with the 2019 Annual Evaluation Synthesis Report. The key learning theme in the 2019 edition of the report was the issue of complexity. With the introduction of complexity in the analysis of the ITC's interventions, the organization would be moving from a project-focused approach to a process of constant adjustment, flexibility and long-term interaction with stakeholders.

22.9. As was the practice, the CTD had taken note of the report of the 53rd Session of the Joint Advisory Group, and had agreed to forward it to the General Council for adoption.

22.10. The General Council adopted the report of the Joint Advisory Group in document ITC/AG(LIII)/276 and took note of the CTD Chair's statement.

22.11. The representative of Trinidad and Tobago, on behalf of CARICOM, noted that the report of the Joint Advisory Group on its 53rd Session had illustrated the Session had been an important opportunity to reflect on the value and the effectiveness of the work of the ITC. CARICOM expressed appreciation for the work of the International Trade Centre which had been a key source of support for members of the Group.

22.12. For example, the coconut industry in its region had benefited from the mobilization efforts and the partnership of the ITC over the last period of time. CARICOM looked forward to the further strengthening of that partnership in the years ahead and highlighted the valuable expertise and tools that the ITC offered. CARICOM recognized in particular the Centre's important contribution to efforts to break down gender barriers related to trade.

22.13. CARICOM commended the ITC on its valuable contribution and affirmed its keenness to further strengthen engagement with the Centre in the period ahead.

22.14. The representative of Benin, on behalf of the African Group, congratulated the Executive Director of the ITC and her team for the important activities that had been carried out by the ITC. The African Group underscored the high-level results achieved with the use of tools and instruments that were relevant. All of those activities and initiatives had assisted developing countries and in particular African countries, LDCs and SVEs to improve their competitiveness.

22.15. The assessment tools had been presented throughout the year and the African Group fully appreciated them including the activities geared towards supporting the projects and initiatives in its various countries and regions with the focus on women and youth. The African Group also thanked

the development partners that contributed to ensuring that those activities were carried out thanks to their expertise, competencies and financial resources.

22.16. The representative of the European Union said that the International Trade Centre was a valued partner to the European Union. The European Union was pleased with its cooperation to date and hoped to continue to work on projects and exchange information in response to emerging priorities and needs. The European Union congratulated the ITC on its impressive performance in 2019 and noted in particular the increasing focus of the ITC's assistance to LDCs, its work on market intelligence tools for MSMEs and its work on women's economic empowerment. On that last point, the European Union thanked the ITC for the excellent work on the study on the barriers faced by women in international trade which had been presented by ITC Executive Director Arancha Gonzalez at the Trade for Her Conference organised by the European Union in September. The European Union looked forward to continuing its good cooperation with the ITC on that important theme and beyond.

22.17. The representative of the International Trade Centre, speaking as an Observer, thanked all Members for their continued support to the ITC. In a time when multilateralism was under crisis, Members had continued to recognize the importance of aid for trade and supporting developing countries and their MSMEs through inclusive trade. In 2019, the ITC had delivered the highest dollar amount of technical assistance and capacity building in its history and had delivered its most impressive results. Its aim was to again best that in 2020, and on behalf of the Executive Director and the ITC Team, the ITC thanked again all Members for their commitment to trade for impact.

22.18. The General Council took note of the statements.

23 REVIEW OF WTO ACTIVITIES

23.1 General Council (WT/GC/W/788) and Trade Policy Review Body (WT/TPR/440)

23.2 Sectoral Councils (G/L/1343, S/C/59, and IP/C/85) and Committees on Antidumping (G/L/1344), Subsidies and Countervailing Measures (G/L/1341), Safeguards (G/L/1346) and Technical Barriers to Trade (G/L/1340)

23.3 Committees on Trade and Development (WT/COMTD/99), Trade and Environment (WT/CTE/26), Balance-of-Payments Restrictions (WT/BOP/R/117), Budget, Finance and Administration (WT/BFA/184), and Regional Trade Agreements (WT/REG/30)

23.4 Working Groups on Trade, Debt and Finance (WT/WGTDF/18) and Trade and Transfer of Technology (WT/WGTTT/21)

23.5 Committees under the Plurilateral Trade Agreements (GPA/AR/2, WT/L/1071)

23.1. The Chair recalled that the reports under that item had been prepared in line with the Decision concerning Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO (WT/L/105). Those reports were listed in the agenda for that day's meeting.

23.2. The Committees on Antidumping, Subsidies and Countervailing Measures, Safeguards and Technical Barriers to Trade had met after the November Goods Council meeting. For that reason, the Annual Report of those Committees had been forwarded directly to the General Council.

23.3. Delegations had already had a substantive discussion on those reports in the respective bodies where they had been adopted and she would therefore suggest that they did not repeat those discussions in the General Council.

23.4. She would also note that, in line with the reporting obligations, reports from the respective bodies would be forwarded to the Ministerial Conference. Since MC12 was taking place later than usual, she suggested that, for the respective bodies, the reports for the Conference consisted of the 2019 Annual Reports, together with an addendum or a partial Annual Report covering the remaining months before MC12. That was in line with what had been done in the past, in those instances when Ministerial Conferences had not taken place at the end of the year. She trusted that was acceptable to delegations.

23.5. She proposed that, in accordance with past practice, the General Council took action on those reports. She invited the General Council to adopt the report of the Committee on Trade and Development in document WT/COMTD/99, and to take note of the reports of the other WTO bodies, including the reports of the Committees under the Plurilateral Trade Agreements, listed in the Proposed Agenda.

23.6. The General Council so agreed.

23.7. The Chair proposed that the General Council adopted the draft Annual Report of the General Council contained in document WT/GC/W/788, on the understanding that the Secretariat would make the necessary adjustments to that Report to include matters that had been considered at that meeting.

23.8. The General Council so agreed²⁶.

24 APPOINTMENT OF OFFICERS TO WTO BODIES – ANNOUNCEMENT BY THE CHAIR PURSUANT TO PARAGRAPH 7.1(A) OF THE GUIDELINES

24.1. The Chair recalled that the relevant Guidelines provided that the outgoing General Council Chair conducted consultations on the appointment of Chairpersons to the WTO Bodies in Groups 1, 2, 4 and 5 of its Annex. The guidelines also stipulated that the selection process should start with the Chair's announcement at the last regular General Council meeting of the year. She would be assisted in the selection process by the serving DSB Chair – Ambassador Walker.

24.2. A list of past Chairs of major bodies was available to delegations at the meeting. She stressed that in accordance with the Guidelines, representatives of Members in financial arrears for over one full year could not be considered for appointment.

24.3. They would begin the consultations early in January. She therefore encouraged the four group coordinators – (i) Africa, (ii) Asia and the Pacific; (iii) Latin America and the Caribbean, and (iv) developed countries – to already begin their process of internal consultations so that they could be in a position to present names in early January.

24.4. They would begin the process with a collective meeting of group coordinators as soon as possible, and would subsequently also indicate a specified time-period in which they would be available to hear the views of all interested delegations.

24.5. She urged all delegations to work with group coordinators with a constructive spirit. As the guidelines clearly stipulated, the process of appointment of Chairs was a routine annual "housekeeping" function, whose purpose was to ensure that the organization continued to be able to handle its business in a smooth and seamless way, and which should be approached in a way conducive to the smooth conduct of ongoing business.

24.6. Recent processes of appointment had proven to be exceptionally and unnecessarily difficult and had had serious repercussions on the conduct of the business of the organization in key areas. She trusted that all delegations would not want to repeat that experience. She counted on everyone's co-operation and positive engagement.

24.7. The General Council took note of the Chair's statement.

25 OTHER BUSINESS

25.1 Eighth China Roundtable on WTO Accessions – Statement by the Russian Federation

25.1. The representative of the Russian Federation, speaking under "Other Business", shared²⁷ with the WTO membership information on the Eighth China Round Table on WTO Accessions, which had taken place in Moscow from 4 to 6 December. Russia expressed its special gratitude to China and the WTO Secretariat for organising the event. The Moscow Round Table had been the eighth in the

²⁶ The 2020 Annual Report of the General Council was subsequently circulated in WT/GC/205.

²⁷ A report on this event was subsequently circulated in document WT/GC/204.

China Accession Round Table dialogue. The thematic focus of the Round Table had been threefold: (i) to have a dialogue on the role and contribution of WTO accessions in the discussions on WTO reform and joint initiatives, (ii) to reflect on the implications of regional integration efforts on WTO accessions; and (iii) to discuss the specific proposals of WTO acceding governments on their role and possible contribution to the outcome of the Twelfth WTO Ministerial Conference that would take place in Nur-Sultan, Kazakhstan, in June 2020. On the first day of the Round Table, participants had also debated on the state of play in ongoing accessions, discussed accession negotiation strategies, and shared best practices.

25.2. The Moscow Round Table had been attended by Chief Negotiators and representatives of ten acceding governments, eight Article XII Members, including at Minister, Deputy Minister and Ambassador level. Representatives of several other WTO Members, current and former accession Working Party Chairpersons, and partner institutions had also participated. The Round Table had demonstrated the sense of responsibility for the multilateral trading system. Accessions had made, and continued to make, significant contributions to the evolution of the multilateral trading system. WTO accessions could provide a source of inspiration and valuable lessons that would help the multilateral trading system to develop a systemic response to the rapid changes of the global economy and new challenges to the multilateral trading system.

25.3. The representative of China congratulated the Russian Federation for successfully hosting the Eighth China Roundtable. Since its inception in 2012, the event had provided an opportunity for acceding governments to better understand the WTO and help several of them join the big family. As the Russian Federation had stated, during the roundtable the previous week, participants had had an extensive exchange of views on various topics particularly on the immense difficulties faced by acceding governments such as domestic coordination, capacity gaps, lengthy process as well as high requests raised by demanding WTO Members. In that regard, China registered its constant support to the work of LDCs' accession to the WTO and would continue to provide ready effective public boost such as the China Programme to help acceding governments to address those challenges. The enlargement of the Membership could be one of the possible outcomes at MC12.

25.4. The General Council took note of the statements.

25.2 Statement by the Chair on Administrative Measures for Members in arrears

25.5. The Chair, speaking under "Other Business", noted that the revised Administrative Measures for Members in arrears in WT/BFA/132 required that, at the end of each meeting of the General Council, the Chair of the Committee on Budget, Finance and Administration should provide information with regard to which Members and Observers were under Administrative Measures.

25.6. Ambassador Dagfinn Sørli (Norway), Chair of the Committee on Budget, Finance and Administration, reported that the Administrative Measures applicable to Members and Observers with arrears in contribution had been in place since 1 March 2013. In accordance with the Decision of the General Council, he should state all Members and Observers under all categories of administrative measures. As of 9 December 2019, there had been 12 Members and 5 Observers under Administrative Measures. The following 5 Members were currently in Category I: Democratic Republic of the Congo, Liberia, Senegal, Yemen and Zimbabwe. The following Member was in Category II: Congo. The following 6 Members were in Category III: Antigua and Barbuda, Burundi, Guinea-Bissau, Niger, Sierra Leone and Bolivarian Republic of Venezuela. The following 2 Observers were in Category I: Comoros and South Sudan. Somalia was the only Observer in Category II. The following 2 Observers were in Category III: Libya and Sao Tomé and Príncipe.

25.7. The Chair said that she was required at each Council meeting to request Members and Observers in Categories II and III of the Measures to inform the Secretariat as to when their payment of arrears could be expected.

25.8. The General Council took note of the statements.

ANNEX 1**THE REPORTS BY THE DIRECTOR-GENERAL AND THE CHAIRS OF THE NEGOTIATING GROUPS AT THE INFORMAL TNC AND INFORMAL HODS MEETINGS HELD ON 6 DECEMBER 2019****Report by the Director-General¹**

Before my report this morning, I want to provide an update on the WTO budget. As you probably know, the Committee on Budget, Finance and Administration agreed yesterday on a favourable recommendation for the 2020 budget. This has been forwarded to the General Council for endorsement.

The proposed budget compromise is the result of flexibility and cooperation among Members, both here in Geneva and in capital. It represents a pragmatic response that preserves the WTO system amid turbulence in the wider international system – turbulence that we cannot wish away. I am counting on your help with approval in the General Council.

I would like to start my report with a few factual observations about the Appellate Body, the multilateral trading system, and the choices before you in the months ahead.

Observation one: as of next week, the WTO Appellate Body will be left with only one member. And as such, it will be unable to take new appeals, or even address most of the pending issues. This represents a serious challenge to the dispute settlement pillar of the WTO's work.

Observation two: the effective paralysis of the appeals function does not mean the end of the multilateral trading system. Existing WTO rules still apply. WTO disciplines and principles will continue to underpin world trade. And Members will continue to use WTO rules to resolve trade conflicts – in regular WTO bodies, through consultations, via dispute settlement panels, and through any other means envisaged in the WTO agreements. I will be there to help you, and I intend to do so even more intensively over the coming weeks.

Observation three: where we go from here is in your hands. What we do – or just as significantly, what we fail to do – will define the trajectory of this organization.

On rule-making, your choices could contribute to restoring certainty in the global economy, and help governments manage interdependence in a fast-changing world.

On the implementation of existing commitments, you have scope to make regular committee work an even more effective vehicle for fostering compliance and addressing concerns about each other's trade policies.

And on dispute settlement, you could restore the impartial, effective, efficient two-step review that most Members say they want.

Alternatively, your choices could open the door to more uncertainty, unconstrained unilateral retaliation – and less investment, less growth, and less job creation.

Let me turn now to the global trading environment. The situation remains downcast. In October, I said that our economists had downgraded forecasts for world trade growth in 2019 to 1.2%. That would be the slowest increase since the crisis a decade ago.

Our newest trade monitoring report – which we will discuss in the Trade Policy Review Body next Thursday – showed similar trends. In the twelve months before mid-October 2019, WTO Members introduced new import-restricting measures covering an estimated \$746.9 billion dollars' worth of traded merchandise – the highest figure since 2012, and a 27 per cent increase over the year before. Even more seriously, these measures are adding up over time, covering a growing share of world trade.

¹ Also issued as JOB/TNC/77.

But this same report notes that during the same twelve-month time period, the ongoing implementation of the 2015 expansion of the Information Technology Agreement continued to deliver positive results. Participating Members lowered tariffs on merchandise worth hundreds of billions of dollars, adding to the impact of the implementation of the Trade Facilitation Agreement. This is an example of the powerful impact that our decisions have in the real world.

Turning now to our negotiating work, you have just heard from the chairs. In some areas, we have seen new proposals and serious engagement. This is encouraging, and I thank you all for your efforts.

Nevertheless, the stark reality is that we remain well short of where we need to be.

On fisheries subsidies, our instructions from Ministers in Buenos Aires was to reach an agreement by the end of this year. But as you just heard from Ambassador Wills, despite hard work by negotiators, Members are unlikely to be able to meet that deadline.

You all know how important these negotiations are – for the WTO to meet its Sustainable Development Goal target; for marine conservation; and to demonstrate that multilateral rulemaking is still possible.

In some core areas, delegates are close to a draft agreement text that would be ready for engagement at a higher political level. In other areas within the fisheries subsidies negotiations, progress is still tentative.

So, I hope that Members will reach common understandings on key concepts and issues as well as on a process that can deliver a fisheries subsidies agreement by MC12. This has to be our top negotiating priority in the coming months.

On agriculture, I would like to echo the words of Ambassador Ford in welcoming the increased engagement and new submissions. I agree with his assessment that you need to build on this momentum. I urge those still working on submissions to circulate them as soon as possible so that delegates can deepen discussions in areas where there is potential for agreement. The critical challenge now is to turn "engagement" into "concrete doable elements."

Now, this focus on what is realistic and what is doable would be useful in thinking about all prospective outcomes at MC12 and also, of course, for guidance for post-ministerial work. Achieving meaningful substantive outcomes will demand flexibility, contributions, and political will on the part of all Members. Let me reiterate that the Chairs and I are, of course, at your disposal to facilitate your search for clarity on different issues.

I also know that progress has been made in the joint initiatives, but I will leave any comments here to the participants.

Let me now update you on my own activities since October.

- I attended a mini-ministerial gathering hosted by China in Shanghai on the sidelines of the China International Import Expo;
- I also participated in the trade ministers' meeting of the West African Economic and Monetary Union in Ouagadougou;
- And finally, in Geneva and elsewhere, I met bilaterally with Ministers from Members including Kazakhstan, the United States, the European Union, China, Mexico, Egypt, Lao PDR, Namibia and Sweden.

Across these discussions, I heard deep concern about the Appellate Body situation. Several Ministers offered their full backing for the Walker process. And I am looking forward to Ambassador Walker's report next week.

In addition to dispute settlement, Ministers also voiced support for wider reforms at the WTO, including a successful MC12.

I repeated to Ministers what I have told you before: the shape of WTO reform is in Members' hands to determine. As you know, it is my belief that attempting to define a precise reform "package" is likely to result in paralysis. Pragmatic improvements, harvested where opportunities present themselves, offer a much more promising way forward.

The issues to address, and how discussions are structured – that is entirely up to you. What is critical is that all discussions should be transparent and open to all Members.

Looking back, reform has been about what Members accomplish, from the Trade Facilitation Agreement to all the other outcomes we have delivered so far.

And looking ahead to next year and beyond, reform will continue to be the collective result of the choices you make - and, it must be said, the decisions you do not make.

In conclusion, I want to reiterate that strengthening the trading system would help deliver stability in the world economy today, which is much needed, and enhance our respective capacities to tackle new problems tomorrow.

Doing nothing, in the hopes of preserving what we have, is also not an option: the ground is shifting beneath our feet, and paralysis could in fact mean losing all we have.

As I conclude my report, I urge you to use today's meeting to have a focused, business-like conversation about the system and where you want it to go.

The upcoming holiday period is an opportune moment for Members to reflect on the compromises they are willing to make to achieve their goals. The months ahead will be consequential for the system and for the future of international economic cooperation. I hope you will come back to Geneva ready to engage in earnest.

That concludes my report. Thank you for your attention.

Reports by the Negotiating Group Chairs:

1. Negotiating Group on Rules

As I am currently in the middle of the last cluster of the Negotiating Group on Rules for this year, it would be premature to provide final concluding remarks on our work. However, I will provide a slightly detailed written report² to be circulated and referred in the minutes of the General Council that starts on Monday.

Although this week's meetings have not finished, this is a good opportunity to give a brief summary to the Trade Negotiations Committee of my activities since I took on the role of the Chair of the NGR.

As you know, I took the position as Chair of this Group a month ago, on 8 November, and started bilateral consultations with interested Members right away. I also called an informal open-ended meeting the Heads of Delegation level for 15 November. At that meeting I:

- reported back on the consultations;
- sought views on the current state-of-play in the negotiations on fisheries subsidies; and
- asked for guidance on how best to move these negotiations forward.

I continued with consultations and convened a subsequent informal open-ended HoDs meeting, which was held on 28 November, where I posed five substantive questions on scope, exclusions,

² See TN/RL/32.

special and differential treatment, and how the fisheries subsidies disciplines could be incorporated into the WTO system.

From the interventions in these meetings, one thing was clear; we were not going to meet the December deadline to conclude these negotiations. That is a serious setback. But, on a positive note, Members strongly expressed their commitment to conclude the fisheries subsidy negotiations by the 12th Ministerial Conference. Furthermore, they are willing to commit to an intensive work programme, including intersessional work and the facilitators were also told to continue their work, to engage with delegations in a variety of formats, and to come up with suggestions for text in areas where they think it would help build convergence.

This week, the facilitators circulated draft working papers. These are in room documents RD/TN/RL/113 to 119 and subsequent revisions. Of course, each of these papers is on each facilitator's responsibility, some of them have a greater level of maturity than others and they differ in style and approach. Although they do not replace proposals delegates engaged in a constructive discussion on their contents. It was also encouraging to hear that in two areas, subsidies for IUU fishing and to fishing overfished stocks, delegates stated they were ready to engage with the facilitators using their working papers, including the elements of texts under discussion for the new year.

By the end of today, we hope to have these working papers revised and noted by the Negotiating Group and to have a work programme from January to June 2020, with the aim of delivering a draft to MC12 that Ministers can adopt.

I am also happy to note that at my last HoDs meeting, there was support for the basic working structure for the coming months, including starting start work as early as the second week in January with another fisheries cluster.

So, the process moving forward sounds promising. However, it is only as promising as the progress on substance. I have to say, for someone entering these negotiations this late, it is quite worrying to note that the advances in the facilitators' working papers are quite modest. They are still not the "clean consolidated" texts that the Negotiating Group had been instructed to develop before the summer break.

What is evident is that Members are still holding on to their well-known positions, even at this 11th hour, or should I really say, 11th and a half hour. I would really like to avoid this cliché as I am aware that my predecessors have said it time and time again, but everyone needs to get out of their comfort zones. This is not a war, compromise does not mean defeat – indeed everyone is going to have to move away from their existing position because this is the only way to find common ground. It does not mean leaving the trenches and going into no man's land.

