



General Council 5-6 May 2021

MINUTES OF MEETING

HELD IN VIRTUAL FORMAT ON 5-6 MAY 2021

Chairperson: H.E. Mr. Dacio Castillo (Honduras)

The Chairman expressed the General Council's condolences to the delegation, the Government and the People of Chad for the demise of the President of the Republic of Chad, His Excellency Idriss Déby. The Chairman likewise expressed the General Council's sympathy to the delegation, the Government and the People of Saint Vincent and the Grenadines for the recent eruption of La Soufrière that had caused tremendous devastation on the island. The Chairman also expressed the Council's deepest sentiments and condolences for the passing of former Deputy Director-General Miguel Rodriguez Mendoza.

The Chairman bade farewell to H.E. Mr. Michael von Ungern-Sternberg (Germany), H.E. Mr. Kemal Madenoğlu (Turkey), and H.E. Ms. Paik Ji-ah (Republic of Korea) and expressed appreciation for their valuable contribution during their time as Permanent Representatives.

The Chairman welcomed the incoming Chief of Staff, Dr. Bright Okogu, and thanked the outgoing Chief of Staff, Ambassador Tim Yeend, for his service to the organization over the past eight years.

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<sup>1</sup> The proposed agenda was circulated in document WT/GC/W/821.

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## **1 REPORT BY THE CHAIR OF THE TRADE NEGOTIATIONS COMMITTEE AND REPORT BY THE DIRECTOR-GENERAL**

1.1. The Chairman recalled that a Formal TNC meeting and Informal Heads of Delegation had been convened by the Director-General on 3 May. He invited the Director-General, as Chair of the TNC, to briefly report on that meeting.

1.2. The Director-General reported that the TNC had held its 40<sup>th</sup> Formal Session on 3 May in conjunction with an Informal Heads of Delegation meeting. 62 Members had intervened, and they had had a good exchange of views about priorities for the months ahead. Her opening statement and summing up had been circulated as JOB/TNC/91. She had already started reaching out to Members as promised and hoped they would have concrete progress to take stock of later in May.

1.3. The Chairman said that Members had a rich discussion at the meeting on 3 May, and he would also refer Members to the Director-General's concluding remarks, and to his intervention at the end of that meeting. He noted that the statements that delegations made on 3 May would be fully reflected in the minutes<sup>2</sup> of that meeting. He reiterated that he would continue his consultations on MC12 the following week. He would then convene an Informal General Council meeting to report on those consultations.

1.4. The General Council took note of the report of the Director-General.

## **2 IMPLEMENTATION OF THE BALI, NAIROBI AND BUENOS AIRES OUTCOMES – STATEMENT BY THE CHAIRMAN**

2.1. The Chairman recalled<sup>3</sup> that the item remained on the agenda so that the General Council could continue to follow up, in a horizontal and transparent manner, on the Ministerial decisions adopted in Bali, Nairobi and Buenos Aires. His report that day was based on the information provided by the Chairs of the regular bodies on the implementation work taking place further to Ministerial mandates in their respective areas. The report would focus only on those areas where there had been

<sup>2</sup> The Minutes of the 40<sup>th</sup> Formal Session of the Trade Negotiations Committee was circulated in document TN/C/M/40.

<sup>3</sup> The Chairman's statement was circulated in document JOB/GC/258.

developments since the March meeting of the General Council, and for those areas he did not mention that day, he referred Members to the previous report under that item.

2.2. On the Work Programme on Electronic Commerce and the Moratorium, he recalled that, in a communication dated 1 April, he had invited all Members to consult on the Work Programme and the Moratorium in preparation for MC12. Eighteen delegations had responded to his invitation, including two group coordinators. On 29 April, he had convened an informal open-ended meeting where he had reported on his consultations. His statement had been circulated as JOB/GC/257. The meeting had also been an occasion to hear the views of those who had not attended the consultations and to hear views on possible ways forward ahead of MC12. In that regard and based on what he had heard from the consultations, he had asked whether Members would consider it useful to hold structured discussions including the sharing of national experiences as suggested by some delegations.

2.3. Despite well-known differences in Members' positions, delegations had confirmed their readiness to engage and deepen the discussions on e-commerce. On the Moratorium, some delegations had reiterated the need to have clarity on its scope and revenue implication. Others had noted the need to consider the broader benefits of the moratorium. A number of delegations had also highlighted the need to broaden the discussions under the Work Programme to address not only issues related to the moratorium but also the digital divide and the challenges limiting developing countries' ability to leverage the benefits of digital trade.

2.4. As he had heard no objection to having structured discussions ahead of MC12, he had concluded that he would reflect further on the next steps and reach out to Members as necessary. He noted that Members had had a rich and fruitful discussion at the previous week's meeting. Given that day's long agenda, he encouraged delegations not to repeat that discussion. However, if any delegation wished its statement made on 29 April to be reflected in the record of the meeting, they should send it to the Secretariat. He also noted that Members had a separate agenda item on the Work Programme and the Moratorium – which was Item 7 of the General Council's agenda.

2.5. There were a few matters to report in the area of Agriculture. Concerning the Ministerial Decision on Public Stockholding for Food Security Purposes, he recalled that the first recourse to the Decision had been reported in 2020. Recently, the same Member had notified on 8 April to have exceeded the de minimis level for rice for the marketing year of 2019-2020, and had sought coverage of the breach of the de minimis limit under the Interim Solution set out in the Bali Decision, and in the subsequent General Council Decision of November 2014. The notification would be on the agenda of the June meeting of the Committee on Agriculture for review. As regards the follow-up to the Bali TRQ Decision, the Committee continued to deliberate on the outstanding issue of the future operation of Paragraph 4 of the Underfill Mechanism with a view to finding an agreement within the agreed deadline of December 2021. The Chair had already started consultations with Members on the issue.

2.6. Regarding the implementation of the Nairobi Decision on Export Competition by Members with scheduled export subsidies commitments, fourteen Members had circulated their revised schedules – twelve of which had already been certified. One of the two remaining Members had recently informed the Committee to have completed the domestic process to approve the Nairobi outcome, paving the way for the circulation of its draft schedule. The Committee on Agriculture had initiated the second triennial review of the Nairobi Decision. 2021 was the first year when all Members were expected to reply to the annual Export Competition questionnaire following the expiry of the grace period foreseen in the Nairobi Decision.

2.7. On the LDC Services Waiver, following an initial proposal from the LDC Group, on 5 March the Council for Trade in Services had agreed to organize a virtual workshop on LDCs' services export performance and implementation of the preferences notified under the LDC Services Waiver. The event would be held during the first week of June. Regarding Duty-Free Quota-Free market access for LDCs, a discussion had taken place at the last CTD meeting in March. A number of Members had provided updates on their DFQF schemes for LDCs, and the LDCs had once again stressed the importance to them of DFQF market access. The Committee would revert to that agenda item at its next meeting in June.

2.8. A brief update concerning Trade Facilitation where the Committee had been very active, including initiating discussions on the first four-year review of the Trade Facilitation Agreement. The

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rate of ratification remained at 93% with 10 Members left to ratify the agreement. Regarding Aid for Trade, a stocktaking event had taken place on 23 to 25 March and he invited Ambassador Piracha (Pakistan), Chair of the CTD, to report on the event.

2.9. Ambassador Muhammad Mujtaba Piracha (Pakistan), Chairman of the CTD, reported that the Aid-for-Trade Stocktaking event held on 23-25 March 2021 had provided an opportunity to survey the on-going economic impacts of the COVID-19 pandemic – impacts that were falling particularly hard on LDCs and many small, tourism-dependent developing countries. A total of 35 sessions had been held. Some 20 of those sessions had been organized by Members or Groups of Members including four sessions organized by the LDC Group. More than 200 speakers had participated with 46% of those being female speakers. Several thousand trade and development professionals had attended the three days. The conference had generated a considerable amount of analysis on how Aid for Trade could contribute to pandemic recovery, response and resilience measures. The divergent outlooks of different parts of the world in terms of economic growth, indebtedness and access to finance had been a theme evoked in the high level plenary event where Dr. Ngozi had been joined by the Heads of the IMF, OECD, UNCTAD, WHO and World Bank.

2.10. Equitable global COVID-19 vaccine roll-out had also been identified as the best value global economic stimulus package available in that high-level session. There had been recognition, too, of the need to redouble efforts to promote global value chain integration and to address supply side capacity constraints if hard-won development gains were not to be permanently reversed by the pandemic. Keeping markets open had been described as essential for vaccine delivery and to bring forth a strong and sustained recovery. Several sessions had looked at adapting trade formalities to take account of the pandemic both at a practical level in terms of using electronic tools to speed clearance and also how implementation of the TFA provisions could help in that regard.

2.11. Regional approaches to COVID-19 recovery had also been discussed, including leveraging the African Continental Free Trade Area and PACER Plus agreement in the Pacific. There had also been a focus on promoting recovery among MSMEs and in the tourism sector. One bright spot in terms of resilience had been the rapid growth of digital trade, but again, there had been concern that opportunities for recovery had been limited by the digital divide. Two sessions had taken a gender-lens to the impact of COVID-19 on women's participation in trade and trade-related activities and many of the sessions had examined the gender dimension of the issues at hand.