In my opening remarks of this week's cluster, I said that in order to get to a text-based negotiation, each delegation will need to become very uncomfortable. In the context of negotiations, uncomfortable is good. We had a taste of that this week in IUU and overfished stocks and indeed several Members expressed their discomfort with the need to separate themselves from their strict and rigid positions. But that is negotiations, and that is the only way to move forward – Members can no longer hold onto positions that remain dear to them, even if they have held on to them for several years.

Some of you have suggested holding a senior officials' meeting by next Easter, which gives us four clusters to get there. Without a significant level of progress, there would be no point in having such a meeting. I will have to make a judgement call as work progresses.

Also, if we want to meet our SDG 14.6 mandate, which is a clear instruction from our Heads of State and repeated by our Ministers, then we are ALL demandeurs meaning that we should all want a meaningful outcome. So, lets really roll up our sleeves during the next coming months and do what we are supposed to do – be flexible and negotiate.

As mentioned in our last RNG HoDs, I will be calling on you as Heads of Delegations as needed. You have also given me the flexibility to call meetings at different levels and all types of configurations. So be ready, from today onwards I have you all on speed-dial.

2. Committee on Agriculture in Special Session and Sub-Committee on Cotton

1. The key message of my report today is that we have reached the turning point towards an increased pace and intensification of the discussions towards negotiations on the agriculture file.
2. Since the last TNC meeting, on 14 October 2019, the CoA SS has witnessed a significant increase in the level of engagement. In the two CoA SS meetings and the Dedicated Sessions on PSH and SSM held since then (on 28 October and on 25-26 November), numerous new submissions have been tabled, and several imminent submissions were announced.
3. In October, two submissions were introduced: one on the pillar of Market Access, by the United States (on "Tariff peaks") and one on Cotton, by the C-4.
4. It is the November meetings however, that saw a real increase in engagement. Eight additional submissions were made:
 - two in the Market Access pillar - one by the United States (on Tariff Rate Quotas) and the other one by Australia and Canada (on the treatment of shipments en route);
 - one in the export competition pillar focusing on transparency was tabled by Canada (co-sponsored by Norway and Switzerland); and
 - four in the Domestic Support pillar: one from Australia and New Zealand and one by Canada (on the evolution of the future domestic support entitlements); one by Russia (introducing a new formula for the reduction of Trade Distorting Support); and one by Costa Rica (suggesting an approach that calls for the contributions to be proportional to the trade distorting potential).
 - The eighth submission, made by the African Group was cross-cutting and covered Domestic Support (including for Cotton) and transparency related issues, PSH and SSM.

In short, some Members have pursued their analytical work and new creative ideas and approaches, related to both transparency and substantive disciplines, and added them to the list of ideas already on the table. The discussions and submissions also confirmed the priority of Domestic Support for the majority of Members, and the growing interest by several Members in various Market Access issues. The exchanges on PSH, SSM, Export Restrictions and Export Competition confirmed the interest of the proponents. However, a continuing low-level engagement on PSH and SSM reinforces the difficulty in these two areas. I also held a Cotton Quad Plus meeting on 26 November to address Cotton which also is a priority for many Members.

In light of the flurry of submissions, some Members stressed the need to pursue work towards building consensus and operationalising our collective commitment for agricultural reform.

I see this increased level of engagement as a turning point towards a higher gear in the pace and intensity of the discussions. I see it also as a strong signal about Members' willingness to start debating on what may be feasible at or for MC12. My intention is to make every effort to build on this momentum.

I have therefore called upon Members, especially those who informed me that are still working on their submissions, to put them forward as soon as possible, preferably, before the Christmas break. I have also urged Members who have submitted papers to share more information, especially the numbers reflecting the implications and the insights, with the rest of the membership and encouraged all Members to engage with each other and take full advantage of the coming weeks to transform the various ideas on the table into concrete potential doable, negotiable elements. I expect the additional inputs signalled to be delivered soon, and I expect them to help in framing the way to a meaningful outcome.

Therefore, I expect that before the end of the year, early in January, we would hopefully be working around a platform that leads us to texts around which we hold our negotiations. It remains to be seen what it would look like and what it would apply to, but it must be framed in such a way that negotiated outcomes might be possible.

As from January, we will have only five months till MC12. The next meeting of the CoA SS is scheduled to take place on 27 and 28 January. In the intervening period, I will have intensive consultations in various configurations and in particular with groups representatives and members of those groups as well as bilaterals.

I renew my call to all Members to work together to see how we can achieve our goals and move towards increased prosperity resulting from a stable, predictable, fair agricultural trading environment.

With greatly reduced trade-distorting capacity and practices, I remain committed to finding a path that takes us to a meaningful outcome by MC12.

3. Committee on Trade and Development in Special Session

After my election as Chair of the Special Session of the CTD at a formal meeting of the Committee held on 25 October, I reached out to several Members for some bilateral one-on-one meetings, with the objective of listening to views and thoughts on where we stand, and how we could move forward in our work. These conversations were particularly useful for me to better appreciate the perspectives of various Members on the work of the CTD SS.

With regard to substance, a new submission by the G90 was made available to Members on 20 November in the form of a room document. The document reference is RD/DEV/182.

I convened an informal, open-ended meeting of the CTD SS on 27 November, in order to allow the G90 to introduce its new submission in the CTD SS, and to hear initial views from Members.

My understanding of the new submission is that it is meant to serve as a discussion document. As explained by the G90, the same ten proposals submitted in 2017 remain on the table for the proponents, since the issues raised in these proposals remain of relevance and concern to them. In addition to listing the ten proposals, the new submission attempts to explain the rationale behind each of the proposals.

I will be frank. Members' reactions to the new G90 submission were mixed, at best. Although there were some indications of willingness to engage, there was also an expression of disappointment from several delegations, who shared the view that having the same conversation as in the past, on the basis of the same proposals, will not contribute to advancing the work of the CTD SS.

I must say that the reactions to the G90 submission did not come as a surprise to me, especially since the delegations that I had met bilaterally had earlier shared their positions with me.

Nevertheless, the discussion at the informal, open-ended CTD SS meeting served as a reality check for all of us. Indeed, if there is to be any chance at all to have an outcome on S&D at MC12, it is clear that Members must move beyond their well-known positions, and find ways to be creative. This is the message I shared with Members in closing the meeting on 27 November.

I will still need to decide how to proceed with the next phase of work in the Special Session.

The intention would be to facilitate discussions in informal settings. But before coming to any specific determination about next steps, I intend to first meet with the G90 representatives, to hear their views on how they see the process going forward. I will also be continuing to reach out bilaterally to other Members for conversations on a one-on-one basis.

I will, of course, be keeping Members informed of how I intend to proceed. This concludes my statement.

4. Council for TRIPS in Special Session

As you know, despite various efforts, for some time now there has been little activity in the TRIPS negotiations on a multilateral register for wine and spirit GIs for some time now. While there had been some signs of active reflection on the part of the demandeurs last year – these have not resulted in any concrete initiative or declaration in the TRIPS Special Session. I have also not been able to detect any movement in Members' positions over the course of this year.

In small group discussions held on 1 May, I once again pointed out that this lack of activity in the TRIPS Special Session stands in marked contrast with the dynamic activity on GIs in Bilateral and Regional Trade Agreements. These are creating multiple new protection regimes for GIs. Unfortunately, this outside momentum has not translated into increased initiative in this negotiating group, which has not engaged in the substance of its mandated work on a GI Register for wine and spirit GIs for some time now. At the consultations, I suggested that an exchange between delegations on relevant developments in recent bilateral trade agreements and domestic GI protection systems could be useful for the work in the TRIPS Special Session, where negotiating positions date from as far back as 2008. However, while all delegations promised to raise my suggestion with their capitals, their substantive positions remained the same.

Equally, at the open-ended informal meeting of the TRIPS Special Session on 4 December, the delegations supporting the modalities proposal in document TN/C/W/52 reiterated once again the importance they attached to the TRIPS issues and confirmed their view that the WTO was the right forum to discuss these questions. They emphasised their commitment to the parallel advancement of all three TRIPS issues – the GI register, GI extension and the relationship between the TRIPS Agreement and the CBD – however, they judged that the current negotiating context was, in their view, not conducive to engaging substantively at this time.

The delegations supporting the Joint Proposal reiterated their position that while they were open to considering negotiating proposals, any activity in the TRIPS Special Session needed to respect the negotiating mandate that was limited to wine and spirit GIs. One delegation argued that the longstanding divergence of views meant there was little likelihood of an outcome, and it was therefore opposed to any intensification of work in any of the Doha negotiating groups.

In light of the above, I am compelled to report once again that the situation remains unchanged, and that there is no appetite for substantive engagement in the TRIPS Special Session on either side of the debate.

It is my personal view that this state of affairs represents a lost opportunity for useful multilateral work in the area of GIs. I am aware that the increasing number of bilateral agreements on GIs, and the impending entry into force of the Geneva Act of the Lisbon System, are signs of success for the legitimate users of GIs protected under these systems. However, this increasing multiplicity of protection systems also means, that to establish the exact nature and scope of protection of an individual GI in a given jurisdiction is becoming more difficult, not less. The relevance and need for accurate information on GI protection is reflected in the increasing number of initiatives for GI registers by business associations that struggle to collect and present this information that is so important for traders and users of GI-protected products. At a time when Members are increasingly considering how to enhance transparency, this strikes me as a compelling area where a combined effort to improve information can deliver concrete benefits for businesses and producers across the Membership.

I believe that in this context, a reliable multilateral register for wine and spirit GIs, that reflects the actual details of protection in individual jurisdictions, could effectively complement bilateral and plurilateral GI developments, and make a real contribution to addressing the practical needs of traders in products that are covered by the GIs in such a register.

Although recent experience is not positive, it remains my hope that delegations will eventually return to substantive discussions in the TRIPS Special Session and work towards a useful multilateral contribution in this area.

As always, I will be ready to help them once they do.

I will conclude by saying that I shall circulate a written report under my own responsibility before the end of the year.

5. Dispute Settlement Body in Special Session

As I mentioned at our previous meeting, I have been consulting informally with interested delegations to hear their views on the work of the DSB in Special Sessions.

On 27 November 2019, I also held an informal open-ended meeting to report on these consultations and to provide an opportunity to all participants to express their views on the work of the group.

As I reported at that meeting, the delegations I have met with expressed support for the work of the DSB in Special Sessions. At the same time, concern has been expressed that resuming intense work in the Special Sessions may not be fruitful at this time, as the attention of participants is focused on more pressing issues relating to the functioning of the dispute settlement system. Certain Members believed that the group should continue to work ahead despite these challenges.

For now, I have informed participants that I do not propose to schedule further meetings before the end of the year, but remain available to meet with them and hear their suggestions.

ANNEX 2**STATEMENTS BY MEMBERS AT THE INFORMAL TNC AND INFORMAL HODS MEETINGS HELD ON 6 DECEMBER 2019**

Following the Director-General's statement at the above-mentioned meeting, the statements made by: Argentina (Colombia, Iceland, New Zealand, Panama, United States, Uruguay and Argentina); Japan; Benin (African Group); Paraguay; Costa Rica (Joint Initiative on Services Domestic Regulation); Republic of Korea; Turkey; Australia (Joint Statement Initiative on Electronic Commerce); Thailand (ASEAN); Russian Federation; Chad (LDCs); India; Vanuatu (ACP); European Union; Pakistan; United States; Egypt; Norway; China; Uruguay (Informal Working Group on MSMEs); Canada (Ottawa Group); Brazil; Singapore; Peru; Switzerland; South Africa; Mexico; Chinese Taipei; Indonesia; Iceland; Bolivarian Republic of Venezuela; Hong Kong, China; Nigeria; Solomon Islands (Pacific Group); Chile (Structured Discussions on Investment Facilitation for Development); Kazakhstan; Panama (Article XII Members); Israel; Malaysia; Trinidad and Tobago (CARICOM); Colombia; St. Lucia (OECS); Nepal; Cambodia and Viet Nam are included below as part of the Minutes of the General Council meeting.

1. Argentina (Colombia, Iceland, New Zealand, Panama, United States, Uruguay and Argentina)

Our delegations commit to continue to engage constructively in the fisheries subsidies negotiations in order to adopt an agreement on comprehensive and effective disciplines as called for by Ministers in the Buenos Aires Decision of 13 December 2017 in document WT/MIN(17)/64 – WT/L/1031.

We welcome the appointment of Ambassador Santiago Wills (Colombia) as the new Chair of the Negotiating Group on Rules and are confident that his leadership will help us meet our mandate by the Twelfth Ministerial Conference in Nursultan, Kazakhstan on 8-11 June 2020.

The health of our oceans and the credibility of the WTO depend on our success. We welcome the progress made this year in the Negotiating Group on Rules including consideration of a range of new and updated proposals aimed at finding common ground in the negotiations.

We are committed to building on this proposal to reach a meaningful outcome that will prohibit subsidies that contribute to illegal, unreported and unregulated fishing and overfished stocks, and we further support targeted prohibitions on subsidies that benefit large, industrial fishing fleets as well as further constrain on subsidies that contribute to overcapacity and overfishing.

We note recent proposals by some of the largest fishing nations and subsidizers and call upon all Members to contribute to a successful and meaningful outcome commensurate with their roles in the fisheries sector.

We further welcome the submissions by 71 Members of updated subsidies notifications pursuant to the Buenos Aires Ministerial Decision and in accordance to Article 25.3 of the Agreement on Subsidies and Countervailing Measures in order to strengthen transparency in the fisheries subsidies negotiations. These updated subsidies notifications were due on 30 June 2019. We call upon those that have not yet notified to do so by the end of this year.

As we near the successful conclusion of the negotiations, we further recognize that appropriate and effective special and differential treatment may include transition period for individual Members with specifically identified needs in the context of their implementations of disciplines under negotiation.

We commit to continue to work constructively with the Chair and Members under his leadership in order to lock in convergence, narrow differences and reach an agreement that represents new, meaningful constraints on harmful fisheries subsidies which can serve as the WTO's contribution to the long-term health and sustainability of our oceans.

2. Argentina

As a country with a coastline that suffers from illegal fishing because of incursions into our jurisdictional waters by foreign fleets of subsidized fishing vessels, we regret that the WTO is facing yet another missed deadline. We trust that Ambassador Wills, with the help of Members, will inject new life into these negotiations.

We cannot be petty in our contribution to the furtherance of SDG 14.6. In the same way that "justice delayed" is not always effective justice, "contribution delayed" can also be rendered useless.

With respect to the agricultural trade reform, almost 20 years have passed and we have seen no evidence that time has closed the gap in the divergent approaches to the issue of subsidies that distort production and agricultural trade. We urge Members to review their positions and to broaden their scope of flexibility.

As regards the joint initiatives launched in Buenos Aires, we are pleased to note that 2019 has been a year that significantly built on the progress achieved in 2018, and we hope that more delegations will decide to join in.

3. Japan

This is the last TNC/HODs that I attend as Ambassador of Japan. I arrived here soon after MC10 in Nairobi, where Members achieved certain outcomes such as the elimination of agricultural export subsidies, but disagreed over the way forward for multilateral negotiations. Since then, my impression is that we have still been stuck in soul-searching mode. But today, facing daunting challenges in which the survival of the multilateral trading system is at stake, we need to act and move forward on the important agendas including the WTO reform.

On the dispute settlement mechanism, Japan supports the adoption of the draft decision proposed by Ambassador Walker, which is based on the points of convergence, and simultaneous initiation of the selection processes to fill the vacancies of the Appellate Body. On the other hand, the proposed decision does not address all the issues. We must therefore continue our discussions on remaining issues either in the Informal Process or in any other suitable fora in order to find a long-lasting solution to the Appellate Body matter.

Japan continues to place emphasis on transparency and notification as an important part of the WTO reform. Together with the other proponents, Japan will continue to work to reach a consensus at the earliest possible juncture.

Regarding fisheries subsidies negotiations, despite firm commitment by Members, there are still many issues we have yet to resolve. Now, under the new Chair, all Members need to shift gear and push this negotiation forward. Japan welcomes the start of a text-based discussion in some areas. Our mandate is clear. We need to work on creating meaningful rules to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing. In line with this mandate, Japan stands ready to make a constructive contribution to finding common ground in this negotiation.

I am heartened to see progress made in several joint statement initiatives. We welcome, in particular, the recent development on e-commerce negotiations and reiterate the importance of deepening discussion with a wide range of stakeholders in the aim of achieving substantial progress by MC12. As to the extension of the customs duties moratorium, Japan strongly believes that we should extend our current multilateral practice of the moratorium, at least until MC12. We are prepared to engage ourselves in meaningful discussions on the moratorium towards MC12.

On services domestic regulation, Japan welcomes the steady progress in negotiation of domestic regulation disciplines within the joint statement initiative. Japan submitted its indicative draft schedule in October, and we acknowledge that 51 Members have already submitted their draft schedules. Japan will continue to contribute to the discussion, aiming for a concrete outcome by MC12.

As for the joint statement initiative on investment facilitation, Japan believes that the meaningful outcome of this initiative will lead to promoting economic growth by improving the environment for

inbound direct investment including in developing countries and the LDCs, and by enabling MSMEs to better access foreign markets.

To conclude, Japan will continue to work hard to contribute to overcoming the challenges facing the WTO and achieve meaningful outcomes at MC12.

4. Benin (African Group)

The African Group thanks the Director-General for his report, as well as the Chairs of the Bodies for the status reports they have presented to us.

We would like to stress the need to accelerate our work with a view to achieving results that take into account the needs, concerns and priorities of developing Members, and least developed countries (LDCs), in particular, as reflected in recommendations made by the African Group at the end of its Retreat held in Geneva on 23 November 2019.

The Group would like to highlight, in particular:

- The need to work towards achieving, by the time of Nur-Sultan, meaningful outcomes towards reduction of domestic support that affects international trade in agricultural products, including cotton, by reducing the Aggregate Measurement of Support (AMS), and to address the historical imbalances of green box supports, as well as introducing more effective disciplines for the blue box.
- Effectively addressing the situation of Net Food Importing Developing Countries (NFIDCs), many of whom are LDCs, which are increasingly confronted with the challenges of food security and impacts of climate change to their livelihood.
- Similarly, a permanent solution must be obtained for the management of public stocks for food security purposes. Appropriate modalities for the establishment of the Special Safeguard Mechanism will need to be agreed. We are concerned with regard to impact of domestic regulation of trade in services on countries' ability to regulate their markets. The preferential rules of origin for LDCs, and the duty-free and quota-free access regime for products exported by LDCs, should be made effective for this category of countries, including those in accession.
- With regard to Special and Differential Treatment, the Group urges Members to take action to implement the mandate contained in Paragraph 44 of the Doha Ministerial Declaration, aimed at making the S&DT provisions more precise, more effective and more operational.
- In addition, the African Group stresses the importance of WTO Members to adopt measures to eliminate subsidies contributing to illegal, unreported and unregulated fishing as well as subsidies to large scale fisheries that are harmful to the sustainable fisheries as instructed in SDG 14.6, while allowing appropriate S&DT for developing countries, and LDCs in particular as outlined in the MC11 decision. Disciplines will need to focus on large-scale fisheries and target subsidies that contribute to overfishing and overcapacity.
- The African Group urges other WTO Members to work towards relaunching the process of selecting Appellate Body members. The aim should be to reach by consensus solutions that are acceptable to all, while preserving the fundamental characteristics and integrity of the legal and jurisdictional system embodied by the Appellate Body.
- Ongoing consultations on WTO Reform should result in effective consideration of the needs, constraints and priorities of developing countries, in particular those of LDCs, through the adoption of special and differential treatment in the current and future agreements, including for the strengthening of productive capacities and to ensure that developing countries move up value chains.
- The African Group remains concerned about the implications of the Moratorium on Electronic Commerce on revenue losses related to electronic transmissions, and recommends that appropriate modalities for the treatment of such losses be sought, including through compensation.

- Regarding the Moratorium on Non-Violation and Situation Complaints under the TRIPS Agreement, the flexibilities provided to developing countries under this Agreement are fundamental, including those in relation to the promotion of public health. Since the scope and modalities of non-violation complaints have not yet been determined, the African Group supports the extension of the Moratorium.
- Finally, the African Group informs the other WTO Members that the African Union renewed, on 21 November 2019, its request for observer status with the WTO. We urge Members to respond favourably to this request, which will concretely and effectively reflect the principle of inclusion, defended within the organization. This is a step after the launching of the African Continental Free Trade Area.

5. Paraguay

Paraguay, as a supporter of the multilateral trading system, reaffirms its commitment to the WTO as a forum in which we hope to achieve concrete results in respect of several areas.

Regarding reform, Paraguay believes that the discussions should continue to be inclusive and transparent, and respect the development component as a fundamental principle and right of Members. We must preserve special and differential treatment for those Members who really need it. Furthermore, the discussion on improving transparency and notifications should move away from the punitive approach and focus on finding a solution that would make it possible to identify not only appropriate incentives, but also the most effective mechanisms for enabling Members to fulfil their outstanding obligations.

Turning to the Appellate Body, we reiterate our deep concern regarding the current situation, and are grateful to Ambassador Walker for all his efforts. The dispute settlement system is vital for the security and predictability of the multilateral trading system. We therefore deeply regret that the Appellate Body will cease to function as of 11 December 2019. The Membership's priority must be to fill the vacancies without further delay, and pragmatic decisions are called for now that the deadline has been reached.

As regards the agriculture negotiations, we would like to thank the delegations that presented new proposals during the most recent Special Session of the Committee on Agriculture. We believe that there is sufficient material on which to reflect. Paraguay reiterates that it is seeking a package outcome, one containing important elements from the market access pillar. We will be working with the delegations that are interested in our contributions to make progress within this pillar.

With regard to the negotiations on fisheries subsidies, we would like to congratulate the Ambassador of Colombia, Santiago Wills, on his recent appointment as Chairman. Paraguay urges Members to redouble their efforts to deliver on the Ministerial mandate and conclude the negotiations, without prejudice to the rights that international law bestows on landlocked WTO Members.

As a signatory to the Joint Statement on Services Domestic Regulation, we reaffirm our commitment to making progress on outstanding issues, and hope to achieve an outcome that will enable us to improve the regulatory environment for trade in services.

Paraguay faces enormous challenges on account of its geographical position. We are faced not only with a lack of logistical connectivity and cost overruns in the transport of goods, but also, in this new digital era, with an obstacle that has an even greater impact on our development: our status as a digitally landlocked country. For this reason, Paraguay supports the extension and renewal of the moratorium at least until the Twelfth Ministerial Conference in June 2020, as well as the continuation of the 1998 Work Programme on Electronic Commerce.

With respect to participation in the various Joint Initiatives, we view with much enthusiasm the WTO's potential to generate new disciplines that are linked in a cross cutting manner to trade facilitation. This is why we firmly support the work of the Initiatives on Electronic Commerce, Facilitation of Investment for Development, and MSMEs. We hope that the discussions will remain open and transparent, as they have been up to now, and we call upon Members, in particular LDCs and landlocked developing countries that have not yet participated in the Initiatives, to make their concerns and interests known, so as to enhance the inclusive nature of these discussions.

As a signatory to the second Joint Statement on Electronic Commerce, we reaffirm our commitment to the current negotiating process. Paraguay hopes to continue participating actively in the forthcoming sessions with concrete proposals that reflect our digital needs and interests, and, in particular, the interests of landlocked developing countries.

We would also like to announce that we signed the Joint Statement on Investment Facilitation for Development in Shanghai on 5 November. We are determined to step up our efforts to further develop the multilateral framework for facilitating foreign direct investment, while working towards a concrete outcome for MC12.

My delegation is ready to actively contribute to the discussions held in the run up to the next Ministerial Conference. We hope to work constructively with Members in order to achieve tangible outcomes in the next few months.

6. Costa Rica

I would like to reiterate the value of the WTO and the importance my country places on its proper functioning so as to ensure that the organization retains its fundamental role in the global economy. In times such as these, it is even more important for this organization to continue responding to economic developments, thereby reaffirming its central role as a guarantor of market access opportunities and non-discriminatory treatment.

I would therefore like to reaffirm Costa Rica's commitment to the WTO and to the reform process that is needed to strengthen the organization. For instance, we are co-sponsoring initiatives to improve the fulfilment of transparency obligations, and are participating in joint initiatives to facilitate progress in a number of areas that call for joint action within the WTO, such as electronic commerce and the domestic regulation of services. We are pleased with the progress achieved in all these areas.

Costa Rica has promoted and supported pragmatic solutions to the concerns expressed on the functioning of the dispute settlement mechanism. We are concerned by the current situation and thank Ambassador Walker for his work. We endorse the report and the solutions proposed, which we see as a good basis for quickly moving forward in the process for selecting members of the Appellate Body.

We also need to conclude and fulfil our mandate concerning critical global issues such as fisheries subsidies. We regret that it was not possible to meet the deadline set by our Ministers to conclude the negotiations in December, and we are committed to beginning the new year with renewed vigour and political will to resolve the issues under discussion.

Reforming the agricultural trade distorting support pillar is still a priority for Costa Rica. Looking ahead to MC12, in order to arrive at a successful outcome, a pragmatic approach is required in the current context, without lowering the level of ambition that is needed for a gradual process of reform. Costa Rica is prepared to work with all Members in exploring new ideas that might achieve a balanced result; that limit the spread of trade distorting support, and that incorporate the principles of proportionality and progressivity into the disciplines, so that those with the greatest distorting potential, will contribute proportionately to finding solutions.

Our organization and the multilateral trading system are facing many challenges. However, MC12 offers us a unique opportunity and shared responsibility to change the course of things. We must persevere on this path in search of understandings and agreements. We must also strengthen mechanisms that foster understanding and create confidence among us all. Costa Rica is ready to take up this challenge.

Now, if you will allow me, I would like to give the floor to Jaime Coghi, Chairman of the Joint Initiative on Services Domestic Regulation.

7. Costa Rica (Joint Initiative on Services Domestic Regulation)

I welcome the opportunity to provide an update on the open-ended negotiations in the context of the Joint Initiative on Services Domestic Regulation.

In the most important development since my last report, 24 delegations have circulated their indicative draft schedules in which they propose to inscribe the draft Reference Paper on Domestic Regulation into their schedules of commitments. They count for 51 WTO Members.

The exchange of indicative draft schedules constitutes an important milestone in these open-ended negotiations. Several participants with fewer commitments have already indicated that they might be ready to expand the sectoral coverage of the disciplines in their schedules of specific commitments.

In addition, participants have been able to resolve some of the outstanding issues in the Reference Paper at their last meeting, moving the text closer to finalization.

All this demonstrates that participants remain committed to delivering an outcome at the next Ministerial Conference in June 2020 in Kazakhstan.

The outcome of these open-ended negotiations will be consistent with GATS obligations and follows well-established WTO procedures. The disciplines that Members would inscribe as additional commitments in their schedules would apply on an MFN basis. The adoption of these disciplines would hence bind only participating Members but benefit all Members without diminishing in any way their rights under the GATS.

As key next steps, the Group will work towards finalising the text of the Reference Paper in early 2020. Furthermore, participants are committed to continue conducting their deliberations in an open, inclusive and transparent manner, and to address the concerns and interests of all WTO Members. Participants are convinced that their work is a valuable contribution to facilitate services trade and promote economic growth and development.

To conclude, I invite all Members not already part of this process to engage actively in the discussions and consider joining the Joint Initiative on Services Domestic Regulation.

8. Republic of Korea

The WTO celebrated the 30th anniversary of the TPRM last week. TPRM plays a crucial role in strengthening transparency in the WTO making the mechanism one of the critical components of the organization's monitoring function. Unfortunately, the two other key pillars of the WTO are facing a more negative situation.

First, I echo the concern raised by other delegations about the urgent need to find a solution to the Appellate Body issue. We are less than one week away from a paralysed Appellate Body. The Members should put in best efforts despite the little time that remains. I will defer a more detailed statement for a relevant agenda at the General Council meeting next week.

Second, the negotiating function of WTO has not been productive for some time. The Members should ratchet up its effort in the run up to the MC12. In this regard, I would like to touch on some topics of importance to Korea.

Regarding fisheries subsidies negotiations, it is regrettable that we cannot meet the deadline, which is given to us by MC11. We cannot afford to miss the deadline again. This negotiation should be successfully concluded by MC12 in order to ensure the sustainability of fisheries as well as to prove the relevance of the WTO's negotiating function. To this prove the relevance of the WTO's negotiating function. To this end, meetings should be transformed to a constant negotiating mode by making accelerated efforts.

Next year, all Members should do their utmost to move the negotiation forward according to the working scheme under the new Chair's leadership. In particular, to make progress on the disciplines on "Overfishing and Overcapacity", we should bear in mind that differentiating between beneficial subsidies and harmful ones is crucial.

Regarding e-commerce, we have achieved extensive progress through six rounds of negotiations. We were able to review and revisit all areas of concern presented in various proposals on an equal footing. In the run up to MC12, I believe that we can reach an important milestone through additional

rounds of intensive engagements for a consolidated text that is more succinct and less divergent in the key areas of interest. I call for continued efforts to accelerate this progress.

Korea reiterates its support for a permanent moratorium on customs duties for electronic transmission. It is evident from our twenty year long experience and from the many studies published that the benefits of continuing the moratorium outweigh any potential risk being posed by constraining a nation's digital industrial policy.

On services domestic regulation, Korea is pleased to be an active player in the negotiations. More and more disciplines are being agreed upon in the reference paper and twenty-four indicative draft schedules have already been submitted. This is the kind of progress we need to keep up the momentum for a concrete outcome. Korea, along with other MIKTA members, organised a workshop on "Regulatory Frameworks to Facilitate Trade in Services" in an effort to reach out to other Members on this important subject. I appreciate the close coordination among the MIKTA members, and also would like to thank the Director-General for his participation to the event.

I encourage all other Members to join in the negotiations on services domestic regulation as the regulatory framework built on transparency and coherence will certainly lead to sustainable growth and development for all Members regardless of where they stand.

Last but not least, Korea also continues to support the future work in other Joint Statement Initiatives including the preparation of a streamlined text on investment facilitation, a Ministerial Decision on MSMEs, and discussions on Women and Trade.

It is not a secret that the WTO is in a serious crisis. Some commentators even go one step further to question whether this organization can survive in the years ahead. Frankly speaking, these alarming remarks are no longer something we can sweep under the rug.

Unlike the commentators that have the luxury to stay pessimistic, I believe we are all here to work together and to find a solution to this crisis. We, the Members, should take the first step by coming together in a cooperative spirit, in support of the WTO and the rules-based multilateral trading system.

9. Turkey

In the last General Council meeting of the year, we regret that current tensions continue to present a series challenge to the WTO, which in turn hurts the effectiveness of the multilateral trading system. With the de facto disabling of the Appellate Body, we are adding yet another dimension to the current negative picture.

We also regret that the Appellate Body selection process cannot begin as there is now even more uncertainty on how to address the pending appeals. As we said before, we acknowledge that some Members have concerns regarding the functioning of the Appellate Body. Turkey has clearly shown its readiness to address these issues. We expect all Members to show a similar level of commitment and engagement, so that the organization can move forward. Otherwise, we will be risking the gains for the multilateral trading system achieved by the Marrakesh Treaty.

Turkey recognizes there is room to update the WTO rulebook. There are a number of proposals and initiatives to that effect. We hope that this exercise can be translated into some actions and concrete outcomes for the Ministerial in Nur-Sultan.

I also would like to recall that the WTO is a unique platform for developing Members and LDCs as it stands out as an organization giving equal say to all its Members. It also stands out as an organization that has managed to keep the delicate balance between Members with different development levels. S&DT provisions, in a sense, is an entrenched principle and a key objective of the WTO. In our view, reform discussions should accommodate the development needs of Members.

Reform discussions do not mean we should not aggressively pursue our current negotiation topics.

On agriculture, fruitful discussions took place in recent CoA SS meetings. We see there is convergence among Members that agriculture should be one key outcome at MC12. We believe that any outcome should push existing discussions forward, especially on domestic support and SSM.

Domestic support is one of the priority issues not only for Turkey but also for the overwhelming majority of Members. Any outcome on domestic support should focus on correcting the existing imbalances in the Agreement on Agriculture and should result in a fair and development-oriented outcome.

Considering the increasing volatility in agricultural markets, an effective and operational SSM remains critical to provide predictability and to address the challenges resulting from import surges and price volatilities.

For fisheries, we have underlined three priorities for which there is convergence mainly on the scope of the agreement and crosscutting issues.

- First, inland fisheries and aquaculture should be kept out of the scope of the new discipline.
- Second, negotiations should focus on disciplining specific subsidies within the meaning of the SCM Agreement and non-specific subsidies should be kept out of the scope.
- Third, as set out by our mandate, appropriate and effective S&DT should be an integral part of the negotiations. The ongoing negotiations should result in a fisheries subsidies discipline that is practical and simple considering Members' different situations and development levels.

For services, specifically on services domestic regulation, Turkey welcomes the fact that in the current state of play, the Reference Paper is getting closer to be finalised. We submitted our draft indicative schedule in October, indicating our intention to subscribe the disciplines contained in the Reference Paper as additional commitments.

We have also demonstrated our commitment to apply the domestic regulation disciplines to some additional sectors. We will continue to support the work in this initiative with a view to adopting the domestic regulation disciplines by MC12.

On the joint statement initiatives, we consider them to be proof that the WTO can respond to the rapidly changing nature of the global economy. Turkey has been actively participating in all initiatives. Since Buenos Aires, some extensive work has taken place under these initiatives and we are looking forward to seeing results by MC12.

MC12 will be hosted by an Article 12 Member. This is meaningful in terms of accessions. Accessions contribute to the universalization of the multilateral trading system. In our view, the processes of Belarus and Bosnia-Herzegovina have reached a level of maturity.

We are also looking forward to registering progress on all these issues in the new year.

10. Australia (Joint Statement Initiative on Electronic Commerce)

I will first provide a report on negotiations under the Joint Statement Initiative on Electronic Commerce on behalf of the co-convenors: Australia, Japan and Singapore.

We have worked actively to achieve the objective agreed by our Ministers in Davos to achieve a high standard outcome on the trade-related aspects of electronic commerce that builds on existing WTO Agreements and frameworks with the participation of as many WTO Members as possible.

Since the October HODs/TNC:

- we have welcomed two new Members, Indonesia and Cameroon, bringing the number of signatories to 82;
- held two negotiating rounds (22 to 25 October and 19 to 22 November); and,
- the co-convenors have conducted Ambassador-level consultations.

The October round covered – digital trade facilitation and logistics, data flows and localization, privacy, cybersecurity and telecommunications. The November round covered – customs duties on electronic transmissions, access to the internet and data, source code, ICT products that use cryptography, capacity building, legal issues and market access.

At both rounds, negotiations were structured around "streamlined texts" drawn from proposals made by Members. Facilitators also circulated updated comparison tables to inform discussions.

Throughout the year, our negotiations have been constructive and useful in highlighting areas of convergence; where further streamlining of the text could be possible; and identifying specific points of difference where further work was needed.

An organizational meeting is scheduled for 16 December, where we will discuss the Work Plan for next year and the format of future meetings.

We continue to work to ensure this initiative is transparent and inclusive: all meetings have been open to all WTO Members; and all proposals and reports are available on the WTO's online portal.

And we continue to encourage Members, particularly developing countries and LDCs, to highlight the opportunities and challenges they face to ensure these are taken into account in the negotiations.

Our negotiations have been complemented by seminars run by stakeholders in the margins, open to all WTO Members, which have provided valuable real world perspectives on issues such as online consumer protection, the e-commerce moratorium, the value of digital trade for small business and electronic payments.

We look forward to a continuation of the constructive engagement and momentum demonstrated in this initiative this year into 2020 with the aim of achieving substantial progress by MC12.

11. Australia

Like many others, Australia is a major beneficiary of the WTO and its framework of rules, which help to promote and protect an open global trading system.

We are at a crucial moment in the history of this organization. In three weeks' time, we will celebrate the WTO's twenty-fifth birthday. As the Director-General has noted, we are facing many serious challenges but also have the opportunity to shape an organization that can respond to the changing nature of modern trade while continuing to provide a rules-based system that benefits all.

The task ahead will not be easy but we have been encouraged by the strong engagement and the numerous initiatives that have come forward in recent months.

An immediate concern is the need for a properly functioning dispute settlement system. We need to intensify our efforts to find concrete solutions to identified concerns on the Appellate Body and to resolve the appointments impasse quickly. We urge Members to work together to maintain a binding dispute settlement system that enforces the rules to which we are all committed and benefit from.

Another urgent priority is to find a meaningful outcome on fisheries subsidies. We welcome the active leadership of Ambassador Wills since his appointment as Chair, and strongly support the statement delivered by Argentina. We believe we can design disciplines that target harmful subsidies while leaving appropriate policy space for Members' national priorities. This, combined with a capping approach to ensure real reductions in global levels of fisheries subsidies, would be a meaningful and necessary outcome, and we look forward to working with Members to achieving this.

Of course, Australia is firmly committed to making progress in agriculture, particularly on domestic support, and we thank Ambassador Ford for his guidance and energy throughout the year. Together with fellow Cairns Group Members, we will bring forward new ideas to cap and reduce growing agricultural subsidy entitlements. This we believe is a matter of urgency. Our most recent analysis shows that WTO Members will amass entitlements of more than USD 2 trillion in trade-distorting agriculture subsidies by 2030 with the vast majority of USD 1.7 trillion of this in the hands of just 10 WTO Members.

We will also continue to contribute actively to the Joint Statement Initiatives and seek substantial progress on these by MC12. We see these initiatives as integral to the future of the organization, focusing as they do on issues of core interest to business and the community. The WTO must be working on e-commerce, services domestic regulation, investment facilitation, MSMEs and women's economic empowerment – this is where our business sector and communities are focused and we must be as well.

In particular, we now have a clear pathway for a concrete outcome on services domestic regulation by MC12 and are pleased that, to date, 51 WTO Members have submitted draft indicative schedules incorporating the negotiated domestic regulation disciplines on an MFN basis.

We strongly support the e-commerce moratorium. We believe the six-month extension to MC12 that we propose is a modest but pragmatic step that fulfils the intent of the original MC11 decision.

Finally, we reiterate the importance of improving transparency and the overall operation of WTO Committees to ensure the effective functioning of this organization.

In closing, I would like to underline that the challenges this organization is facing are not approaching on the horizon – they are here.

We have an opportunity to ensure that the WTO continues to play a pivotal role in international trade, for all our benefit, for another 25 years.

12. Thailand (ASEAN)

Thailand delivers this statement on behalf of ASEAN.

We, the ASEAN Member States, reaffirm our full support for the open, non-discriminatory and rules-based multilateral trading system, embodied by the WTO, which must be maintained and strengthened. We believe in the primacy of the WTO and its objective of "open trade for the benefit of all" as well as ensuring security and predictability in global trade.

We view the two-tier dispute settlement system, with its fundamental principle of negative consensus as an indispensable pillar of the multilateral trading system.

In this regard, ASEAN expresses our serious concern that the Appellate Body could be rendered inoperative within the next week and therefore urges all Members to exercise the necessary flexibility to enable the unblocking of the Appellate Body selection process expeditiously as well as the adoption of the decision regarding this matter at the upcoming General Council Meeting.

To ensure continued security and predictability in world trade, ASEAN reiterates our firm commitment to the multilateral trading system and its rules. We also stress our continued support to strengthen the dispute settlement system, including through addressing concerns raised by Members.

13. Thailand

Thailand believes that the WTO is now at a critical juncture and there is a clear need for Members to take action, through making key decisions and delivering meaningful outcomes in negotiations and WTO reform, to ensure the smooth functioning and the further strengthening of the WTO and the multilateral trading system.

In light of the looming deadlines of some critical issues, crucial decisions will need to be made at the upcoming General Council Meeting next week.

Particularly, decisions pertaining to the functioning of the Appellate Body as well as the extension of the two Moratoria, namely the TRIPS Non-Violation and Situation Complaints and the Moratorium on electronic transmissions, which can have profound impact on the credibility of the WTO and the confidence in global trade as a whole.

Resolving the Appellate Body impasse remains of critical importance. Thailand therefore urges Members to provide the needed flexibility to adopt the Draft General Council Decision on the

Functioning of the Appellate Body at the upcoming General Council Meeting and to fill the vacancies in the Appellate Body without further delay.

On the extension of the two Moratoria until MC12, Thailand would like to highlight the crucial importance of achieving consensus on these items at the General Council Meeting to avoid the unnecessary uncertainty and unpredictability for stakeholders that would result from the lapsing of both Moratoria.

With regard to the ongoing negotiations, Thailand would like to highlight Fisheries Subsidies and Agriculture as two key areas where outcomes must be delivered.

On Fisheries Subsidies, while we are disappointed that the negotiation could not be completed within this year as intended, we are encouraged by the intensified efforts and heightened level of engagement by Members in the ongoing negotiations. In any case, we must now focus on finding convergence and delivering a meaningful outcome at MC12.

Agriculture remains a priority for Thailand, and we see domestic support as the pillar with the most momentum for a possible meaningful outcome at MC12, which will positively impact global agricultural trade and food security. We therefore support all efforts to intensify the negotiations in this area with a view to achieving a substantive outcome by MC12.

Lastly, we must find ways to strengthen the WTO through gradual, inclusive, and meaningful reforms, carried out in a manner that is balanced and in line with the WTO's key objectives. We believe that pragmatism, constructiveness and an openness to listening to the perspectives of others are key to reaching an outcome on this issue. We remain encouraged by the rising engagement from diverse range of Members on WTO reform and welcome further discussions in this area.

This will render the WTO more relevant given disruptive changes in global economic landscape.

14. Russian Federation

I would like to thank the Director-General for his comprehensive report. My thanks also go to the Negotiating Group Chairs for their respective reports and their hard work.

Yesterday, the CBFA approved the budget for next year. We welcome the consensus reached by Members and are looking forward to its adoption by the General Council next week.

Last month in Shanghai, our Trade Ministers agreed that the rules-based multilateral trading system should be firmly supported, and international trade should play a role in driving economic growth, job creation and sustainable development. They supported the necessary reforms of the WTO, demanded that the selection of the Appellate Body members move on as soon as possible, and appealed that the work on issues such as fisheries subsidies should be carried out soon.