2.12. Promoting an inclusive and green recovery had also been a theme discussed and one that would be taken forward through further work in the ongoing biennial Aid for Trade Work Programme. That work would culminate next year in the 2022 Global Review of Aid for Trade that would examine the theme of "Empowering connected, sustainable trade." That information, along with a more detailed summary report of the Stocktaking event, would be made available in due course on the WTO website at the Aid for Trade section.

2.13. The representative of Chad, on behalf of the LDCs, reiterated the importance of implementing the decisions in favour of LDCs with regard to accelerating and increasing their integration into world trade, with the expected positive trickle-down benefits for their people, in terms of employment and poverty reduction. The proper operationalization of the decisions taken in favour of LDCs in the past was all the more critical in those times of crisis in which their economies had been particularly affected and needed to diversify their export potential. The LDC Group thanked the Members that had notified their preferences granted to their countries and called those who had not done so to follow suit. Beyond notifications, Members should collectively ensure follow up to implementation. It was in that spirit that an LDC workshop on the services waiver was co-organized with the WTO. The workshop would be attended by Members and suppliers from LDCs and external consumers.

2.14. The LDC Group also called on Members to further consider its submissions to the Committee on Rules of Origin, and to identify best practices and areas requiring reform, so as to align themselves with the Nairobi Decision. Moreover, as regards e-commerce, the LDCs supported the revival of the 1998 Work Programme and the discussions on their constraints, in order to fully benefit from the potential of electronic commerce. The LDCs had a compelling need to move forward decisively on that issue taking into account their communication submitted in November 2019. Regarding the moratorium on imposing customs duties on electronic transmissions, the LDC Group supported the preparatory work for deliberation by the Ministers at MC12.

2.15. The representative of the European Union said that, on the Nairobi Decision on Export Competition, the European Union continued to urge the remaining Members to submit the necessary schedule modifications to eliminate export subsidy commitments as soon as possible and in time for MC12. The 2021 Export Competition Questionnaire would be the first occasion on which developing countries were required to submit replies. The European Union encouraged all developing Members to do so. That was particularly important for those who were active exporters. The European Union also looked forward to the discussion in the Committee on Agriculture Regular meetings on the triennial review of the Nairobi Decision. The European Union counted on Members' active participation on how to enhance disciplines and ensure no circumvention of commitments.

2.16. On the Bali Ministerial Decision on Public Stockholding, the European Union noted that India had invoked the Bali Ministerial Decision on Public Stockholding for the second time in its DS:1 notification submitted on 8 April 2021. That would be examined in the Regular meeting of the Committee on Agriculture together with the remaining questions to India from 2020. The European Union hoped that it could count on India's constructive engagement with the Membership during the examination and that the information still to be provided would be supplied in time for the Committee.

2.17. On the Bali Ministerial Decision on Tariff Rate Quota administration, the European Union continued to regret that it had not been possible to reach an agreement on widening the scope of the underfill mechanism in order to ensure that all Members took on equivalent commitments under the Decision. Rolling over the timeframe in 2021 would not be acceptable to the European Union. The European Union took note of the recent discussions and constructive ideas put forward by the Chair of the regular Committee on Agriculture and urged the Membership to engage on the issue and work constructively in the Committee on Agriculture Regular meetings. The European Union considered that the issue should be taken up by Ministers at MC12.

2.18. The representative of Indonesia noted that Members still had a lot of work to be done to ensure meaningful progress in the implementation of the Bali, Nairobi and Buenos Aires outcomes. The top priority remained a meaningful outcome on the establishment of a permanent solution on PSH and a comprehensive and balanced outcome on SSM at MC12. Indonesia urged Members to focus their negotiations on the core issues in the unfinished agriculture mandate and to restore the credibility of the WTO by making it work for the resource-poor and livelihood farmers in the world, who were currently being beaten by the pandemic and its impact on food security.

2.19. The representative of India said that, while Members were working towards outcomes for MC12, India wished to remind them of the Ministerial Mandates from Bali and Nairobi regarding an effective and permanent outcome on public stockholding for food security purposes. The Ministerial Mandate for PSH was clear that the negotiations had to be on an accelerated and separate track. Any effort to link those discussions with other pillars in agriculture or any other sector would undermine the Ministerial Mandate. If Members could not deliver on the mandated issues of the past Ministerial Conferences, the WTO's competency would come under question. That would leave doubt as to whether the WTO and its Members would honour the outcomes at MC12 for which they were currently preparing. The credibility of the WTO rested on its capacity to implement outcomes of the past Ministerial Mandates especially when food security issues had become pronounced due to the ongoing pandemic.