Russia remains committed to preserving and strengthening the multilateral trading system, with the World Trade Organization at its centre. Today, however, the organization is in deep crisis. Many do not believe in its ability to make rules on international trade and effectively resolve trade disputes. Nonetheless, history teaches us that the absence of the rule of law in the global trading system is fraught with a slide towards unilateral trade measures and an increase in protectionism.

The WTO reform, including in the lead up to MC12, should ensure the effectiveness and relevance of the organization and its capacity to better address current and future challenges. Russia will work with all WTO Members to advance a process for necessary reform that is balanced, open, transparent and that promotes inclusivity and development. The reform must, *inter alia*, preserve the centrality, core values and fundamental principles of the WTO, and consider the interests of all Members.

Maintaining the dispute settlement function is a key priority. The current situation with the Appellate Body is simply inadmissible. The presence of this body ensures predictability and consistency in the application of WTO Agreements. All Members of the organization have agreed to a two-tier dispute settlement system, and it is important that this system be maintained. Let me underline the urgency to overcome the impasse in the appointment of AB members.

Russia has put forward a number of specific proposals for the reform of the organization. In particular, we have recently tabled initiatives in the area of MSMEs and on approaches to reduce trade-distorting domestic support in agriculture. We also strongly support the gradual removal of burdensome technical barriers to trade in services. I am confident that disciplines in domestic regulation will help to improve the situation in this area. Let me also mention, without going into much detail, the need to advance negotiations on fisheries subsidies, e-commerce and investment facilitation. Accession of new members, including the Republic of Belarus, is another important area of WTO work.

In conclusion, let me emphasise the need of a shared strong commitment to working together to deliver meaningful outcomes at MC12.

15. Chad (LDCs)

The LDC Group has listened to the Chairs of Negotiating Groups and it would be useful to ask whether we should cry or laugh. Because we are adults, we are not going to cry. But I am wondering whether we should laugh though it might also not be appropriate. The work that we have been doing this year is coming to an end as we commence the final stretch in the lead up to MC12. 2019 has been a difficult year filled with tensions for the multilateral trading system.

But it has also been a productive year to the extent to which Members have tirelessly invested in discussions, deliberations and negotiations with a number of different proposals made on issues on trade relating to fisheries subsidies, agriculture and WTO reform. That demonstrates the resilience that the system can call on even on the most difficult situations. In that, we should see a glimmer of hope and have a positive attitude. This means that despite everything that has happened, we are able to reach arrangements among us.

The LDC Group is a fervent defender of multilateralism and we consider that the World Trade Organization is the best arena in which to express our concerns and which is tasked to ensure fair, transparent and equitable regulation of global trade. This is why, without reservation, we call on all Members to preserve the WTO and ensure and strengthen its effective functioning.

Unblocking the Appellate Body impasse is imperative in order to preserve the relevance of the WTO and the multilateral trading system. We need a viable system – one that is rules-based – so that we provide the best possible conditions for international trade. It is however very regrettable that we have not been able to arrive at a solution before the next General Council and that we have been confronted with the risk of the collapse of the Appellate Body.

The LDC Group is made up of countries whose share in global trade is very low for the moment. But we are looking to become better integrated and so we face significant institutional, structural, financial and human resources constraints. This is why our countries count on the support of the Members and of the Secretariat to benefit both from S&DT as appropriate in the development and implementation of rules and from effective technical assistance to allow us to catch up our economic and trade delay and to, in the end, benefit from our rights. This is a path in line with the goal to consolidate and ensure the ability of the multilateral trading system to last.

Concerning the negotiations, the principle of S&DT for LDCs and the recently graduated LDCs should be fully taken into account by Members especially in fisheries subsidies for which an outcome is expected by MC12. For other negotiating pillars such as agriculture, we would like to reiterate the need for a solution on trade distorting domestic support and the need to eliminate domestic support on cotton production – which is of vital importance for the LDCs and the C-4 in particular.

16. India

State of Play

The cynical strangulation of the Appellate Body and the attack on the principles of non-discrimination and special and differential treatment have cast a pall of hopelessness on the WTO.

Appellate Body

With four days to go before curtains come down on the WTO Appellate Body, it is clear that the binding, two-stage, independent dispute settlement mechanism, that gave teeth and credibility to the rules-based multilateral trading system is well and truly dead. This will undo one of the biggest achievements of the Uruguay Round and trade will rapidly regress to an era of power politics. While we agree that the dispute settlement system does require improvement, we believe that the systematic assault on its very existence is neither appropriate nor necessary. Moreover, it is in direct contravention of the treaty-obligations of WTO Members, and is a far more serious lapse than anything that the Appellate Body can be charged with. It is also distressing to note that every effort of almost the whole WTO Membership to find solutions has been rebuffed. This kind of brinkmanship apparently originating in pique and prejudice rather than in a desire to reform is leading to a total breakdown of trust within the WTO and will have a debilitating effect on its other pillars as well.

Fisheries Subsidies Negotiations

Coming to ongoing negotiations, we must be mindful of the need of rapidly progressing the negotiations on disciplines in harmful fisheries subsidies. The mandates by SDG 14.6 and the MC11 decision on fisheries subsidies must be honoured in both letter and spirit. We would like to caution Members that in sensitive areas like fisheries and agriculture, where the livelihood of a large number of the poor and marginalised are at stake, reneging from a commitment to provide special & differential treatment to Members like India will derail these delicate negotiations. We will look closely at the Chair's report, on fisheries subsidies negotiations, Facilitators' working texts, proposed process and work programme up to June 2020 through this lens.

E-Commerce Moratorium

In the era of digitization, it is important to significantly update the 1998 Work Programme on Electronic Commerce and to understand the scope of the moratorium on customs duties on electronic transmissions, its potential impact on revenues and domestic industry of developing Members. Business as usual will not suffice and an updated Work Programme which can lead to focused engagement to provide clarity on these issues, is the need of the hour. Reluctance or inability to engage sincerely on these issues now is likely to jeopardise any chances of consensus on extending the moratorium at MC12. More on this in the General Council.

WTO Reforms

On WTO reforms, our view is that they should be premised on the principles of inclusiveness and equity, and not serve to widen existing asymmetries in the covered agreements. We look forward to an active engagement leading up to MC12 in this area and a balanced outcome.

Agriculture

Agriculture negotiation outcomes have the potential of being like the proverbial incoming tide that could lift all boats and meet the needs and aspirations of a large number of Members. For progress in agriculture, it is important that we engage in earnest to build upon and advance the work of the last several years and to implement existing decisions and mandates.

Conclusion

To conclude, we are at a critical juncture, as challenges have amplified and the multilateral rules-based trading system is facing grave threats. Keeping in view the aspirations of the large majority of Members, our priority should be to balance our agenda and make it inclusive, transparent and development-oriented. First and foremost, we must continue work to address the impasse in the Appellate Body appointments and not clamber onto second rate solutions. Winston Churchill said, "we should not waste a good crisis" and I believe this is the time to continue putting pressure on the recalcitrant by pressing the draft decision emanating from the Walker process. If we do not persevere and stand together to preserve what we have, we are unlikely to succeed in shaping the future we seek and aspire for.

17. Vanuatu (ACP)

I take the floor on behalf of the ACP Group and, in so doing, wish to thank the Director-General for his report. We further extend appreciation to the Chairs of the various Negotiating Groups for the updates provided on the work which has been undertaken since our last TNC.

On fisheries subsidies, it is clear that negotiations will not be completed by December 2019. The ACP would wish to encourage Members to continue to work to find appropriate frameworks and landing zones to guide our discussions during 2020 leading up to the next Ministerial Conference in Nur-Sultan. We confirm that our room document revisions of July 2019 and our 2017 proposals in conjunction with TN/RL/W/274/Rev.6 remain the basis of our engagement and that special and differential treatment remain at the heart of these negotiations. We commend the facilitators for their work so far. Any suggested text and these papers must remain open. They cannot be closed or replace our texts. However, we are ready to work on the documents as a tool for our engagement and to see how we find convergence. The ACP welcomes the efforts of the Chair of the Negotiating Group on Rules to establish a work programme for next year. The ACP remains committed to achieve an outcome in fisheries by June 2020 in line with the Ministerial mandate and on the basis of SDG 14.6.

S&DT remains a priority of the ACP Group. The ACP together with the G90 has introduced a room document that takes the work of the CTD SS forward through a consultative process. We thank members that have engaged constructively with us and we hope that their input will assist towards a review of the Agreement Specific Proposals in a manner that will be acceptable to all. We intend to continue with consultations and an assessment of what is doable for a meaningful outcome in MC12.

Agriculture continues to be a key policy driver in the development objectives of ACP members. Unfortunately, the imbalances and distortions in global agricultural trade remains one of our major obstacles. Particularly, our focus is on increasing value addition, enhancing our international competitiveness, increasing the use of research and development, undertaking sectoral upgrade and boosting export performance. The success of our policy initiatives relies heavily on addressing these imbalances and distortions. We, therefore, attach high priority to an outcome on agriculture in Nur-Sultan in line with the Doha mandate. Appropriate, effective and operational flexibilities for developing countries, especially as it relates to LDCs, SVEs and NFIDCs, must be a part of any package. The ACP Group remains in a solution-seeking mode and stands ready to contribute to Ambassador Deep Ford's effort to facilitate an outcome. We will be making a submission in this regard in the near future.

On the Appellate Body, we regret that Members have not been able to find a resolution to the blocking of appointment of Appellate Body members. For ACP members, the WTO's dispute settlement system represents a badge of enforceability in our efforts to negotiate new rules and implement current ones. ACP members do not have an alternative to the dispute settlement mechanism, embodied in the DSU. Our inability to appoint members to the Appellate Body in time for 11 December will have irreparable consequences for the functioning of the WTO, the effects of which will be felt by large and small countries alike in the foreseeable future. We therefore reiterate our call on Members to unblock the appointment process urgently in order to limit further reputational and other damage to the WTO. We stand ready to engage constructively in all initiatives to this end.

In respect of services, it continues to be an important contributor to the socio-economic development of many ACP countries. We therefore continue to pay careful attention to the developments in this area in the WTO. These discussions must stay true to the letter and spirit of the GATS including GATS and particularly as it relates to flexibilities for developing countries and the right to regulate.

On e-commerce, the WTO decision, established in 1998, is up for renewal the end of our work this year. While we agree that the remit of the Work Programme is broad in terms of the issues that could be covered, we believe that it would be remiss of us to discount the incessant calls for a continued conversation on unfinished business on issues under the Work Programme and on the moratorium concerning the application of customs duties on the electronic transmissions. As we indicated in our last statement in this forum, in arriving at an agreement that we can all coalesce around, we must fully take into account of and integrate the development dimension as it relates to the moratorium and wider discussions within the Work Programme on Electronic Commerce.

The preservation of an effective, rules-based and inclusive multilateral trading system is in the interest of all Members. The ACP is of the view that progress can only be made through constructive and meaningful dialogue and diplomacy towards finding meaningful outcomes.

18. European Union

Since our last meeting, the situation of the WTO has further deteriorated. Not only the discontinuation of the Appellate Body's work has become an evident prospect, but attempts to obstruct the functioning of this organization through the budget discussion have shattered Members' confidence in the WTO. This has diverted us from progressing our negotiation agenda or from finding ways to resume nominations of the Appellate Body members, which should be the priority. While the European Union is alarmed about the current state of affairs at the WTO, we remain strongly determined to address the challenges in front of us.

- First, we remain resolute to find ways to restore a two-step dispute settlement system at the WTO, and resume nomination of Appellate Body members as soon as possible. Next week's General Council will be crucial in this respect and we invite all Members to engage constructively in finding solutions.
- Second, the best option we have available to demonstrate the WTO's relevance is to deliver on the negotiating function of the organization. As a consequence, all our efforts should be devoted to ensure that next Ministerial Conference delivers results on the ongoing negotiations. We are therefore grateful to the Chairs, Co-Conveners and Facilitators for the reports they have made today.
- We note that the Joint Statement Initiatives are well on track and the European Union is very supportive of all of them. This is a unique opportunity to advance issues on their own merits. Those initiatives are supportive of the multilateral trading system and we see no valid reason to further challenge that.
- With respect to Fisheries Subsidies,
 - We regret that despite all efforts and the looming deadline, we have achieved no outcome this year on prohibiting subsidies contributing to overcapacity and overfishing and on eliminating subsidies that contribute to IUU fishing.
 - Fortunately, the WTO has been given another chance to finish the work on fisheries subsidies. That chance is Nur-Sultan. This must be our focus. We must show to the world that the WTO is capable of delivering a multilateral outcome, and on trade and sustainability related issues.
 - The European Union greatly appreciates the renewed impetus that the Chair of the Negotiating Group on Rules, Ambassador Wills from Colombia, has injected into the negotiations. This was needed to move the negotiations forward. The European Union fully supports Ambassador Will's efforts. The European Union also supports Ambassador Wills' plans for the period before the Ministerial Conference. Such a roadmap is certainly needed and we appreciate that no Member objected to it at the recent HODs meeting. Time for exploring and discussing is over. All WTO Members now need to show necessary flexibilities and be able to make concessions to achieve our joint goal.
 - As regards the outcome in Nur-Sultan, for the European Union, the negotiations must fulfil the mandate. The mandate talks about eliminating subsidies to IUU fishing and about prohibiting subsidies contributing to overcapacity and overfishing. These are areas on which negotiations need to focus on.

There is lots of work ahead of us, but also a chance to achieve something meaningful despite the current context. Let me assure the Director-General that the European Union remains determined to seize this opportunity.

19. Pakistan

Pakistan has consistently supported efforts of all Members who are striving to preserve and strengthen the multilateral trading system. It is unfortunate that at the last TNC meeting of 2019, we still have not been able to resolve the matter of the Appellate Body. It is a matter of grave concern for the future of the system and we regret that we have reached this situation.

On fisheries subsidies, we wish to welcome the Ambassador of Colombia as Chair and assure him of our support. In the negotiations, we feel that there is some progress though divergences in views on ways in the various pillars persist. Pakistan remains concerned with the minimal progress made in the area of S&DT for developing countries. Effective S&DT of all developing countries is a fundamental pillar in these negotiations and can ensure a balanced and effective outcome. Similarly, we are keen to safeguard the interest of small-scale and artisanal fishermen in developing countries.

Concerning agriculture, we have noted some new developments and we are ready to engage constructively to find meaningful solutions on all issues in the interest of our farmers. For Pakistan, specific elements such as Article 6.2, effective S&DT and the interest of NFIDCs are critical components during negotiations. We intend to continue working with the Chair and like-minded Members on these issues to find meaningful solutions. As always, we continue to support an ambitious outcome on cotton. We believe that the C-4 has put forward a meaningful and useful proposal which can contribute in a big way to our cotton farmers.

Consistent with our earlier statements, we maintain that discussions on WTO Reform should have developing countries at its centre and must be geared towards addressing their needs. That is the only way we can contribute to achieving realistic and effective progress on the Sustainable Development Goals to reduce hunger, poverty and inequalities and ensuring economic growth and industrialization. Reform should not at any cost alter the fundamental principles of the WTO. We need to support a development-friendly process and not one that makes participation more burdensome for developing countries.

As we approach MC12, our haste to find outcomes should not make waste by ignoring crucial issues of developing countries which can only be counterproductive for the system.

20. United States

The United States associates itself with the joint statement on fisheries subsidies as delivered by Argentina. I want to use my time today to offer views on five key elements where the WTO must take action as we move toward MC12.

First, the WTO's negotiating pillar remains stymied, and we must utilise the next few months to identify the root causes of our current paralysis. Critical to this effort is reaching a new understanding on special and differential treatment in the context of current and future negotiations. S&DT should be a tool in our negotiations, deployed constructively to ensure successful implementation of multilateral outcomes. Currently, it remains an obstacle, raised by some to deflect engagement on substance and by others to maintain outdated asymmetries.

We have only to look at the slow progress in fisheries subsidies negotiations and on agricultural issues to see how the absence of a shared understanding on the appropriate use of S&DT has become an obstacle.

We are unable to evaluate how to deliver effective S&DT to Members who need it most, because the specific needs of those who truly lack capacity are crowded out by those who insist it is an unquestioned right, regardless of individual capabilities.

Second, we have spent much of this past year discussing necessary improvements in Members' compliance with basic transparency obligations, and yet, many Members continue to be reluctant to fulfil their existing commitments. The current compliance record is poor: for example, more than 70 percent of Members have not met their import licensing obligations, and over a quarter of agriculture notifications from 1995-2016 remain outstanding. We commend those Members who have provided updated subsidy notifications related to fisheries; however, more than half the Membership has yet to submit notifications for 2019.

If we are to have a realistic hope for future negotiations, we must substantially improve notification compliance in order to have the information necessary for an accurate assessment of current trends and relative capabilities.

Third, committee functioning and engagement remains a critical component of our work. Committees need the full engagement of all Members. Reform also requires a closer examination of how this organization manages and allocates its resources.

Fourth, with respect to dispute settlement, the United States has engaged constructively over the past year, providing detailed statements in the DSB and the General Council outlining clear positions and articulating our longstanding concerns with the functioning of the Appellate Body. Unfortunately, we have yet to see the same level of engagement from other Members. We have asked repeatedly, if the words of the DSU are already clear, then why have the practices of the Appellate Body strayed so far? This is not an academic question. We will not be able to move forward until we are confident we have addressed the underlying problems and have found real solutions to prevent their recurrence.

Fifth, we need to return the institution to its core mission – that is – promoting a world trading system based on open, market-oriented policies and commitments. Non-market oriented policies and practices are damaging the world trading system, leading to severe overcapacity and unfair competitive conditions for our workers and businesses. They are also hindering the growth of innovation and undermining the benefits of trade.

To remain relevant, we need to reinforce the importance of market-oriented conditions for the world trading system. These conditions matter for our businesses, industries and workers. We need to work together to find ways to ensure the WTO helps achieve fair and mutually advantageous outcomes and restore public confidence in the trading system.

21. Egypt

Egypt associates itself with the statement made by Benin on behalf of the African Group.

We believe the reports we have heard today reflect positive progress in certain areas that may provide solid basis for our work in preparation to MC12. However, we believe that there are two pressing needs we have to focus on in order to make the best use of the limited time available before MC12.

- First, we need to concentrate on areas with high levels of convergence among Members and maybe achievable in due time.
- Second, we need to eliminate tensions and create an environment conducive to bringing Members' views closer on the priority issues.

Having said that, we would like to share our views on some of these areas which we consider priorities for our work to ensure that MC12 is a success.

On the Appellate Body, we reiterate our position that it is not in the interest of this organization to make any linkage between urgently resolving the Appellate Body crisis and the broader discussion on WTO Reform. We urge the Membership to take collective action to build confidence towards resolving this issue and immediately filling the current vacancies in the Appellate Body.

On agriculture, it remains a major priority for Egypt. We highly commend the work done by Ambassador Ford and took good note of the recent developments in the last CoA SS meeting as well as the number of submissions circulated prior to it which reflects the importance Members attach to agriculture and their commitment to achieve a meaningful outcome in Nur-Sultan.

We are thankful for the fruitful discussion regarding the African Group proposal which addresses the elements that would constitute a real and meaningful reform to the Agreement on Agriculture. In this regard, we strongly encourage Members to intensify their work to achieve the long-term objective of a fair, market-oriented agriculture trading system taking into consideration the developmental needs of developing countries and the flexibilities needed by LDCs and NFIDCs as

per our Ministers' mandate that any reform should take into account non-trade concerns particularly food security. We look forward to deepening our discussion on the basis of this proposal in 2020.

On fisheries subsidies, we appreciate the work of Ambassador Wills and commend the Facilitators for their commitment and the valuable work under their areas of responsibilities. We believe that in order to narrow the gap and reach meaningful outcomes by MC12, much remains to be done. We should engage more to direct the negotiators to focus their work in a transparent and realistic manner.

We must ensure that any future outcome on fisheries subsidies shall fully consider the needs of developing and LDC Members for appropriate and effective S&DT. We would like to reaffirm the exclusion of aquaculture and inland fisheries from the scope of any future agreement on disciplines on fisheries subsidies. It is important to avoid using the failure of meeting the December deadline as a reason to diminish and neglect integral parts of the outcome or to reopen topics that are neither subject to the negotiations nor the mandate.

On special and differential treatment, we thank Ambassador Hassan for her efforts to help resume discussions in the CTD SS and would like to refer to the positive step taken by the G-90 in presenting a room document last November. We hope this document will serve as a basis for constructive discussions involving the entire Membership in order to pave the way for more focused process next year. The outcome of this process will enable the G-90 to update and improve the agreement-specific proposal in order to achieve convergence on it or some of its elements by MC12.

To conclude, I believe we should continue our work in good faith and have frank discussions reach a common understanding on issues where we can have deliverables at MC12. We need to be realistic in assessing what can be done and what could be further developed in the longer-term taking into consideration capacity constraints of developing and LDC Members.

22. Norway

Norway deeply regrets that we have not been able to conclude the negotiations on fisheries subsidies within the established deadline. We should, however, not dwell on our collective shortcomings. We should rather focus our energy on the task ahead of us.