2.20. On the Bali Ministerial Decision on Public Stockholding for Food Security Purposes and the General Council Decision of 2014, as the Chairman had reported and as had been mentioned by the European Union, India had notified the Committee on Agriculture that it had exceeded the de minimis level of market price support for the market year 2018-2019 and 2019-2020. That market price support to rice, a traditional food crop, was notified under Article 7.2(b) of the Agreement on Agriculture to pursue public stockholding programmes for food security purposes. India's public stockholding programmes covering rice and several other commodities had been consistently reported in table D as one notification since 1995. The programme was consistent with the criteria mentioned in Paragraph 3, Footnote 5, and Footnote 5&6 of Annex 2 to the Agreement on Agriculture. The stocks under the programme were acquired and released to meet the domestic food security needs of India's poor and vulnerable population and not impede commercial trade and food security of other Members. For those reasons, the notified level of market price support was covered by the peace clause set out in the Bali Ministerial Decision and the General Council Decision mentioned in document WT/L/939. India had been constructively engaging on that issue with other

Members in the meetings of the Committee on Agriculture and did not support linking PSH outcomes with other outcomes.

2.21. Since the European Union had again raised the issue, India was nudged to repeat what it had said in response to the European Union's comments. Members calling for transparency should lead by example. It was not India's intention to point fingers. But the European Union had still not submitted its own notification for the market year 2018-2019, well passed the deadline of 30 September 2019 and crossing nineteen months, which had been the benchmark for it when it had submitted its 2017-2018 notifications. It was also disappointing to note that specific trade concerns on the European Union's policies related to MRLs and endocrine disrupters had remained on the agenda of the Committee for several years altogether.

2.22. As a responsible Member of the WTO, India was conscious of its notification obligations having consistently complied with them including the notification obligations prescribed in document G/AG/2 on domestic support. Its market access notifications had also been up to date. India's track record with meeting its transparency obligations had been much better than that of Members pressing for enhanced transparency at the WTO.

2.23. On clarifications on questions asked, India requested Members to submit their due notifications so that at least it could also have the right to ask questions rather than those Members who had submitted their notifications being asked and pushed to give more clarifications.

2.24. The General Council took note of the Chairman's report and of the statements.

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

3.1. The Chairman 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. He invited Ambassador Piracha to report on the matter.

3.2. Ambassador Muhammad Mujtaba Piracha (Pakistan), Chairman of the Dedicated Session of the CTD, reported that there had been no meeting of the CTD's Dedicated Session on Small Economies since November. He had however recently met with the Coordinator of the SVE Group who had informed him that, in line with what had been announced at the last General Council meeting in March, consultations had been held with Members on the possibility of holding a meeting of the Dedicated Session to discuss the impact of natural disasters on the trade of small economies. He hoped to be able to circulate the agenda for that meeting soon. He would also like to mention that the Dedicated Session would definitely be meeting as Members prepared for MC12.

3.3. Going by past practice, the Dedicated Session would need to approve a report to the General Council, which would contain a summary of the work undertaken since the last Ministerial Conference. That report, in the past, had also contained the elements of an agreed text for a decision on the Work Programme on Small Economies, particularly the possible elements of future work. He had been given to understand that the SVE Group Coordinator would soon be consulting with Members on that matter. The objective of the SVE Group would be to eventually table a proposed text for a Ministerial Decision on the Work Programme on Small Economies in the Dedicated Session, for approval by Members. He would remain in touch with the SVE Group Coordinator as well as with other Members in that regard.

3.4. The representative of Guatemala, on behalf of the SVEs, said that, as it had been announced at the last General Council Meeting, the SVEs had held consultations with some Members and had had a good response regarding the Group's proposal to hold a Dedicated Session of the Work Programme on Small Economies on the issue of "Economic and Trade Impact of Natural Disasters on Small Economies". The Group would circulate the proposal shortly for consideration of all Members and would commence the organization of the session with a view to holding it in June. The SVEs thanked Members for supporting that issue and hoped to report back to the General Council of the results of the session. The Group announced that it would be working on a draft proposal for a

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Ministerial Decision of the Work Programme on Small Economies as a deliverable for MC12. The draft proposal would be presented for the consideration of the CTD Dedicated Session of Small Economies. The SVEs highlighted the importance of the work carried out within the Work Programme and hoped to count on the general support of the Membership and the Ministers to continue its focused discussions on the needs and challenges of small economies.