First, we need a process that enables us to make progress. We are delighted that we have a new Chair, and we support the process that he has outlined. We agree that the process must be intensified with continuous negotiations under the guidance of the Chair, with the able assistance of the Facilitators and the Secretariat. Our clear objective is to celebrate in Nur-Sultan that the fisheries subsidies negotiations are successfully concluded, and that the WTO has delivered on SDG 14.6.

Secondly, we need to focus on the area that is of the greatest importance in order to fulfil the mandate, namely subsidies that lead to overcapacity and overfishing. In this context, we need to remind ourselves that the mandate is to prohibit and eliminate certain fisheries subsidies, not to establish sound fisheries management.

This leads to my third point, which is that we need substantial reductions of subsidies that lead to overcapacity and overfishing. We are concerned that disciplines that are designed with a strong emphasis on fisheries management and a generous green box may give the largest subsidizers the possibility to increase their subsidies rather than reducing them. This would run counter to what is needed in order to fulfil the sustainability objective of the mandate.

Large fishing nations and big subsidizers should start real negotiations about substantial reductions of their fisheries subsidies. We urge large fishing nations and the proponents of capping to show leadership and indicate what reductions they are prepared to undertake as their contribution to meeting our mandate on overcapacity and overfishing. Norway is ready to do its part and stands ready to commit to reducing our fisheries subsidies, based on the 2018 subsidy notification.

Norway is encouraged by the increased participation and engagement of Members in the Joint Statement Initiatives. This demonstrates that, despite the many challenges facing this organization, a substantial number of Members are committed to the system. They are eager to move forward – impatient and willing to engage in improving and updating the rulebook.

More than 80 Members, small and large, developing and developed, are actively taking part in the discussion under the Joint Initiative on Electronic Commerce. This reflects the fact that the digitalization of our societies, economies and international trade generate a need for global rules for Electronic Commerce.

The number of participants in the structured discussion on Investment Facilitation for Development is now close to 100. Progress has been encouraging, raising expectations for a substantial outcome for MC12.

Similarly, the Services Domestic Regulation initiative is making significant progress towards a meaningful outcome in Nur-Sultan.

Development is a horizontal issue that needs to be addressed in all areas under negotiation. Norway continues to believe in the guiding principles we outlined in our paper to the General Council earlier this year: Let us stay pragmatic, identify the needs and address them in a practical manner, rather than continuing abstract debates.

We are only a few days away from when the Appellate Body ceases to function in accordance with what was agreed 25 years ago. This is not only regrettable. It could also have been easily avoided.

Let me assure you that Norway supports the efforts to constructively address the various concerns raised about the functioning of the Appellate Body. We should not, however, lose sight of the ultimate goal of this exercise which is to unblock the nomination process and restore the full functioning of the Appellate Body.

Let me finally lend support to the Director-General's point that this does not mean the end of the multilateral trading system, unless we, the Members, let it happen. I will refrain from repeating this line of argument, but limit myself to paraphrasing Elton John: "We're still standing."

23. China

As my Ambassador is out of town, I make this statement on his behalf. I would like to begin by thanking the Director-General and Chairs of negotiating bodies for their reports and hard work for the whole year.

Next week, the Appellate Body will not be able to hear new cases due to the continued impasse over the selection process. To make matters worse, the budget has been used as a leverage to further stifle the system which brings more uncertainties to solve the AB impasse and also could cause a new systemic challenge to the organization.

The whole world is closely watching us here in Geneva, not only for the concrete deliverables for MC12, but more for our collective ability to preserve the multilateral trading system.

On 5 November, the Mini-Ministerial meeting was held in Shanghai where Ministers reiterated strong support for the multilateral trading system and emphasised the rules-based multilateral trading system is essential in ensuring a stable and predictable framework for world trade.

I am not going to repeat China's position already on the record but will just share China's views on some new developments.

On the Appellate Body, China remains committed to the informal process led by Ambassador David Walker. Members have done their part to accommodate the United States' concerns while preserving the system by tabling a dozen proposals and engaging in discussions. We urge the United States to be responsive and constructive, and the selection process should be launched as soon as possible.

On Fisheries Subsidies, everyone said that we must aim at a "meaningful outcome", but may mean different things when they were saying that. In our view, the agreement must be meaningful to the fish, who cannot speak for themselves. Fuel subsidies, specific or not, are having the same effect on fish and must be treated in the same way under the disciplines.

On Investment Facilitation for Development, we are happy to see that as the discussions dive deeper, Members have shown growing interests and support. On 5 November, 98 Members co-sponsored a

new Joint Ministerial Statement, calling for intensified work towards a concrete outcome at MC12. In this regard, China is more confident that this topic reflects the common interest of the broad Membership and we will continue working with others to further shape the future framework.

On Development, discussions in the General Council meetings throughout this year demonstrate that challenging developing country status and seeking to differentiate developing Members is unrealistic and by no means the way out. The right for developing Members to self-designate their own development status and enjoy S&DT should be respected. In the meantime, developing Members should assume obligations commensurate with their capabilities and level of development.

24. Uruguay (Informal Working Group on MSMEs)

The Group held four open-ended meetings during 2019, the first on 22 February, followed by 28 June, 29 October, and 27 November. I am pleased to report that the Kingdom of Saudi Arabia joined the Group at our last meeting, bringing the number of members of the Group to 91. Our work focuses on developing concrete recommendations for MC12. The annual report describing our activities and the topics discussed this year is contained in document INF/MSME/R/13.

The objective of the Group is to identify horizontal and non-discriminatory measures that can help our MSMEs trade internationally and benefit from trade rules.

With this in mind, we are now working on a Declaration of the Group containing a set of recommendations to promote MSMEs' inclusion in rulemaking in the area of trade, a recommendation on trade facilitation to promote MSME-friendly implementation of the Trade Facilitation Agreement, and a recommendation to promote the implementation of the newly adopted IDB decision. We are also inviting Members to submit information on MSMEs as part of their TPR to improve the quality of information we have at hand. Likewise, we are working on a decision to support the Global Trade Helpdesk, and through it facilitate MSMEs' access to information, as well as a decision to develop an online webpage that would include links to relevant MSME information and recap good practices that have merged from our discussions with a view to helping MSMEs participate in international trade.

An additional informal meeting will take place on 12-13 December to review our complete package, including our draft declaration for MC12, the various recommendations I just mentioned, and our post-MC12 work programme.

We hope to have a stabilised text by the time our first 2020 meeting on 25 February.

MSMEs matter. They matter to us all. They play a critical role in all economies around the globe in terms of employment and in terms of economic activity. So helping our MSMEs means helping our economies.

But we also know that MSMEs struggle to trade internationally. So we have a duty to help them. The WTO is a rules-based organization, and we all know that trade rules matter for trade. They can either facilitate or inhibit trade. So making sure that WTO rules work for MSMEs is critical if we want to help our MSMEs.

What we are trying to do is to make trade rules work for MSMEs and promote MSME-friendly implementation of trade agreements. Another important part of our work is to develop concrete tools to help MSMEs access information, through the Global Trade Helpdesk for example.

In short, our approach is a developmental one: by supporting our MSMEs, we support development. It is an approach anchored in the sharing of good practices and the development of concrete tools.

The more Members we have on board, the more successful we will be in helping our MSMEs. Making trade work for MSMEs means making trade work for development and for our economies. It is a win-win situation.

We count on your support in the lead up to MC12.

25. Uruguay

Uruguay once again wishes to extend its thanks to Ambassador Ford for his ongoing efforts to move the agriculture negotiations forward.

The presentation, at the most recent meeting of the Committee on Agriculture in Special Session, of eight analytical papers and proposals concerning the various negotiating pillars, and the active participation of Members in discussions inside and outside the meeting room, show a growing level of commitment and bring us closer to the more intensive and focused discussions that we will need to have in the coming months if we want to achieve concrete outcomes at the next Ministerial Conference.

And yet, despite this, we still have a very long way to go.

Trade in agricultural goods remains the most distorted form of trade worldwide, and a vast array of restrictive trade measures and instruments impeding effective market access are available to Members. We must take concrete steps towards substantive negotiations aimed at progressively reducing or removing these barriers, so as to ensure that trade in agricultural products is integrated into the international trading system on an equal footing with trade in other types of goods.

At the same time, we see very high levels of production and trade distorting subsidies that depress international prices and act as entry barriers to the markets of the countries applying them, making the products of these countries artificially competitive in external markets, which is doubly harmful to producers in many of our countries, who do not often have the capacity to deal with such levels of distortion. The potential levels of these subsidies and their growth are of particular concern when we look at current trends, which is why we must take urgent steps to limit and reduce them. If we want to achieve meaningful outcomes, all Members must be prepared to contribute to the solution in a manner proportional to their contribution to the problem.

Our country is ready to move on to the next stage of the pre MC12 negotiations, and will continue working to ensure we make progress in the three pillars that will bring us closer to the long-term objective of establishing a fair and market-oriented agricultural trading system through substantial progressive reductions in levels of support and protection.

At this critical time for the organization, it falls to all of us to support its negotiating function and show flexibility and commitment with a view to achieving tangible outcomes in an area that has long been overlooked; this area is an absolute priority for the large majority of Members, given its fundamental importance not only for their economies and the livelihoods of their populations, but for combatting hunger and poverty worldwide – targets that all of us have pledged to meet within the framework of the Sustainable Development Goals of the United Nations 2030 Agenda.

26. Canada (Ottawa Group)

I will provide an update on the work of the "Ottawa Group" WTO reform initiative.

The Ottawa Group is continuing to engage at the Vice-Ministerial level on the question of modernization and reform of the organization, especially in the lead up to MC12.

In Geneva, informal discussions among the Members have continued and the work on how to improve the work of the four previously identified WTO bodies is still underway.

Brazil has been coordinating within the Ottawa Group an effort to improve the work of the SPS Committee. From March to November, Brazil held five informal "open-ended" meetings to exchange ideas with Members. On 23 September, the Secretariat circulated document G/SPS/W/319, submitted by Brazil, and a revised version was circulated on 18 October. This document compiles the main outcomes of those five informal meetings and aims at improving the regular work of the Committee, in ways that do not add to the Members' substantive obligations. The proposal provides guidelines for themes such as STCs, agenda, thematic sessions, notifications, and document translations, based on the contributions presented by the Membership. It complements the Committee's Working Procedures in terms of both transparency and the enhancement of Members' ability to take part in the discussions of specific SPS issues brought before the Committee. At the latest informal meeting of the SPS Committee, Brazil presented its revised proposal and received

feedback from Members. All Members are invited to send comments and suggestions until 24 January in order for Brazil to elaborate a third version of this document to be presented in a sixth informal open-ended meeting in February. Discussions will continue during the SPS Committee week in March. We hope to have an outcome document approved inside the SPS Committee at the latest in the first semester of 2020, as a positive sign of WTO achievements on the road to MC12.

On Rules of Origin, Switzerland notes that the co-sponsors circulated a revised version of the proposal on Tuesday, 3 December. With the revised version, co-sponsors reduced divergences on the substance. The Chairperson of the Committee on Rules of Origin will hold informal consultations before the holiday break.

Concerning TBT, Singapore continues its consultations with Members.

Concerning Trade in Services, Australia is continuing to explore ideas for strengthening the WTO's monitoring and transparency function for services trade measures, and assessing whether it can get broader support for the concepts.

With respect to fisheries subsidies negotiations, the Group has continued to share perspectives on how to reach a successful conclusion to these negotiations, and treat the group as a "sounding board" for ideas.

Finally, we note that the co-sponsors of the proposal on Procedural Guidelines for WTO Councils and Committees addressing trade concerns have also engaged and consulted with the Ottawa Group in the fall.

27. Canada

Canada is pleased to co-sponsor the communications on the two WTO moratoria (WT/GC/W/782 and WT/GC/W/783) that were circulated in advance of the next General Council meeting, and which propose to extend these two moratoria to the Twelfth Ministerial Conference. It is important that the General Council considers and takes a decision on the extension of these two moratoria in parallel, recognising the balance between these two moratoria.

In the Committee on Agriculture in Special Session last week, we contributed technical analysis and options to advance our discussions on enhancing transparency in export competition, enhancing predictability in applied tariffs, and in estimating the domestic support entitlements of all Members. On the agriculture negotiations, Canada wholeheartedly supports Ambassador Ford's approach to seek "doable elements for meaningful outcomes" at MC12. Engaging in such an approach should not, however, be construed as a lowering of the level of ambition in agriculture. Canada continues to seek ambitious and meaningful outcomes in the WTO agriculture negotiations and particularly on creating new rules on domestic support. To this end, Members should seek outcomes at MC12 that:

- reflect current global agriculture trade and production patterns;
- contribute to the ongoing reform in agricultural trade in the years to come; and,
- set us on a path to future success in the agriculture negotiations post MC12.

Canada supports continuing our negotiations on fisheries subsidies with a view to concluding an agreement by the next Ministerial Conference. We want to recognize the significant work that has been done, and express our deep gratitude to the facilitators for their efforts. This work needs to continue.

Canada would also like to thank the three co-conveners of the JSI on e-commerce, and the facilitators of the focus groups, for their leadership and efforts to advance these discussions forward. Canada is committed to this initiative and to working with all interested Members to continue making further progress by MC12.

On services domestic regulation, Canada welcomes the progress made in the scheduling process this far. Canada encourages all participating and interested Members to submit draft indicative schedules.

Canada also welcomes the progress made by proponents on the structured discussions on the JSI on investment facilitation for development. Canada will continue to engage in this process constructively.

We are pleased that the supporters of the Buenos Aires Declaration on Trade and Women's Economic Empowerment have successfully held all of the workshops called for under the Declaration. We continue to call on all WTO Members that have not yet signed on to the Buenos Aires Declaration to do so.

I would also like to highlight the significant ongoing efforts by the MSME Informal Working Group in preparation for MC12. Canada is fully committed to the multilateralization of this discussion and I encourage those Members not yet part of the Informal Working Group to reach out to Uruguay, our coordinator, or to the other Working Group Members to discuss how to participate in this work.

Finally, we deeply regret the persistent blockage of the Appellate Body appointment process. We value the efforts made to date to promote a solution-oriented dialogue, and Canada is prepared to play an active role in supporting effective appellate review that meets the needs of Members and fully respects the Dispute Settlement Understanding. We remain open to engaging in forward looking discussions with Members.

28. Brazil

We finish 2019 at a critical juncture in the WTO.

We came very close not to approve next year's budget. We did so under exceptional circumstances. The compromise reached buys us one year to move the reform process forward.

MC12 is six months away and we have challenges in the three functional pillars of the WTO reforms.

On the judicial pillar, the Appellate Body is now clearly paralysed. The Walker process provided the benchmark for guidelines to be adopted, as we all collectively decide how to resurrect the Appellate Body.

We need to: rebuild trust in the Appellate Body; make sure that the causes that led to the current situation will not be repeated; establish an appropriate process to enhance transparency on expenditures. But, in the meantime, we need to make sure that an interim arrangement is in place for appeals.

On the negotiating pillar, the definition of a package to Nur-Sultan still eludes us.

We missed the deadline for fisheries, which has trade and environmental repercussions. We must push this issue forward to MC12, together with e-commerce and investment facilitation. We also need to make sure agriculture will be part of that package.

Domestic support disciplines in agriculture represent an opportunity, but they must reflect today's reality.

The world's top subsidizers no longer belong exclusively the developed world. Some of their policies distort trade and affect not only other major agricultural exporters, like Brazil, but also small economies. Trade-distorting agricultural subsidies damage the interest and development prospects of most developing countries, especially LDCs, regardless of whether the support is granted by developed or developing countries.

Top subsidizers – be they developed or developing countries – must contribute proportionally more to reduce distortions in agricultural trade.

A plurilateral initiative on SPS should also be explored. We have now 25 years of experience dealing with SPS issues both in the committee and in the dispute settlement system – clearly, there is room for improvement.

We must be flexible, creative and result-oriented in WTO decision-making.

We should be inclusive and seriously and constantly strive for multilateral results. If, however, they prove to be impossible, paralysis should not be an option, as inaction is the surest way to weaken the WTO to the detriment of all Members, especially developing ones.

On transparency, Brazil is ready to support initiatives that enhance notification compliance and support for capacity building.

We also believe that all accession processes, which are ready to be concluded, should be part of the MC12 package.

In a nutshell, the survival of the WTO is at stake. Those that consider that things should not remain as they are must collectively push the system in a different speed.

29. Singapore

As this is our last TNC/HODs for the year, it is timely to review the work that we have done in the WTO in 2019. In this context, I would like to make three observations on the good, the bad, and the ugly.

Let us start with the good. Solid progress has been made, particularly in our Regular Committees and the various Joint Statement Initiatives (JSIs), and we must continue to build on these efforts. Members submitted a record number of notifications this year in agriculture, subsidies and trade facilitation, and we encourage the Membership to keep breaking such record highs. Members are also contributing actively in discussions to strengthen the WTO. In this context, Singapore tabled a discussion paper on good practices in the TBT Committee, and co-sponsored the EU's paper on Procedural Guidelines for WTO Councils and Committees Addressing Trade Concerns.

We just celebrated the 30th anniversary of the Trade Policy Review Mechanism, which has played an important role in promoting transparency, accountability and predictability in the multilateral trading system. Some Members are also tabling creative approaches aimed at breaking deadlocks, such as Costa Rica's latest paper on a more sustainable negotiation framework in agriculture. Additionally, the JSI on E-Commerce, which Singapore, Japan and Australia co-convenes, has made good progress, with six negotiating rounds this year and Members moving from tabling proposals to discussing streamlined texts. Going forward, we will intensify our efforts to further narrow the differences in the text, with the goal of achieving "substantive progress" in the JSI on E-Commerce by MC12.

Turning to the bad. Outside of the Joint Statement Initiatives, the negotiating arm of the WTO is barely moving, and the dispute settlement mechanism is being crippled. In the meantime, world trade growth has stalled due to the indiscriminate use of tariffs. WTO Members implemented 102 new trade restrictive measures between October 2018 and October 2019. The trade coverage for import-restrictive measures during this period is the highest since 2012. Undoubtedly, these new trade restrictions and increasing trade tensions have led to a global "synchronised downturn", which has slowed economic growth, dampened business confidence, and most importantly, affected the livelihoods of people across the world.

Before yesterday, the CBFA was unable to recommend a budget to the General Council, causing much anxiety and uncertainty. We also had innumerable meetings over the course of this year to try to save the Appellate Body. Many proposals have been tabled in an attempt to address the US' concerns. Yet, we are still unable to avoid the Appellate Body from going inoperative next week. On fisheries subsidies, it is disappointing that we will not meet the deadline of December 2019, agreed to by our Ministers, to conclude negotiations. It did not help that we took four months just to decide on a Chair with all the blocking that went on. Hence, it is crucial that we get the work done by MC12. We should avoid grand-standing and political posturing. Instead, we should engage constructively and substantively to develop effective disciplines on fisheries subsidies.

Now, for the ugly. The ugly is the worrying tendency of some Members to engage in brinkmanship at the expense of the WTO's larger objectives. In fact, it appears that there are no limits to brinkmanship in this organization, as even the livelihoods of the WTO Secretariat staff are up for play. We saw brinkmanship on full display in the way the Appellate Body impasse has been handled, as well as in the manner in which a small minority dragged out the discussions on the moratorium on customs duties on electronic transmissions, which will expire this month. Rather than seizing the

ample opportunities to find a pragmatic solution, some Members seem to prefer creating new hoops for others to jump through at every corner.

As we look towards 2020 and MC12, it is incumbent on all of us, the entire WTO Membership, to resist protectionist tendencies, reduce trade tensions, and refrain from hostage-taking tactics. After all, everyone stands to lose from a weak and ineffective WTO. Instead, let us focus on what each of us can do to strengthen the WTO to advance common goals to provide much needed stability to the multilateral trading system. As the Director-General had said in his statement, what Members will do, or fail to do, will define the trajectory of the WTO.

30. Peru

Peru would like to share its concern at the difficult situation that our organization is encountering. The WTO is a fundamental piece in terms of encouraging trade, resolving trade-related disputes and improving the levels of development in Members' economies.

Peru laments the current status of the dispute settlement mechanism whose appellate function will cease in practice in a few days' time. Understanding the importance of this fundamental piece in the multilateral trading system's machinery, we have demonstrated flexibility and cooperation at all times during the process led by the General Council and by Ambassador Walker and we regret the fact that we still have not been able to overcome the situation despite the significant efforts undertaken by the Facilitator. Based on this situation, we reiterate our call for constructive dialogue in a quest for a multilateral solution. We need to know all these reasons that have led to the situation but the reasons should be accompanied by proposals for concrete solutions.

In addition, although Peru enthusiastically welcomes the fact that a report was adopted containing the draft budget for next year, we regret the fact that there was delay in finding consensus on this which has provoked uncertainty with regard to the consideration of our duties as well as for the workers of the organization.

Without prejudice for the foregoing, there are also some positive signs that this organization can continue to remain valid and to achieve its goal of ensuring higher levels of liberalization in favour of all its Members.

On the Joint Initiative on Domestic Regulation in Services, recently, many Permanent Representatives recognized the positive outlook in terms of achieving an outcome at the next Ministerial Conference. It is true that this time, the outcome is being led by only several Members but that does not mean that other Members cannot align themselves with it. That is why the initiative has always been open and transparent. With the aim of achieving better participation, I would like to call on representatives from other Members of the WTO to consider the disciplines that we have been working on whose implementation will only serve to ensure better levels of transparency and certainty in the procedural requirements which will apply to service providers who are seeking licences or other types of permits such as this. Peru will continue to participate with the aim of resolving the issues of other Members and the few pending questions which remain to be addressed before we achieve a final text.

Peru recognizes the progress made in electronic commerce and will continue to support this very important process. We would like to thank the countries and the Facilitators who have been involved.

Another important sign that there is hope for the multilateral trading system is the effort to constructively address the topic of trade and the economic empowerment of women within the WTO. We strongly believe that this organization can help us to examine to what extent Members are able to contribute to complying with the SDGs particularly SDG 5 which promotes the economic empowerment of millions of women who are in many cases live in conditions of violence and poverty such as in my country and in many others as well. In this regard, I would like to recall the efforts of the Secretariat led by the Director-General on this topic. Peru, together with the rest of the Membership, is committed to look at a way we can re-launch work which was started in the Joint Ministerial Statement on Trade and Economic Empowerment of Women in Buenos Aires and I would like to invite all Permanent Representatives here to align with this aim.

I would also like to demonstrate my satisfaction at the election of Ambassador Wills as Chair of the Negotiating Group on Rules who comes from GRULAC. In this regard, we convey our support to the

efforts which he is undertaking and with regard to the work done which has been submitted for the negotiations on fisheries subsidies. Peru trusts that, under his leadership, the work will be able to get back up to speed in order to achieve a satisfactory outcome for all Members of the WTO for the next Ministerial Conference. Peru is however concerned on how some Members are mistreating other Members in the process involving the appointment of the Chairmanship of the Negotiating Group on Rules.

Peru would like to reiterate its support for the work of the Informal Group on MSMEs to promote and improve the participation of small and medium-sized enterprises in international trade and would like to invite Members who have not yet done so to align themselves with this very important initiative.

Finally, Peru would like to reiterate its commitment to the process of reform provided for under Article 20 of the Agreement on Agriculture. We welcome the efforts by the Chair of the Negotiating Group, Ambassador Ford, and we will continue to work together with the rest of the Membership towards the aim of achieving convergence in the substantial and progressive reduction of trade distorting domestic support. We hope that with the renewed impetus and concerted efforts by all Members, we will be able to achieve a concrete outcome in agriculture for the next Ministerial Conference.

31. Switzerland

The multilateral trading system is under pressure. The challenges facing the WTO are multiplying. Today, I will not dwell on these setbacks, which have been mentioned so many times before.

Economic operators and other stakeholders would like to see our organization move forward, be brought up to date and, above all, overcome its most immediate challenges. Today, I will focus on responses and actions that will enable us to address the situation and strengthen the WTO.

Fisheries subsidies is one area of negotiation in which failure is not an option. It is imperative that these discussions be brought to a successful conclusion at the next Ministerial Conference. We view this as a top priority. Renewed efforts are required, including through increased commitment from heads of delegation. We endorse the work plan of the new negotiating group Chair and wish to assure him of our support.

The customs moratorium on electronic transmissions constitutes an important achievement for the multilateral system. For more than 20 years now, it has contributed to the stability and predictability that are so dear to investors. The moratorium favours the development of the digital economy – an area that holds real potential for all WTO Members. Changing the rules of play midstream could cause serious disruption.

The WTO dispute settlement system is a central element in providing security and predictability to the framework conditions for world trade. It is vital that Members continue to resolve their disputes in good faith, while seeking to ensure a prompt and final settlement. The WTO Dispute Settlement Understanding provides sufficient opportunities for preserving these principles.

We also stand ready to contribute constructively to work on issues that form a long standing part of the multilateral agenda.

Regular WTO bodies have an important role to play in the implementation of trade rules, and their potential has not yet been fully exploited. We welcome the proposals that seek to improve how these bodies function, and will continue to contribute to efforts made in this regard.

We are also encouraged by the progress made in respect of the initiatives stemming from joint statements. The participants are engaged in intensive and serious work. They have taken concrete steps on the path towards the Nur-Sultan Ministerial Conference and are seeking realistic solutions. In our view, these initiatives provide promising avenues for modernising the trading system and adapting it to the needs of the modern day economy.

The joint initiative approach might also be suitable for addressing other issues concerning the nexus between trade and sustainable development.

The challenges are well known, and work is ongoing. It is now important to move up a gear, as time is short. We must step up our efforts to ensure that the Twelfth Ministerial Conference is a success.

32. South Africa

We associate ourselves with the African Group and ACP Statements.

The challenges facing the multilateral trading system are unprecedented and deepening. The immediate threat to the system is the impasse on the appointment of Appellate Body members. At the heart of a well-functioning multilateral trading system is an effective dispute resolution mechanism which is critical in providing security and predictability in trade. Most importantly, it prohibits any WTO Member from determining unilaterally whether another Member violates its obligations under WTO law and stops trade disputes from escalating into trade wars.

It is not the usual practice of the DSB to require consent for the selection process to be launched, merely that when Members of the Appellate Body are to be appointed that consensus prevail as to such appointments. Article 17.2 of the DSU clearly states that: "vacancies shall be filled as they arise". It is for this reason that we associate ourselves with 116 Members that call for the launch of the selection process.

We thank Ambassador Walker and support his efforts towards the resolution of the impasse. The Membership worked very hard over the last two years to find a landing zone. The areas of convergence were a genuine attempt to unlock the impasse. The areas of convergence are not sufficient on their own, they are part of a package that requires agreement to launch the process for the selection of AB Members. Any of the options currently available under the DSU are not ideal alternatives to the current system. They will limit rights of Members to appeal, will subject disputes to power dynamics and are likely to fragment the system. The biggest risk is that powerful countries may exert pressure to make smaller Members to implement panel rulings. We urge Members to continue efforts to address the impasse and restore an independent, impartial two-stage system that is based on negative consensus.

Times like these require that we remain level headed and collectively work towards resolution of issues in the interest of all. Nelson Mandela once said, "we must use time wisely and forever realise that the time is always ripe to do right".

On WTO reform, we would like to emphasise that reform must promote development and inclusivity and address the long-standing issues of interest to developing countries as entailed in the Doha Development Agenda, as well as preserve the principles that underpin the multilateral trading system.

In relation to S&DT, we reiterate that this is a treaty-embedded right available to developing countries and LDCs. We need to deliver on the mandate as set out in Paragraph 44 of the Doha Ministerial Declaration which calls on Members to make S&DT more precise, effective and operational. The G90 room document is a discussion document that aims to facilitate a constructive discussion with the Membership in order to respond to the mandate in an inclusive manner and we encourage the Membership to make proposals as we work towards the revisions to be submitted early in 2020 which will be an outcome of a consultative process in order to reach a meaningful outcome at MC12. The flexibilities entailed in covered WTO agreements are not only of importance to developing countries in their own right but also in the achievement of the SDGs. It is ironic that during a Development Round, S&DT and flexibilities which are critical to integrate developing countries in global trade, change the structure of their economies and achieve the SDGs are put to question.

On the E-commerce moratorium, we remain concerned that the moratorium is asymmetrical to developing countries from a revenue, economic and trade and industrial policy perspective. The extension of the moratorium is not just a procedural issue, it has significant implications for our economies. With information available on its impact, differences in understanding on what it applies to, the moratorium is increasingly difficult to maintain. We call for a structured discussion under the Work Programme with clear milestones, timeframes and deliverables to resolve issues such as scope and definition, feasibility to impose duties, revenue and digital industrial policy implications which remain unresolved. We urge the Membership to work with us towards resolution by committing to

engage in good faith through the Work Programme on these priority issues to facilitate informed policy making.

Turning to agriculture, we need a meaningful outcome in MC12 and it should include substantial reform of Trade Distorting Domestic Support; including on Cotton; a permanent solution for Public Stockholding; and advancing the discussions on a Special Safeguard Mechanism. We underscore that S&DT must be integral to any outcome in agriculture.

On Fisheries Negotiations, we must work towards delivering comprehensively on all the pillars of the mandate by MC12. Disciplines must target and prohibit harmful subsidies, safeguard food security and livelihood of coastal communities and allow Members policy space to develop their marine resources and implement their Blue oceans economy strategies. We are also concerned that discussions on S&DT are not at a mature stage and this has to be an integral part of the outcome.

On TRIPS Non-Violation and Situation Complaints, we remain of the view that NVCs should not apply to the TRIPS Agreement as we are concerned with any NVC remedy that would have the effect of expanding existing TRIPS obligations or reduce flexibilities that Members currently have. In addition, until the scope and modalities have been decided, Members should agree not to launch NVC claims under the TRIPS Agreement. Our view is that the two moratoria are not linked and each should be considered on its merits. We are therefore supportive of the extension of the TRIPS Non-Violation and Situation Complaints moratorium.

We are committed to work constructively with the Members to navigate these difficult times.

33. Mexico

Our organization is in an unprecedented situation.

Despite the various attempts under the Walker process and the constant insistence of now 118 Members on filling the vacancies in the Appellate Body, everything would seem to indicate that we will find ourselves in a situation in which we no longer have a body of second instance in the dispute settlement system.

Without a doubt, we are sailing into wholly uncharted and potentially stormy waters, requiring greater cooperation and understanding among us all. Otherwise, this potential paralysis of the body of second instance could prevent us from ever managing to settle our disputes within an equal and reliable rules-based framework.

While we fully agree with the Director-General that this paralysis in no way signifies the end of the multilateral trading system, or of this organization's work, we will certainly be obliged to redouble our efforts, at all levels, to reinstate the Appellate Body without delay. This situation must, under no circumstances, become our "new reality". Our producers and exporters will demand that we honour the commitment that we all made, which is to give them a chance to appeal in any trade dispute before the WTO.

We also thank the Director-General for informing us that a consensus was reached on the budget yesterday. In this regard, we stress that, to avoid finding ourselves in a similar situation, we must create the mechanisms needed to ensure the continued functioning of the organization. No matter how valid the reasons, we cannot allow them to lead us into a state of paralysis due to a lack of budget.

Concerning matters for negotiation, establishing disciplines on fisheries subsidies continues to be a priority. We are only a few months away from the Ministerial Conference in Nur-Sultan and we still have a long way to go. To achieve a positive outcome, it is important that next year, meetings are held at all levels and that we do not rule out the possibility of having at least one meeting at Deputy Minister level.

With regard to agriculture, the exchange of views was undoubtedly enhanced by the ideas, information and assessments presented at the last meeting of the Negotiating Group. Clearly, we still have a significant amount of work to do if we are to come up with concrete proposals that enjoy consensus and meet the objective of continuing with the reform process provided for in Article 20 of

the Agreement on Agriculture. We must therefore step up our efforts in the coming months and show the necessary political will in order to move forward.

Our delegation has been saying for several years that, when undertaking commitments, the principle of proportionality must govern any outcome in this area. For my country, proportional reductions in domestic support are clearly a priority, and any new commitment must start at the bound levels. Similarly, we are open to examining and discussing proposals that seek to discipline trade distorting support, for which there is currently no limit under the Agreement on Agriculture.

At the same time, we welcome the intensive work carried out as part of the joint initiatives. A clear illustration of such work is the submission of indicative schedules of commitments relating to domestic regulation of services. We are pleased that, to date, more than 50 Members, including Mexico, have submitted their respective schedules, which speaks to the interest in this matter. The negotiation on electronic commerce and the discussions on investment facilitation are also enjoying the same momentum. Mexico reiterates its commitment to these initiatives and to a positive outcome of the Twelfth Ministerial Conference.

We will start next year with significant challenges and will navigate very rough waters. Now more than ever, we need to act with pragmatism and the sense of urgency that our organization requires. Rest assured that our delegation will continue in this vein.

34. Chinese Taipei

The fact is that we are deeply concerned about the unprecedented situation that the multilateral trading system is facing right now. If no moratorium on TRIPS and E-commerce, as well as no selection of Appellate Body members were materialised, there will be massive uncertainty in the world of business. While we appreciate there is no easy solution to the crisis, we remain extremely worried about the impact on the multilateral trading system and on the WTO itself.

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu remains a strong supporter of the rules-based trading system. In our view, it is vitally important to the health of the world economy, and indeed to the economy of every single Member. We simply cannot risk losing the multilateral trading system. Equally, we are convinced that WTO reform is absolutely essential for the future sustainability of this organization, especially at this critical moment in time. Of course, WTO reform is not something that can be done quickly. It takes time. Some improvement, or progress, is already being made. We are working with Members right now on proposals. For example, on transparency and improving Members' Compliance with Notification Requirements. Also, on the Procedural Guidelines for WTO Councils and Committees addressing trade concerns. Modest steps perhaps, but important ones for this organization nonetheless. My delegation calls on Members, as a matter of urgency, to engage more constructively in the dialogue, and work to find ways to resolve the differences that still exist.

As for the Appellate Body issue, we believe our first priority remains to initiate the selection processes immediately. We continue to support the approach suggested by Ambassador Walker, and we are hoping to see the impasse resolved very soon. And, importantly, to engage in the disputes in good faith and resolve them eventually.

MC12 next year is fast approaching, and we do want to see some outcomes. I would just like to briefly share with you our own views on some the items presently on the agenda.

On the Fisheries Subsidies negotiation, to which my delegation attaches great importance, we welcome the new dynamic brought by Ambassador Wills. Given the wide divergences that exist among Members, we are ready to adopt the work programme proposed by the Chair of the Negotiating Group on Rules in order to intensify our work in all necessary forms of the negotiations. We would also urge Members to give favourable consideration on our textual suggestion on the Disciplines Attaching to Subsidies Contributing to Overcapacity and Overfishing, which was jointly presented by the European Union, Japan, the Republic of Korea, and my own delegation, this November.

On the subject of the joint initiatives, I would just like to emphasise that Members could explore different ways to address their stakeholders' concerns through the work that we have already undertaken here. While we are pleased to see the progress made on the joint initiatives so far, we

should also be mindful of whether the possible outcome can meet the high expectations of business. In the Joint Initiative on Services Domestic Regulation, it is good to see that 24 Members have submitted their indicative draft schedules, which is a significant achievement. We would encourage participants who have not yet submitted their indicative draft schedules to do so as soon as possible. We are looking forward to a meaningful outcome at the MC12.

As for E-commerce, while we are encouraged by the fact that more participants are joining the initiative, we are also aware that this initiative aims at a high standard outcome, as described in the Joint Statement at Davos this January. If the outcomes turn out to be low-hanging, the stakeholders will definitely be disappointed. Our hope is that we will achieve a high-standard and ambitious outcome that includes the free flow of data.

As crises approach, this is a testing time for us all. No one wants to see this organization fall apart. All of us, as Members, have the responsibility to maintain the dialogue, and find ways forward.

We certainly stand ready to work with fellow Members to this end.

35. Indonesia

I would like to associate my delegation's position with ASEAN's statement delivered by Thailand and wish to convey further some observations and concerns over issues of importance to our delegation.

There are three main issues that my delegation wishes to raise in this important meeting.

First, on Appellate Body Issues, as stated by many already, my delegation also wishes to reiterate its grave concern over the upcoming dysfunction of the Appellate Body. The absence of the two-tier dispute settlement system has impinged the rights of Members and, in broader context, will question the relevance of the multilateral trading system.

We would like to reiterate our conviction that Members' concerns over the work of the Appellate Body and the launch of Appellate Body Selection Process should be done in parallel. Our General Council meeting next week might be a moment of truth for the next path of the WTO – whether this organization would still be relevant as the most authoritative organization that relates to international trade or not.

Second, on agriculture negotiation, Indonesia reiterates the necessity to deliver a meaningful outcome for the both mandated negotiations: the permanent solution for Public Stockholding for Food Security Purposes and Special Safeguard Mechanism. Agreeing on these will give a strong signal that the WTO has not turned a blind eye to issues of importance to majority of its Membership and remains relevant in addressing inequities and imbalances left as a result of the Uruguay Round.

Furthermore, addressing the domestic support issue is also of paramount importance for us. In this regard, Indonesia is encouraged by the development in the most recent Special Session of the Committee on Agriculture and will continue to engage in finding a balanced approach in bridging the gaps in the negotiation and our work towards MC12 serves as a good momentum to optimise the engagement of Members in the on-going discussion and negotiation process on these important agricultural issues. To this end, Members need to set utmost priority and be more responsive to the needs of small-scale and resource-poor agriculture producers in developing and LDC Members as well as by being more responsive in ensuring access to food for the poor and the most vulnerable.

Lastly, on Fisheries Subsidies Negotiation, we welcome the effort by the new Chair in trying to consolidate proposals and ideas on the table as well as to pave the way of the next process of negotiations. In this regard, Indonesia wishes to reiterate the importance of having a discipline that is in line with the overall objectives of the Sustainable Development Goals. The fact that the overall goals of SDGs are interlinked and mutually reinforced shall be the basis to deliver a balanced discipline on Fisheries Subsidies in this House.

Indonesia is of the view that we need to take careful consideration to the mandate of the negotiation. Having observed the ongoing negotiation process, I believe the right interpretation of mandates is needed for us to have a landing zone on approach of the discipline. Moreover, we also need to ensure that effective flexibilities for subsistence, artisanal, small-scale fisheries need to be provided in order to reach balance between Members' obligation to contribute to sustainable fisheries and their

development rights. Indonesia is committed to engage positively in the negotiation and remains open in considering approaches offered on the table.

36. Iceland

Dispute Settlement

Iceland supports the draft proposal by Ambassador David Walker and thanks him for his efforts. It is urgent to unblock the Appellate Body selection process and fill the vacant seats without delay.

Fisheries Subsidies Negotiations

First and for the record – it is a disappointment for Iceland that we did not manage to meet the end of year deadline.

The WTO was mandated to conclude an agreement on fisheries subsidies which delivers on Sustainable Development Goal 14.6 by the end of 2019.

It is important that we fulfil the mandate and conclude an ambitious agreement.

From Iceland, the negotiations need to meet two underlying principles:

- First, the outcome needs to meet SDG target 14.6 and the MC11 mandate by establishing a clear prohibition on subsidies that harm the sustainability of fisheries.
- Secondly, the WTO is not – and should not – become a fisheries management organization.

I want to thank Ambassador Wills for taking on the chairmanship and fully support his approach which was outlined at the HODs meeting last week.

We have confidence that under his leadership we will achieve the progress needed to reach a conclusion before MC12.

Trade and Women's Economic Empowerment

And to conclude, I would like to use this opportunity to give you a brief update on the follow-up on the Buenos Aires Declaration on Trade and Women's Economic Empowerment.

The number of Members and Observers supporting the Declaration is now close to 130.

The Declaration set concrete objectives. One was to deliver 6 seminars on a range of topics relating to women's economic empowerment which has been fulfilled.

Additionally, Members were encouraged to use their Trade Policy Reviews to highlight policy developments contributing to women's economic empowerment. We now have 17 TPR reports where this has been done. Finally, as set out in the declaration we will report back on our findings at the MC12 in Nur-Sultan.

37. Bolivarian Republic of Venezuela

We thank the Director-General and the Chairs of the negotiating groups for their reports and for all their hard work.

Regarding the negotiations in progress, our delegation is committed to the work proposals that have been presented in relation to the negotiations on fisheries and agriculture, with the expectation of being able to present an outcome at the next Ministerial Conference.

Concerning the negotiations on fisheries subsidies, our delegation is playing an active and constructive role in fulfilling the negotiating mandate reflected in Target 14.6 of the Sustainable Development Goals, especially the inclusion of appropriate and effective special and differential treatment for developing and least-developed countries. We therefore hope that more flexible rules

for artisanal and small scale fisheries can be adopted. We also agree that topics that do not come within the competence of this organization should be excluded from the negotiations.

We express regret at the situation of the Appellate Body and the polarization of positions on matters of vital importance to the organization, such as special and differential treatment. It is a source of concern that despite already having a clear diagnosis of the problems and of Members' divergent perceptions, we are unable to reach agreements that take account of everyone's interests and, especially, of the needs of the most vulnerable. We have an obligation to be creative.

We hope that this December break will provide an opportunity for reflection on the historic moment facing us and on the responsibility placed on our shoulders.

On this occasion I would like to share some thoughts with other Members regarding the impact of the use of unilateral coercive measures as an instrument of pressure to prevent a country from freely exercising its right to determine its political, economic and social system.

This is about limitations that not only impact the country exposed to them. In the case of Venezuela, this is a matter with extraterritorial implications that also affect transnational companies and other governments that have traditionally maintained sound trade relations with Venezuela, impacting access to food, medicines and raw materials and thereby adversely affecting domestic and international trade through financial and commercial restrictions.

The prolonged implementation of these measures directly affects the economic and social development of the country and therefore constitutes a flagrant, massive and systematic violation of the human rights not only of the country's nationals but also of foreign citizens residing in the country.

The collateral damage of these measures is incalculable and, in most cases, irreparable. They have arbitrary effects on innocent people. History has shown clearly that they are not even an efficient mechanism for crushing a people's will. So it begs the question: what is the logic behind such an attempt at domination?