3.5. The representative of Saint Lucia, on behalf of CARICOM, associated with the statement of the SVEs. The CARICOM Group renewed its support for the convening of the dedicated discussion on trade and natural disasters within the context of the SVEs and on the level of the Committee on Trade and Development Dedicated Session on Small Economies. CARICOM was pleased that Members had responded positively to the SVE Group's proposal in that regard and looked forward to the discussion tentatively scheduled in June. Since the previous General Council meeting, one of the CARICOM Member States, Saint Vincent and the Grenadines, had become the most recent case study among the SVEs Group of its acute vulnerability to natural disasters. On 9 April, the volcano on the island of Saint Vincent had erupted explosively displacing over twenty thousand residents from their homes and decimating important sectors such as agriculture, tourism and fishing. In the space of two weeks, there had been over thirty explosive events covering the entire island in volcanic ash. Nearby islands such as Barbados had also been impacted – again, a reflection of CARICOM's shared vulnerability. The explosive eruption had been followed by five floods that had caused devastation to the island in a very short period of time. In less than two weeks, it had been estimated that the volcano had caused over USD 150 million in infrastructure damage. In addition, USD 150 million of damage had been attributed to the agriculture sector, where 90% of tree crops and 100% of vegetable crops had been destroyed. Saint Vincent and the Grenadines had already been suffering acute economic pain as a result of the COVID-19 pandemic and the eruption had taken place at the same time. That was a clear example that the economic vulnerability of the trade and economic prospects of SVEs to natural disasters was not simply an academic or theoretical matter. It was an almost daily experience for many SVEs.

3.6. In less than a month, CARICOM countries would have to endure another Atlantic hurricane season. Based on experience, hurricanes were becoming more destructive each year, inflicting more physical and economic damage in the process which could set them back decades. It was the devastation caused by two Category 5 hurricanes, Irma and Maria, that had swept through the Caribbean region in the space of two weeks in September 2017, that had prompted CTD Dedicated Discussion to initiate discussions on trade and natural disasters. The destruction of property and infrastructure and the loss of lives recorded, particularly on the islands of Bermuda and Dominica, had highlighted the catastrophic impact that the hurricanes had carried on small islands in developing seas. It was again in that backdrop that CARICOM was prepared to engage with Members on those important issues with the view to raising awareness of the impacts of those natural hazards on their trade. CARICOM also remained open to discuss with Members the appropriate trade policy responses that could be deployed in that context. The WTO should be actively engaged in that matter and urgently address the acute trade policy responses that could be deployed in that context. As a deliverable for MC12, CARICOM called on Members to support the Ministerial Decision on the Work Programme on Small Economies. Such an outcome was of utmost importance for CARICOM. The CARICOM Group acknowledged the solidarity that the General Council had expressed in recognition of the devastation brought about by the explosive eruption of the volcano in Saint Vincent and the Grenadines, which would be shared with its Government.

3.7. The representative of Barbados associated with the statements of the SVEs and CARICOM. Year after year, graphic reports of the deluge caused by natural disasters on small and vulnerable WTO Members inundated them. Barbados spoke about loss of life and damage to infrastructure and homes and appealed to all to support the response and recovery efforts.

3.8. Another critical issue that WTO work needed to address was the impact that those disasters had on trade and trade prospects in those countries. Unfortunately, Members were again reminded of those horrific scenes and the irreparable damage of such events. The early projections of the molten sulphur volcano in Saint Vincent and the Grenadines had revealed that costs could be up to 15% of that Caribbean island's GDP and an estimated 300 million in infrastructural, agriculture and housing damage. The damage in terms of trade had not yet been revealed, but evidence showed wide scale destruction of agricultural products which would have otherwise contributed to exports, the destruction of fishing vessels; and the indefinite closure of the airport, a vital avenue of exports, imports and tourism – the country's main income generator and therefore employment. Barbados was heartened, or cautiously so, to hear the responses to the proposal to convene a dedicated

session of the Work Programme on Small Economies on the economic and trade impacts of natural disasters on those countries.

3.9. Barbados looked forward to work with Members in defining the Programme on that session which would be held in June. It was time for Members to examine the role the WTO could play in examining the nexus between trade and natural disasters and how it could assist small economies in that regard. Barbados hoped that Members would be able to build on that body of work which had started in the WTO and other international organizations. It should not all be for nothing. The decision on the Work Programme on Small Economies had become an important fixture of the outcome of WTO Ministerial Conferences. Barbados therefore looked forward to the commencement of discussions on the path of a draft decision to be adopted by Ministers at MC12.