Our delegation has been working hard, in the most constructive manner possible, albeit facing obstacles to paying our debts to the organization, without access to the necessary cooperation for fulfilling our existing commitments, and also without access to the Members' webpage for consulting documents needed for our day to day work, and carrying the burden of being under constant siege.

Despite all this, you can be certain that we remain committed to a rules-based, strong, just and equitable multilateral trading system that promotes inclusivity and development.

38. Hong Kong, China

I am going to focus on three issues that are at the forefront of many Members' minds: the fisheries subsidies negotiations, WTO reform and the Appellate Body impasse.

Fisheries Subsidies Negotiations

Hong Kong, China reiterates our full support for the work to establish, as soon as possible, a set of new disciplines on fisheries subsidies contributing to illegal, unreported and unregulated fishing, as well as overfishing and overcapacity.

Members are now looking to reaching an agreement by MC12, but it is clear that Members' positions on many major issues remain divergent, and we would need to put in much more work before we could get a consolidated draft text. The reality is that we will have only six more clusters of meetings in the run-up to MC12, so we should carefully consider how best we may focus the negotiations to achieve progress within the limited time left.

Moving forward, Members will need to exercise greater flexibility and make compromises. Hong Kong, China remains committed to working constructively with other Members to achieve a meaningful outcome on fisheries subsidies rules, which is essential to demonstrate that the negotiating arm of the WTO is alive and well. We are ready for a more intense, proactive and result-oriented phase of negotiations in the run-up to MC12.

WTO Reform

We would submit that reform is a continuous process. It is not about reinventing the wheel and it is not reasonable to expect to complete the entire reform process once and for all. To make a solid, substantive and sustainable difference, Members will need to work together with a positive mind-set and a fresh perspective.

During the past year, Hong Kong, China has been supporting the idea of taking small and concrete steps to improve the functioning of the Council for Trade in Goods and its Subsidiary Committees. During this time, we have heard many Members' calls in different WTO fora for better coordination with the Secretariat. We are also encouraged by instances where Members and the Secretariat think out of the box to streamline existing operations, make better use of technology, and collaborate in various configurations to create a conducive environment for Members' participation at meetings and more efficient operation of this organization in general.

We hope that this "can-do" spirit will continue to flourish and be translated into useful ideas and practices benefitting the entire organization. We look forward to exploring with Members further how this organization could be made more effective and more prepared to respond to the emerging challenges to the multilateral trading system.

Appellate Body

Hong Kong, China commends Ambassador Walker for his effort in leading the consultations under the informal process and producing a draft decision for discussion at the General Council.

Nevertheless, notwithstanding the goodwill and hard work of many delegations, it seems inevitable that the Appellate Body will stop to be operational very soon. This will inevitably undermine the dispute settlement system and pose a serious challenge to the multilateral trading system. Just as Members have benefited from the system, it is in Members' fundamental interest to work together to preserve and defend the system. We welcome constructive proposals to reform the Appellate Body, but we do not believe that this has to be achieved through creating an impasse in the appointment of Members to fill the vacancies in the Body.

The WTO will have been in operation for 25 years by the end of this month. Surely, we can look back and find many hard-earned achievements that we can take pride in. There have also been lost opportunities and difficulties. We have overcome some of those and are still struggling with some others. Stepping into the 26th year of the WTO, we hope all of us will continue to be creative and constructive in our search for convergence.

39. Nigeria

Nigeria wishes to acknowledge the Director-General's exemplary leadership in piloting the affairs of this Committee. We commend you and your team for your detailed report on the status of the ongoing negotiations. We also wish to thank the Chairs of various Negotiating Groups for their reports. We associate ourselves with the statement made by Benin on behalf of the African Group.

Agriculture

Sustainable development of our Agricultural sector is in the heart of our strategy for economic transformation given its contribution to GDP and job creation in our economy. However, the effects of heavy trade distorting subsidies by large economies incentivised by the imbalance and inequities of the current rule under the domestic support pillar, are such that erode the competitiveness of developing countries in their domestic and export market. The wider implication of these effects on output, jobs, poverty and insecurity in developing countries cannot be overemphasised. It is therefore pertinent that priority is given to addressing the inequities of the current rule under the domestic support pillar. We believe the suggestion of the Chair of the CoA in his report to the informal TNC and HOD meeting of 14 October, 2019 for "some issues (...) to be prioritised and phased for a meaningful outcome at MC 12 and some issues will be addressed post-MC12" is one that is likely to guide us towards meaningful outcomes. The African Group has keyed into this initiative and circulated a document titled "African Group Elements on Agriculture for Meaningful Development Outcomes at the Twelfth Ministerial Conference" Ref. JOB/AG/173. The document provides a clear

pathway on issues such as the current imbalance in the domestic support pillar, Public Stockholding for Food Security Purposes, Special Safeguard Mechanism and Transparency. These issues are critical to sustainable development of African economies and expansion of agricultural trade. The document did not only take into account the concerns of Africa, but also that of other developing countries. We therefore urge Members to favourably consider the elements of the African Group Paper.

Fisheries Subsidies Negotiations

We wish to reaffirm our earlier stance that special and differential treatment must be an integral part of any outcome on fisheries subsidies in line with the mandate. We appreciate the questions posed by the Chair of the Negotiating Group on Rules – Fisheries Subsidies at the informal open ended meeting of 28 November 2019. We hope responses provided by Members will guide us to meaningful outcomes in MC12. We wish to remind this Committee that part of the mandate of our Ministers in Doha is to clarify and modify rules on fisheries subsidies within the rules negotiations. Towards this end, we wish to suggest that negotiations should be centred on the prohibition of harmful subsidies as opposed to the various capping and green box approaches, as these are unlikely to reduce harmful subsidies for large scale fishing. We support a list based approach previously proposed by the ACP Group.

My delegation takes note of the various facilitator's working papers and wish to place on record that these documents should not in any way replace the working document TN/RL/W/274/Rev.6 that contains our various positions. We also wish to reiterate that small scale fishing should not be subject to any discipline of fisheries subsidies. Furthermore, we wish to underscore the need for future negotiations to be properly structured and organised in a way that shall enable the full participation of small delegations and others to achieve tangible outcomes by MC12.

Conclusion

We want to re-affirm our well-known position that S&DT is crucial to achieving an acceptable balance of rights and obligations among WTO Members. In our view, S&DT must be an integral part of all current and future negotiations. We look forward to constructive engagement on this issue to achieve a win-win outcome in MC12.

40. Solomon Islands (Pacific Group)

I make this statement on behalf of the Pacific Group.

Our Group wishes to thank the Director-General for convening this meeting to assess the state of play in the WTO negotiations and to provide direction for the way forward to MC12 in June 2020. We also wish to thank the Chairs of the various Negotiating Groups for their reports.

We also support the statements made by the ACP and LDC Groups. In this statement we will confine our statement to two issues.

The first is fisheries subsidies. The Pacific Group commends the active and constructive work of the Chair in injecting new momentum to the discussions. We also commend the excellent work of the Facilitators in ensuring that discussions continue.

As evidenced in the Facilitators' reports and discussions this week, many critical issues – both technical and cross-cutting – remain to be resolved as we come to the deadline of December 2019 set by Ministers at MC11 to conclude this Agreement. While discussions are more advanced in some pillars such as IUUF and OFS, more work is needed in the Overcapacity and Overfishing pillar and the cross-cutting issues, including special and differential treatment.

In line with our Leaders' commitment to the Blue Pacific initiative and our region's shared stewardship of the Blue Continent, the Pacific Group has always stressed the critical importance of this negotiation to us as Small Island Developing States, highly dependent on the fisheries sector.

We reiterate that this Agreement should deliver the two dimensions of the mandate. These are:

- to provide strong disciplines on harmful fishing subsidies and

- to provide appropriate and effective special and differential treatment for developing countries including Small Island Developing States, SVEs and LDCs.

The fisheries subsidies disciplines, including the complementary approaches should be proportional i.e. must target certain subsidies that are harmful and target the main subsidisers. It would not be fair, in our view, that Members like us that contribute little to overfishing are made to pay for the crime of others. Therefore, consideration should be given in this Agreement for small Members that do not currently have the capacity to fish, and have the fish, to build their capacity, and to help diversify our economies. This Agreement should also help us deliver on SDG 14.7 for Small Island Developing States and LDCs.

Our Group therefore remains committed to engaging constructively with Members to conclude this Agreement by MC12.

On the second issue of development, we underline the importance of the G-90 proposals to our Group. These proposals will help us diversify our economies. This will also help reduce our vulnerability stemming from our dependence on a few exports that are susceptible to external economic shocks. This has been exacerbated in recent years by the frequency and intensity of natural disasters. We therefore appeal to Members to support this work in the CTD SS in order to find meaningful solutions.

The Pacific Group reiterates its commitment to the open rules-based multilateral trading system that provides stability and predictability for all Members including our Group.

41. Chile (Structured Discussions on Investment Facilitation for Development)

In keeping with the open, transparent and inclusive nature of the Joint Initiative on Investment Facilitation for Development, I am pleased to update Members on the latest developments since my last report to the HODs in October.

Since my last report, the Structured Discussions held three substantive meetings. Discussions were based – and focused – on the Working Document that had been circulated to all Members in July.

As you may remember, the working document is a distillation of the areas of convergence and common interest regarding the possible elements of an investment facilitation framework that emerged from the example-based discussions held earlier in the year.

The three meetings in October and November provided an opportunity for participating Members to provide their concrete views, positions and textual preferences for further developing the elements of the future framework. I would like to thank all participating Members for their engagement and active participation in those meetings.

In line with our structured and outcome-oriented approach, I have complemented the usual summary of meetings with my own assessment of the discussions, trying to shed further light on the areas of potential convergence to help Members move forward their discussions.

It has been clear during our discussions that participating Members want to deliver a framework for the facilitation of investments that would not only benefit investors, but that could also assist policy-makers in mobilising investment.

The recent Joint Ministerial Statement adopted in November, co-sponsored now by 98 Members (WT/L/1072/Rev.1), attests to the widening support from Members.

These 98 Members committed themselves to "work towards a concrete outcome on Investment Facilitation for Development at MC12". This expectation that the initiative should lead to a meaningful or "concrete" outcome for the next WTO Ministerial Conference is widely shared among participating Members.

At our next meeting on 12 December, we will take stock of the substantive progress made and collectively decide on the best way to move the discussions forward next year – keeping MC12 on the horizon.

42. Chile

I now take the floor on behalf of Chile. At these special times facing the WTO, a context involving the imminent paralysis of the Appellate Body in the dispute settlement system combined with events in the Committee on Budget, Finance and Administration and unilateral trade measures that have been adopted by some Members and are undermining the foundations of the rules-based multilateral trading system.

This meeting is taking place against the background of a substantial loss of dynamism in international trade, signs that the economic processes of relevant markets are slowing down, and clear indications of growing protectionism in trade.

Nevertheless, Chile remains optimistic. We have sufficient strength to continue collaborating with the multilateral trading system and to support any consensus that emerges.

The WTO will maintain its key role in the future of multilateral trade, its discussion and negotiation functions will continue, dispute settlement will remain operational, and proposals already exist for maintaining a two level procedure, in accordance with the commitment made in the Marrakesh Agreement.

Chile reiterates its commitment to an efficient, reformed and modern WTO, with capacity to lead the way in the 21st century.

I would like to highlight the broad participation and progress made in the joint initiative on electronic commerce and urge the continuation of work with an eye to the Twelfth Ministerial Conference. We also highlight the progress made in negotiations on domestic regulation in services, with a call for further efforts towards reaching a final outcome at the Twelfth Ministerial Conference.

Furthermore, at the last session of the General Council, our delegation and others proposed that we should begin discussions on the renewal of moratoria, taking account of the timeline envisaged within the mandate of the Buenos Aires Ministerial Conference.

Indeed, for our delegation, formal and informal talks have pointed, in our view, to the need for more time to seek common understandings and consensus on the various aspects contained in the mandate of Article 64 of the TRIPS Agreement.

Considering the historical positions of countries on this matter, our delegation has proposed to extend the moratorium until the Twelfth Ministerial Conference and continue to study the scope and modalities for this type of complaint.

For Chile, the extension of this moratorium together with the extension of the moratorium on electronic commerce constitutes a historic balance achieved in the Ministerial Conferences. We therefore think it important to maintain the constructive dialogue between delegations and give ourselves time to continue seeking common understandings on the matter.

We consider that the decision on the extension of both moratoria should be taken with due regard for their importance and the balance that they represent in this organization.

In agriculture, Chile reiterates its position: namely, we attach special importance to the agricultural reform programme, in accordance with the provisions of Article 20 of the Agreement on Agriculture. For Chile, it is important to be able to make balanced progress on the three pillars of negotiation, seeking a greater level of commitment and ambition in negotiations. Considering that this matter is of the greatest interest for Members, we place a special focus on any outcomes that can be achieved regarding domestic support.

Concerning the latter, we advocate a broad approach which includes all trade distorting support. All Members should contribute to the negotiation, especially those that distort trade the most. In this regard, we note with interest the proposals aimed at ensuring that reductions in domestic support are made on the basis of proportionality.

Chile considers that, together with the negotiations on domestic support, there is a consensus on working towards improvements in transparency. This task is pending for many Members and there is a need to comply with the notification obligations contained in the Agreement on Agriculture.

43. Kazakhstan

The Appellate Body impasse poses a serious threat to the multilateral trading system. In this regard, we strongly support the reforms of the organization in order to make it more responsive and relevant to today's realities. With regard to the dispute settlement mechanism, we believe it is important to preserve the two-tier system and take actions to improve the operation of the Appellate Body. We commend the informal process led by Ambassador David Walker to resolve the current situation and we support the unblocking of the Appellate Body Selection Process.

On fisheries subsidies, we welcome the appointment of the new Chair of the Negotiating Group on Rules and wish Ambassador Wills every success in his important role. Now, since we reached and missed the December deadline, we need to put all efforts to complete the negotiations by MC12. It is vital to deliver this multilateral endeavour in order to restore the confidence of the international community in the negotiating pillar of the WTO.

On transparency requirements, we strongly believe that notifications are important for the effective functioning of the WTO.

We also hope that the accession of new Members to the WTO, including Belarus, should be one of the outcomes of MC12.

Kazakhstan welcomes plurilateral joint initiatives that are currently being actively discussed by many WTO Members. In this regard, we see some potential deliverables especially relating to domestic regulation in services trade. We expect the adoption of domestic regulation in services trade at MC12. At the same time, we like to emphasise the existing imbalance in the level of commitments in terms of services sectoral coverage. We need to make the service regulatory framework enforceable and effective. However, some WTO Founding Members in their services schedules in particular on Mode 3 commitments have sectoral coverage of less than twenty sub-sectors while other Members particularly those who joined recently committed in over sixty services subsectors. This clearly demonstrates substantial imbalance in the level of services commitments hence do not provide level playing field and reduce effectiveness of application with domestic regulation rules. In order to provide effective and enforceable service regulatory framework, we believe the final text of the agreement on domestic regulation rules should address this imbalance in its coverage.

On electronic commerce, Kazakhstan welcomes the completion of the second round of discussions over the proposals on the table. The scope of the issues is rather extensive and complex and we clearly observe different levels of readiness of Members to discuss certain issues. Now we need to quickly decide on the next steps and try to guide the discussion in a more results-oriented mode. We would like to encourage proponents of this initiative to look into creative approaches and consider employing a flexible model of agreement that will consist of two parts: (i) a multilateral part that will contain basic provisions that facilitate e-commerce where all Members especially developing ones will be comfortable to undertake commitments and (ii) a plurilateral part that will contain provisions that go beyond the trade-related aspects of e-commerce. Given the complexity of the issues, we also believe that certain technical assistance provisions should be carefully crafted in order to address concerns of developing countries.

On investment facilitation, Kazakhstan supported the Shanghai Ministerial Statement which commits us to intensify work to further develop the multilateral framework on Investment Facilitation and work towards concrete outcomes on the issue at MC12. Kazakhstan supports all efforts of the Members that will lead us to move into the next phase which is to share a global rulebook on investment facilitation.

We also believe that given the limited time left before MC12, instead of calling each other to resolve these and other outstanding issues at every Informal TNC and Informal HODs meetings, maybe it is high time to ask ourselves individually what we are doing and what is our contribution to addressing these outstanding issues and to reaching these agreements. And then at the next Informal TNC and Informal HODs meetings, Members should report to the TNC Chair on what has been done on the

progress made individually and collectively by us within the Negotiating Groups to address these issues.

To conclude, our hope is that Nur-Sultan will be the place where we take the necessary concrete steps to revitalise multilateral cooperation on trade and sustainable development.

44. Panama (Article XII Members)

We are delivering this statement of behalf of Article XII Members.

We reiterate once again that the Group has no notion of sitting passive during ongoing negotiations, rather we seek to push new ideas in how all Members should undertake commitments that can lead to more fair and balanced agreements for MC12. We do not seek to backtrack on commitments we undertook on accession at the request of Members with much higher levels of entitlements and flexibilities. This means however that in order to reach a level playing field, all Members and especially those who currently have the highest levels of entitlements and flexibilities will have to make significant adjustments.

During our accessions, Article XII Members undertook significantly greater commitments liberalising our agricultural sector compared to original Members. These steps were taken at the request of Members here present who cited the benefits of this greater liberalization. These included extensive reductions in the various forms of domestic support. As we see it, most statements and proposals on the table seek to preserve the proponent's entitlements and propose others to reduce theirs. We must strive for new ideas to balance the field for all Members and not just accommodate the few who secured entitlements in the Uruguay Round.

Ongoing negotiations must also attend the imbalances in market access, not just levels of support. The average bound tariff in agriculture of the original Members is four times higher and three times higher in NAMA than the average of our Group. Furthermore, Article XII Members underwent a significant process of tariff simplification and 100% binding coverage that many original Members have not. Policy predictability is essential for promoting economic growth.

While our Group has remained active at the CoA SS, we stress the need to work in parallel with reforms to level the playing field in NAMA and Services as well, where Article XII Members undertook more commitments in virtually every sector. These must therefore be included in our current discussions and proposals of reforms going forward for Nur-Sultan and further.

We would once again remind the Members present our openness to dialogue and work together to achieve substantial results towards a fairer and balanced WTO.

45. Panama

Panama regrets that Members have not been able to conclude negotiations to eliminate fisheries subsidies and therefore to fulfil the mandate given by our Heads of Delegation and Ministers to eliminate subsidies by the end of 2019.

However, we recognize that progress has been made and are pleased to note that, despite the current challenges, Members remain committed to achieving a balanced and fair outcome at the forthcoming Ministerial Conference.

In January, we must begin negotiating the text. Once again, we call upon delegations to refrain from introducing elements that do not fall within the remit of the WTO or the negotiating mandate. We should like to take this opportunity to acknowledge the valuable work carried out by the Chair and Facilitators.

With regard to negotiations on agriculture, Panama supports reform in all the pillars. This is necessary to achieve fairer results, with proportional commitments from all Members. We should also like to reiterate our support for maintaining special and differential treatment for developing country Members as part of any outcome and future negotiations.

As a co-sponsor of proposals relating to the work programme and moratorium on electronic commerce and to cases of non-violation under the TRIPS Agreement, Panama considers it important

that both Buenos Aires decisions be postponed until the next Ministerial Conference so that our Ministers are the ones to decide on this matter. As we have stated previously, it is important for my delegation that next year's Work Programme on Electronic Commerce move swiftly from the discussion and presentation of experiences to a substantial phase, in pursuit of concrete multilateral outcomes.

We welcome the development of the discussions on Investment Facilitation for Development. Convinced of its value, we are co-sponsors of the Joint Ministerial Statement on Investment Facilitation for Development, dated 5 November 2019. We reiterate our commitment to continue contributing actively and constructively to shape the future multilateral framework.

Likewise, we recognize the work being carried out by the Working Group on MSMEs with the aim of having possible deliverables at the Twelfth WTO Ministerial Conference.

Lastly, we should like to restate that Panama supports the development of a more pragmatic and transparent WTO. Together with 17 other Members, we are co-sponsors of document WT/GC/W/777, with a view to improving the regular functioning of the Committees and facilitating the settlement of trade disputes between Members.

46. Israel

As we are reporting about activities at the end of 2019, it is good to take stock of where we are and where we are heading. The world has changed and we are now testing the boundaries of the multilateral trading system. People around the world are watching and we cannot afford to send the wrong message. It is Israel's priority to have a healthy WTO with a strong negotiating function, one that is able to deliver outcomes that are beneficial for all.

In this regard and without prejudice, please allow me to refer to areas where we see the conversations that could lead to a positive direction.

On the Joint Initiative on Services Domestic Regulation, the signatories are in the process of submitting their indicative draft schedules demonstrating their commitment to a meaningful outcome by MC12. Although there are some important outstanding issues to be finalised in the draft reference paper, interested Members are working hard towards concluding it in good time. For Israel, this means engaging with our stakeholders and we look forward to progressing on these matters ahead of MC12.