3.10. The representative of Vanuatu, on behalf of the Pacific Group, associated with the statement of the SVEs. The challenges faced by SVEs were enormous. Members of the Pacific Group had very small open economies, dependent on a few exports, and highly susceptible to external economic shocks and high trade costs, owing to their remoteness, smallness and geographical fragmentation. Those threshold characteristics were exacerbated by climate change and natural disasters. Natural disasters were growing in frequency and intensity and had often wiped away a significant portion of their economies. The economic impact of COVID-19 had further made it worse. Economic sectors such as the tourism industry, had collapsed and exports had declined. The Pacific Group supported the convening of the dedicated session in June to focus on the economic and trade impacts of natural disasters on small economies. That would enable the CTD to build on the work already established on that topic in 2018 and 2019, based on studies undertaken by the WTO and funded by the Australian Government. The Group also supported a draft decision for MC12, that would be prepared by SVEs. The Pacific Group underlined the importance of the Work Programme, which aimed to frame responses to trade-related issues identified for the fuller integration of the smaller vulnerable economies into the multilateral trading system and urged Members to engage constructively to facilitate meaningful responses to integrate SVEs into the multilateral trading system.

3.11. The representative of Fiji associated with the statements of the SVEs and the Pacific Group. Fiji commended Guatemala for its continued efforts in the ongoing consultations with the Membership which had been progressing positively, and thanked Members for their understanding of the exceptional challenges faced by the SVEs Group. Fiji welcomed the proposal to hold a Dedicated Session of the Work Programme on Small Economies on the issue of "Economic and Trade Impact of Natural Disasters on Small Economies". The issue of natural disasters on small economies was well known and Fiji could not stress enough that reality. The challenges natural disasters posed in view of the varying climatic nature, was very worrying and was a real threat to small economies like Fiji, as well as many Pacific Island countries and similar to the Caribbean Group of countries. That had further been bolstered by the devastation posed by the COVID-19 pandemic. Fiji therefore looked forward to the Membership's engagement on that important cause, to assist small economies and give due consideration to their plight by supporting the draft proposal to be tabled soon in the CTD for an outcome at MC12.

3.12. The General Council took note of the report of the Chairman of the CTD and of the statements.

## **4 TRIPS COUNCIL MATTERS**

### **4.1 Status Report on the Considerations by the TRIPS Council on the "Proposal for a Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19" (IP/C/W/669) – Statement by the Chairman of the Council for TRIPS**

4.1. The Chairman recalled that the item related to a status report by the TRIPS Council Chair on the "Proposal for a Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19" in document IP/C/W/669 and its addenda. Since the March meeting, he understood that the Council for TRIPS had considered the request again at its informal and formal meetings in March and April and he invited Ambassador Sørli (Norway) to provide a status report on the TRIPS Council's consideration of the matter.

4.2. Ambassador Dagfinn Sørli (Norway), Chairman of the TRIPS Council, reported that, at the meeting of the TRIPS Council on 15-16 October 2020, India and South Africa had introduced

document IP/C/W/669, requesting a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19, which had been circulated on 2 October 2020 and had since been co-sponsored by the delegations of Kenya, Eswatini, Mozambique, Pakistan, the Plurinational State of Bolivia, the Bolivarian Republic of Venezuela, Mongolia, Zimbabwe, Egypt, the African Group, the LDC Group, the Maldives, Fiji and Namibia. The Council had continued its discussions under that agenda item at informal meetings on 20 November and 3 December, as well as at its resumed meeting on 10 December. Following the status report to the General Council on 16-17 December, the Council had continued its consideration of the waiver request at informal meetings on 19 January and 4 February, and at its formal meeting on 23 February. Following the status report to the General Council on 3-4 March, the Council had continued its consideration of the waiver request at its formal meeting on 10-11 March, at an informal meeting on 22 April and at its formal meeting on 30 April.

4.3. At those meetings, delegations had highlighted the common goal of providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all. Delegations had exchanged views, had asked questions, had sought clarifications and had provided replies, clarifications, and information, including through documents IP/C/W/670, IP/C/W/671, IP/C/W/672, IP/C/W/673 and IP/C/W/674, on the waiver request but could not reach consensus, including on whether it was appropriate to move to text-based negotiations. In April 2021, the co-sponsors had indicated that they had been considering an update of their proposal and had been in the process of consulting with Members. Delegations had indicated a need for further discussions on the waiver request and views exchanged by delegations. That meant that the TRIPS Council had not yet completed its consideration of the waiver request. The TRIPS Council would therefore continue its consideration of the waiver request and report back to the General Council as stipulated in Article IX:3 of the Marrakesh Agreement.

4.4. The Chairman thanked Ambassador Sørli for his report on the discussions in the TRIPS Council. As had just been mentioned, the TRIPS Council would continue to work on that matter.

4.5. The representative of Mauritius, on behalf of the African Group, reiterated that there was no more pressing priority than public health, and called on Members to give the highest attention possible to the issue of access to vaccines and therapeutics. Populations were at the mercy of viral infections. The international trading system had been disrupted; and, more importantly, lives had been lost and new variants were breeding. In such challenging times, there was no other solution than making access to affordable medicines, including vaccines, easier for developing countries. The African Group underlined the need to upscale and diversify global production, aware of the production capacity in developing countries and the need of technology transfer, which required flexibility in the TRIPS rules to deal with the pandemic. The African Group reiterated its full support to the waiver and looked forward to an early conclusion of discussions to move to text-based negotiations at the earliest.

4.6. The representative of South Africa associated with the statement of the African Group and the ACP Group. Over 150 million people across the globe had been infected by COVID-19 and over 3 million people had succumbed to the virus. The urgency of the request was underscored by the escalating death rate due to COVID-19. A first-hand humanitarian crisis was unfolding in various parts of the world with rampant mutations, causing much pain and devastation. Lives lost due to COVID-19 could not be accepted on the basis that access to life-saving medical products and technology was hindered by inequitable access and distribution. Global solidarity and cooperation were required more than ever. The overwhelming support for the waiver from Parliamentarians from all corners, Chief Security Officers, former Heads of State, Nobel Laureates and the general public, had come as a realization that while the contribution of intellectual property rights to research and innovation was appreciated, COVID-19 met the criteria provided for in Article IX of the Marrakesh Agreement which provides that "[i]n exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements", of which the TRIPS Agreement was a part of. The African Group added that COVID-19 was not only an exceptional circumstance, and truly unprecedented.

4.7. At the current pace of production, more than 100 countries would not reach reasonable levels of vaccination for years. Such inequality of access to vaccination put the whole world at risk, by enabling the continuation of the pandemic and the emergence of new variants. In addition to thousands of daily deaths, the economic losses from delays in vaccination were estimated at USD 9.2 trillion globally. New strains of COVID-19 proved that the virus would not be defeated until

it was defeated everywhere. The most feasible and practical way to ensure enough supplies of vaccines in the shortest possible time would be to utilize the unused spare capacity in the developing world in order to ramp-up production. Attempts should be made to engage and allow all possible producers across the world to scale-up production. A deal-by-deal approach in the face of a global health emergency had proven inadequate and had instead marginalized poor countries. Lives would only be saved by truly global and inclusive solutions, and the proposed waiver was the only possible tool to address universal, equitable and timely access to life-saving medical products, including vaccines, diagnostics and therapeutics. It was the only means through which Members could arrest the COVID-19 pandemic, save lives and begin to address economic reconstruction and resilience.

4.8. The African Union called for a limited and temporary waiver that would provide countries with the policy space necessary to collaborate in manufacturing, scaling up and supplying COVID-19 medical products which were in short-supply. Recourse to waivers under such circumstances was provided for in the WTO legal framework and formed part of its legal toolbox. Co-sponsors were revising the proposal to clarify the scope for the waiver, based on products and technologies necessary for the containment, treatment and prevention of COVID-19. They were also planning, as part of the revised text, to make a proposal on the duration of the waiver based on the projected timeframe it would take to reach global immunity given the level of production. Consultations had been held with Members, to facilitate discussions, and they would further call on the Chair of the TRIPS Council to facilitate discussions of the revised text. The African Union urgently called for text-based negotiations to develop a WTO solution that would temporarily lift the barriers to specific intellectual property rights that inhibited an effective response to COVID-19. The African Union added that the WTO should primarily respond to the crisis, as well as prepare for future pandemics, and have ready-to-trigger rules that would provide automatic rights of use to address the need for special arrangements and waivers.

4.9. The representative of Indonesia looked forward to text-based negotiations to ramp-up the production of vaccines, diagnostics and other medical products for COVID-19, across countries. As long as the equitable access to vaccines was not resolved, the virus would continue to mutate and affect recovery efforts. The proposal had to be seen from a solidarity point of view, leveraging WTO tools to help humanity. Intellectual property had, by its nature, a monopolistic approach which did not help address a pandemic or a disease. In this regard, Indonesia urged Members to ensure that all necessary actions would be taken at the WTO to address the issue of intellectual property barriers to access vaccines and critical medical products.

4.10. The representative of Vanuatu, on behalf of the Pacific Group, associated with the statement of the ACP Group. COVID-19 had affected all countries, many of which were experiencing a second or third wave. Many small, developing economies were import dependent, as they did not have the capacity to manufacture vaccines, medical supplies and equipment, to contain and treat the virus. At the TRIPS Council meeting, Members had recognized that there was a critical shortage of vaccines worldwide. The TRIPS waiver would therefore enable a scale-up in vaccine production and distribution, to ensure that all countries were supplied at the same time. While they understood that intellectual property rights granted legal certainty to support innovation, there was also a need to ensure that intellectual property rights did not become a barrier to equitable access to vaccines, medical supplies and equipment at affordable prices. The longer the debate, the longer the pandemic would extend, as new waves would occur and new strains would emerge; more lives would be lost and the longer it would take to start to rebuild economies. The Pacific Group therefore encouraged Members to engage constructively on the proposal, to find a balanced way forward to secure intellectual property rights and ensure an equitable access to supplies to combat the pandemic.