On electronic commerce, we have been a strong supporter of the moratorium and view this as an integral part of developing a strong digital ecosystem which is beneficial to both developing and developed Members. On the joint statement initiative, we just concluded the last substantive round and we have seen some progress – but there is still some way to go. In Israel, we develop many innovative technologies that are used in e-commerce and we have seen the value it brings to our economy. This is why we support the advancement of these negotiations so that everyone can benefit from e-commerce.

On fisheries, Israel is happy to welcome Ambassador Wills as the new Chair of the Negotiating Group on Rules. Even though fisheries is in fact not a big sector in our economy, we believe that we should stick to the guidelines and we should conclude these negotiations at MC12 because of the systemic implication they have on the WTO in general.

On dispute settlement, we believe that a functioning dispute settlement system is vital for the well-functioning of the rules-based multilateral trading system. This is however only one of the parts of the WTO. Keeping the negotiating agenda functioning is now more vital than ever and we should not lose sight of this.

Finally, I would like to note the agreement we had last night on the Committee on Budget, Finance and Administration which does allow us to continue our work.

These are hard times. Let us remain pragmatic, open-minded, inclusive and multilateral.

47. Malaysia

At the outset, Malaysia associates ourselves with the ASEAN Statement delivered by Thailand.

As we face the final curtain in 2019, Malaysia appreciates Members efforts in continuing to preserve the multilateral trading system and ensuring that this House continue to stand.

Malaysia would like to reiterate our position as a strong advocate of the multilateral trading system, we believe that WTO has been effective in ensuring that global trade governance remain open, predictable and transparent, benefitting all Members. There is still however a few key challenges.

Dispute Settlement Mechanism

Malaysia would like to re-emphasise that the effective functioning of the dispute settlement system is a fundamental aspect of this institution.

On this note, we take this opportunity to express our gratitude to Ambassador David Walker for his leadership in steering the discussion to unlock the impasse in Appellate Body issue. There is still unfinished business, hence, we encourage all Members to continue to work on this area in months ahead.

Fisheries Subsidies Negotiations

We commend the efforts made by Ambassador Santiago Wills of Colombia and acknowledge the active engagement in fisheries subsidies. We note that there is a need for a convergence to ensure an outcome can be achieved.

We welcome the various ongoing discussions on the Joint Statement Initiatives on MSMEs, Investment Facilitation, and Electronic Commerce. We see these initiatives as potential deliverables at some stages for MC12 and encourage Members to be part of these initiatives.

Development

WTO Members should assume a more constructive role in narrowing the gap in key areas of negotiations. Greater political will and flexibility are crucial if we want to see this through, bearing in mind that time is against us.

Having said that, we must recognize the foundation upon which this multilateral institution was built, that is development.

Conclusion

It is critical that Members exercise flexibilities to resolve the bigger or pending issues to ensure that the credibility of the multilateral trading system is not undermined. We should keep going in months ahead.

48. Trinidad and Tobago (CARICOM)

This statement is being delivered on behalf of the Caribbean Community Group in Geneva.

We thank the Director-General for the reports presented by the Chairpersons of the Negotiating Groups and the report on his activities. The CARICOM Group continues to appreciate the demonstration of transparency that the TNC delivers to the WTO Membership.

Special and Differential Treatment

The CARICOM Group has on numerous occasions reiterated the importance of Special and Differential Treatment mechanism for developing and least-developed countries, as it constitutes an integral part of the architecture of the multilateral trading system. Development is a core principal of the WTO as recognized in the Marrakesh Agreement establishing the WTO. We firmly believe that special and differential treatment should continue to be afforded to developing countries, particularly LDCs

and SVEs in current and future WTO negotiations as they seek to more fully integrate into the multilateral trading system.

The G-90 has recently reviewed the various Special and Differential Treatment proposals. The CARICOM Group believes that this process will be key to move discussions forward by finding ways to converge toward meaningful outcomes at MC12.

Appellate Body

On the Appellate Body impasse, the CARICOM Group is concerned that thus far, despite our best efforts, we have not been able to unblock the impasse in launching the selection process for new Appellate Body members and that in four days' time, notwithstanding any decision to the contrary, the WTO Appellate Body will be rendered inoperable. We sincerely hope that during our deliberations in the upcoming General Council, we can exercise the necessary political will to arrive at a solution we can all coalesce around.

Fisheries Subsidies Negotiations

Since the last meeting of the TNC on 14 October, much has happened in the fisheries negotiations, not least of which is the very important appointment of a new Chair of the Negotiating Group on Rules by the conclusion of the last Fisheries cluster meetings on 8 November.

In this regard, we wish to thank Ambassador Wills for advancing a rigorous, open and transparent schedule of work to achieve the much needed progress required for us to be able to deliver on the mandate in the negotiations. We therefore thank him for his progress report.

While we are all realistically resigned to the fact that the December 2019 deadline is no longer tenable for the successful conclusion of the negotiations, CARICOM will remain very much engaged and actively so within the ACP Group in the months ahead leading up to MC12.

Our fishery resources are very important to the food security and sustainable livelihood of our small economies in the Caribbean and these negotiations are no small matter for us. Naturally, we aim for an agreement that will safeguard our right to our resources as well as secure our capacity to protect those resources for future generations.

We nevertheless wish to emphasise that small countries such as ours are not the ones that have caused the problems that we face with global overfishing. The onus should therefore be placed on large industrial nations to eliminate the subsidies that contribute to unsustainable and damaging fishing practices.

We appreciate the sterling work and commitment of the various facilitators and negotiators. They can be assured of our full support. We urge that the negotiations be carefully focused and phased so that a comprehensive outcome can be achieved.

We look forward to working closely with Ambassador Wills in the new year so that together the WTO can deliver a good agreement for the global community in the fisheries subsidies disciplines.

Electronic Commerce

As the multilateral and plurilateral processes related to electronic commerce continue in parallel, the momentum of the latter is particularly noteworthy. CARICOM representatives in Geneva continue to actively monitor the negotiations as observers. In addition, we continue to take note of the developing countries joining the initiative as the rounds of negotiations progress.

On the subject of the moratorium on the imposition of customs duties on electronic transmissions, CARICOM would want to join in the general consensus regarding retention of the moratorium until MC12.

Investment Facilitation

The Structured Discussions on Investment Facilitation for Development have taken on added significance for the CARICOM Region since four of our Member States co-sponsored the Joint

Ministerial Statement emanating from the Shanghai Mini-Ministerial Conference on 5 November 2019. CARICOM Member States not part of the initiative continue to assess the feasibility and desirability of binding international disciplines on investment facilitation. Among other things, our assessment is taking into account what comprises our investment facilitation goals and needs, as well as the extent to which an international framework can support identified goals and needs.

CARICOM Member States continue to monitor the discussions closely and we encourage Members of the JSI to maintain openness which is critical in allowing all non-participants to evaluate the potential benefits and challenges of the disciplines being proposed. We also encourage Members to keep development at the core of this initiative and to bear in mind that it is an Investment Facilitation for Development framework, the operative term here being "for development". Therefore, Members should strive to advance an ambitious developmental package as a core objective of this framework.

Agriculture

Agriculture remains a major economic sector for the Caribbean Community. Food and nutrition security and agricultural exports have been identified as key drivers of economic growth and critical to building our economic resilience. It is therefore our desire for the Membership to agree an outcome that allows for inclusiveness and equity. We therefore reaffirm our desire to have the development dimension invoked in the Preamble to the Agreement on Agriculture and repeated in Article 20 of the negotiating mandate realised.

In this context, the preservation of existing special and differential treatment, including specific flexibilities for SVEs and LDC should remain central to any outcome. We welcome the increase in submissions on the key pillars and elements of this file, and their overall thrust towards deepening Members' understanding of those key issues that continue to hinder our ability to find convergence. The Community remains committed to focused and solution-oriented discussions aimed at a balanced outcome in Nur-Sultan.

Services

The WTO's continued deliberations on services remains of prime importance to the CARICOM Group. We were therefore pleased to see some activity, though not substantive in nature, in the Working Party on Domestic Regulation earlier this week. We look forward to continued discussions in that format of our work, particularly as we examine the potential linkages and synergies could be developed between the multilateral work in the WPDR on the one hand and on the other hand the Joint Statement Initiative on Domestic Regulation.

49. Colombia

This statement will cover three specific issues of importance to Colombia. These issues relate to certain areas of the ongoing negotiations that promise to deliver positive results in Nur-Sultan.

First of all, in agriculture, we wish to highlight the technical process undertaken this year, and welcome the new proposals and papers that have recently been submitted. As everyone knows, Colombia's priority is the domestic support pillar. Members must ensure that their contributions have two key characteristics: firstly, they must be ambitious; secondly, they must be proportional to the distorting effect of existing subsidies on world markets.

Turning now to the negotiations on fisheries subsidies, we support the statement delivered by Argentina on behalf of a group of Members interested in achieving a high ambition outcome. Colombia would particularly like to emphasise the importance that we give to a strong and ambitious outcome in the area of illegal, unreported and unregulated fishing. Given the implications and characteristics of this type of practice, the prohibition of subsidies in this area should apply without any exceptions or flexibilities that undermine the discipline's core objective. We also wish to reiterate the importance of ensuring that any final agreement reflect the prohibition of fisheries subsidies in areas outside the national jurisdiction of Members. High seas resources are a public good that we must work together to safeguard, and by eliminating subsidies for high seas fishing we will be making a highly significant contribution to compliance with the mandate of Sustainable Development Goal target 14.6.

Lastly, regarding the joint initiatives, we would like to express our support for the progress made following this year's discussions. We are greatly encouraged by the increased participation and support of Members in the discussions on e-commerce and investment facilitation for development, and, above all, would like to highlight the sharing of indicative draft schedules in respect of services domestic regulation. We reiterate our interest in ensuring the future multilateral adoption and implementation of the three initiatives, which will help strengthen this organization.

50. St. Lucia (OECS)

I am making this statement on behalf of the members of the Organization of Eastern Caribbean States (OECS).

In the previous statement of the Director-General to the TNC, he reminded Members that the world is counting on us to deliver a stronger, rules-based system that unlocks opportunities for trade, development and inclusiveness. You also cautioned us that time is not on our side in this regard. Based on today's reports and soundings being received from news sources, it is clear that the crisis has deepened and the existential moment that we once feared is now upon us.

Today, we are now on the cusp of a non-functioning dispute settlement system – the crown jewel of the multilateral trading system. The OECS Member States are deeply concerned because while the Membership of this House is actively engaged in negotiating rules to govern international trade, we have failed in custodial duty to secure the viability of the dispute settlement system that supports these rules.

OECS Member States have not been extensively engaged in dispute settlement. However, as small and highly vulnerable island States, we are firm believers in the multilateral trading system as we believe that it is essential to a more beneficial integration of our economies into the global trading system. In order to prevent ourselves from walking over the cliff, we call on all Members to demonstrate flexibility in addressing issues which can affect the good functioning of the Appellate Body.

What is certain is that the rules-based system anchored by a two-step dispute settlement process has supported the conditions for the expansion of economic output lifting communities across the globe out of poverty. The WTO has contributed to the global economy and economic stability and has provided an opportunity for the development concerns of all Members – big and small – to be discussed in a cordial and constructive fashion. It has put an end to the economic welfare and the beggar thy neighbour policies that once plunged the world into conflict.

We must collectively heed the lessons of the past and work towards and with dispatch to resolve the impasse that threatens our system.

Concerning special and differential treatment for development, the OECS continues to register its disappointment at the slow progress towards mainstreaming development provisions relevant to small States into the architecture of WTO rulemaking. While November marks the end of the Atlantic hurricane season, this period merely offers a temporary reprieve from the catastrophic threats of climate change related events.

In this regard, we ask that more meaning be given to the Work Programme on Small Economies by deepening and intensifying the discussions on the inextricable link between natural disasters and trade. The good work done by the WTO Secretariat itself confirms that such natural disasters are detrimental to the trade performance of our economies and continually derails our economic development.

With respect to fisheries subsidies, we are grateful for the appointment of Ambassador Wills as Chair of the Negotiating Group on Rules. While we are satisfied with the purposeful engagement that the Chair has pursued since he has taken on that role, we also acknowledge that the end of the year deadline will not be met. Nonetheless, we are encouraged by Ambassador Wills' determination in moving the discussions forward. We are hopeful for a balanced outcome in Nur-Sultan – one that secures global fish stocks by limiting the harmful excesses of major subsidizers while also preserving sufficient policy space for countries like ours to sustainably grow our sector.

On agriculture, we note and welcome the increase in submissions particularly under the domestic support and market access pillars. Agriculture stimulated economic growth and food security continue to be of high priority to us and therefore we can only urge Members to be pragmatic and solutions oriented in the deliberations.

In closing, I wish to associate with the statements already delivered by Vanuatu on behalf of the ACP and Trinidad and Tobago on behalf of the CARICOM Group in Geneva.

51. Nepal

We wish to align our statement with the statement delivered by Chad, the LDC Group Coordinator.

As a strong supporter of fair, inclusive and rules-based multilateral trading system, Nepal underscores the need of strengthening the fundamental principles and objectives of the Marrakesh Agreement, and emphasise our shared responsibility to safeguard multilateralism for the interest of all WTO Members.

In this context, my delegation would like to highlight some specific issues.

Dispute settlement mechanism is a core component of the WTO, which we should all safeguard to uphold the rules-based order. The vacancy of Appellate Body members adversely affects the credibility and functioning of the organization. We appreciate Ambassador David Walker's efforts for reaching consensus-based proposal. We stress on for immediate resolution on this issue.

On WTO reform, we view that the substance of the reform should be comprehensive, able to address global challenges including increased inequality, properly incorporate the emerging issues and opportunities of global trade, and support to weaker economies to integrate meaningfully into the global trading system. The process in this respect should be transparent, participatory, bottom up and Member-driven.

Development dimension must remain our prime negotiating agenda. A clear road map on mainstreaming the development dimension in the multilateral trading system and S&DT is fundamental in support of achieving the SDGs especially for the LDCs.

Nepal stresses upon the importance of implementation of the Trade Facilitation Agreement as it aims to reduce the time and cost of cross-border trade. Without external technical and financial support, implementing the Category C Commitments pose severe difficulties for us. We encourage development partners to provide enhanced and additional level of support to implement the agreement.

In view of having potential impacts on revenue posed by the question of moratorium of customs duty on electronic transmission, it is of foremost importance that a comprehensive study be undertaken on the impact of such a moratorium. We underline that all rulemaking on e-commerce should follow the existing mandate.

Finally, pertaining to Aid for Trade including EIF, we reaffirm that the work programme on aid for trade is a priority for the LDCs. Additionally, LDCs focused support measures should be further strengthened not only to enable them to graduate from the LDC status but also to ensure that their graduation is more inclusive and sustainable.

52. Cambodia

Cambodia associates itself with the statement made by Chad on behalf of the LDC Group and Thailand on behalf of the ASEAN.

While we are expressing the serious concerns with regard to the challenges we have faced with the smooth function of multilateral trading system, my delegation appreciates the great efforts made by Members and Facilitators in making text proposals and working together in finding concrete solutions to achieving meaningful outcomes including the reform.

Appellate Body

As the Director-General has reported, the Appellate Body will be inactive after next week. My delegation would like to reiterate our concern on the crisis of the Appellate Body as it is extremely important to resolve trade disputes. We wonder whether or not the WTO will be handicapped after the Appellate Body is inactive.

Special and Differential Treatment

We have a long journey of the discussion on Special and Differential Treatment which has mandated to grant to developing countries especially to LDCs without condition. My delegation would like to express our views that the Special and Differential Treatment are an utmost important dimension to develop our trade policies in pursuit of legitimate development goals. In this regard, we welcome proposals and initiatives submitted by Members. The special and differential treatment must be integral part of all negotiations and we therefore re-urge Members of this organization to find consensus in providing it to developing countries especially to LDCs.

Whereas Members are negotiating in various areas including fisheries, services domestic regulation, moratorium, e-commerce moratorium, investment facilitation and so on so forth, my delegation re-desires Members at the same time to fully implement previous mandates and Ministerial decisions in favours of LDCs including full implementation of DFQF, services waiver and preferential rules of origin.

Finally, my delegation looks forward to hearing from Members through the General Council to be held on 9-11 December, some compromising positions and tell where we stand and how we go forward to MC12 which will take place six months from now.

53. Viet Nam

We associate with the statement made by ASEAN delivered by Thailand.

In light of recent significant developments, we would like to also share our views.

We are pleased that discussions on various aspects of WTO Reform continues steadily. We welcome efforts of many proposals and proponents to consider and actually revise their hard proposals to take into account comments from Members' concerns aiming at convergence to ultimately achieve consensus. We restate that reforms need to be comprehensive and consistent with the goal of preserving an inclusive, open, non-discriminatory and rules-based multilateral trading system while making it more responsive to the changing trade and business environment. We encourage reform proponents to continue to listen and adequately address concerns of Members.

We share the deep concerns of majority of Members that just in four days, the Appellate Body will stop functioning as it did despite of the calls of more than two-thirds of the Membership to launch the AB Selection Process. We look forward to substantive discussions next week on how we can deal with this situation temporarily and whether we can chart our way out of here.

In the area of fisheries subsidies, we again welcome the appointment of Ambassador Wills as the new Chair of the Negotiating Group on Rules and would like to commend his steady, thoughtful and energetic steering that gives enormous momentum to the negotiations in a very relatively short period of time. We sincerely thank him for the intensive consultations with the Heads of Delegation twice last month both in the organizational and the substantial matters of the negotiations – not to mention numerous other meetings which really progressed the negotiations and set out the work plan to meet our mandates at MC12. We note the communication in TN/C/W/75 by some Members yesterday which recognizes the need for special and differential treatment though its forms require further reflection.

In the context of divergences, with regard to other mandates, with the year-end deadlines, we consider that while our understanding of the substantive matters needs to be deepened, we likewise need to ensure a stable and predictable environment for doing business and international trade. Hence, we encourage Members to equally show their respective flexibilities.

We are consistently of the view that it is time for WTO Reform issues to be consolidated and a clear roadmap to Nur-Sultan to be presented. The WTO and the multilateral trading system as the powerful force supporting economic growth, development, stability and peace should continue to be viewed that way.

ANNEX 3

STATEMENT BY NAMIBIA ON THE REPORT BY THE CHAIRMAN OF THE TRADE NEGOTIATIONS COMMITTEE AND REPORT BY THE DIRECTOR-GENERAL (AGENDA ITEM 1)

At its request, the statement of Namibia is included below as part of the Minutes of the General Council meeting.

Allow me to register Namibia's confidence in the Chair's leadership as she directs these proceedings in a constructive manner.

I would like to take this opportunity to thank the Chairman of the Trade Negotiations Committee, the Director-General, for his report on the current ongoing work and progress made thus far.

I am taking the floor to make Namibia's intervention by recalling the Preamble of the Marrakesh Agreement establishing the World Trade Organization:

"Recognising that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development."

Rules negotiations (Fisheries subsidies)

Natural environment and biodiversity resources are indispensable assets for food security and sustainable economic development. Hence the need to give prime attention to the conservation of marine resources in more sustainable manner.

The SDG 14.6, as part of the 2030 Agenda for Sustainable Development adopted by all United Nations Member States, targets that, by 2020:

"prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognising that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation".

Namibia has one of the most productive fishing grounds in the world along the Benguela Current System. One of the four eastern boundary upwelling systems in the world. These systems support rich populations of fish, which form the basis for the Namibian marine fisheries sector. Making it a very important sector within Namibian economy.

It is against the above that Namibia is among the countries with the best fisheries management program in world. The programs also serves as a catalyst towards the implementation of SDG 1 (end poverty) and SDG 2 (end hunger, achieve food security) in the context of coastal communities that rely on fisheries for economic survival and a dependable food source.

Hence, Namibia wants to see the outcome on fisheries subsidy negotiations that would address the capacity constraints and the need for policy space to build and develop domestic fishing industries. This could be achieved through a negotiated outcome on Special and Differential Treatment (SDT). Furthermore, we are of the view that, National authorities should be allowed to determine IUU and, situation of overfished stock, in their respective EEZ and through Regional Fisheries Marine Organizations (RFMOs).

Appellate Body

With regard to the issues pertaining to the appointment of Appellate Body members, Namibia wishes to re-emphasise that priority must be given to resolve the impasse on the appointment of Appellate Body members. The appointment will ensure continued functioning of the DSB as while maintaining independence, integrity as well as impartiality in resolving disputes.

Special and Differential Treatment (S&DT)

S&DT is an integral part of the Marrakesh Agreement establishing the WTO. It promotes active participation of developing countries in international trade as well as addressing challenges that may be encountered in the implementation of WTO Agreements. During the Doha Declaration, "WTO Member governments agreed that all special and differential treatment provisions are an integral part of the WTO Agreements and that these provisions should be reviewed with a view to strengthening them and making them more effective and operational."

Hence, the need to address the issue of Special and Differential Treatment in proper and transparent manner for all Member States to achieve the objectives of the WTO amongst others, to help developing countries benefit fully from the global trading system in order to ensure that no Member should be made worse-off.

In looking ahead to the period before the Twelfth Ministerial Conference in 2020, to be held in Kazakhstan, there is a need to conclude these negotiations well before MC12.