4.11. The representative of Saint Lucia, on behalf of CARICOM, associated with the statement of the ACP Group. CARICOM maintained its concern about the current state of global vaccine inequity and reiterated that no country was truly protected until all countries were equally protected. As of 2 May 2021, over 275.9 million people around the world had been fully vaccinated, 38% of whom were from one country, which underscored the inequity in global vaccination efforts. The CARICOM Group thanked the WTO Director General for convening the Global COVID-19 Vaccine Supply Chain Manufacturing Summit on 9 March. It had been a timely discussion which they hoped would lead further in the direction of unblocking the challenges in vaccine supply chain manufacturing and distribution. Production capacity needed to be expanded, particularly in developing and least developed countries, and in emerging markets; and vaccine distribution needed to be more effective and more equitable. The CARICOM region did not manufacture COVID-19 vaccines and was therefore totally reliant on external manufacturers. They therefore called Members to consider all possible

solutions to address the problem around global vaccine supply, including the ongoing discussion on the TRIPS waiver. CARICOM reminded Members that there was a moral imperative to ensure that all countries had equitable access to vaccines, and should therefore deploy all available trade policy tools to improve vaccine supply and access.

4.12. The representative of Barbados associated with the statement of CARICOM and the ACP Group. The global situation on COVID-19 had reached epic proportions as the number of positive cases and deaths due to COVID-19 surpassed alarming records. Access to vaccines and other lifesaving medical supplies was neither even nor equitable across the many countries of the world. More had to be done to address this effectively. Barbados looked forward to an updated proposal and urged Members to engage in text-based discussions, to reach consensus on an outcome which incorporated the interests of all Members.

4.13. The representative of Paraguay said that they were studying the waiver and repeated their call to deal with the inequities caused by the COVID-19 pandemic. Paraguay was considering all options which took intellectual property and import restrictions into account and looked forward to the revised version of the waiver. Paraguay thanked the United Arab Emirates, Russia and India for their supplies of vaccines. Regarding COVAX, Paraguay believed its financing would only be necessary if they had access to those vaccines and if they were distributed fairly. Paraguay had received over four million doses, enough to vaccinate their adult population, but only some people had received the vaccines. Intellectual property rights had to be considered as a whole, and their link to health should be seen as a fundamental right, and access to vaccines as a public health good. Multilateralism had to come up with solutions to ensure social justice regarding access to vaccines and essential medicines.

4.14. The representative of Tunisia had expected a reassuring message from the WTO, placing the protection of global health ahead of the commercial interests of big pharmaceutical companies. While some developed countries had begun to see the end of the tunnel of the health crisis and were looking at their economic resilience, mainly due to the resumption of an almost normal activity due to sustained vaccination rates, LDCs and some developing countries had been sinking deeper into the health and economic crises because they had privileged the health of their population. Unfortunately, their only means to do so had been strict lockdown measures, which had exhausted their limited resources, so that they were no longer able to effectively address the pandemic, and were suffering the ravages of recurring waves of COVID-19. Tunisia associated itself with the statement made on behalf of the African Group and reiterated its strong support for the waiver, aimed at providing equitable and affordable access to vaccines and medical products necessary for the fight against COVID-19. They remained hopeful that global solidarity, defended by Tunisia in all international fora, would ultimately prevail among Members.

4.15. The representative of Malaysia underscored the importance of having access affordable diagnostic, vaccines and other medical products to effectively contain the spread of COVID-19. At this critical juncture, global cooperation and coordination were more than ever of utmost importance to expand supply to meet global needs, as well as the need to act expeditiously on this tough question. Malaysia also thanked the Director General for her leadership on this. With that context in mind, they welcomed the discussion on the waiver proposal. They also thanked the co-sponsors for initiating the conversation of great importance during that critical juncture. In view of the pressing global needs to prevent and treat COVID-19, they stressed the importance of undertaking all measures necessary to expand and diversify the supply of essential medicines, enhancing the affordability of such medicines, and looked forward to advancing meaningful discussions.

4.16. The representative of Nigeria made reference to his delegation's previous statement and underscored the urgency to move to constructive text-based negotiations on the proposal, to reach a balanced outcome. The devastating negative impact of COVID-19 on lives and livelihoods globally could not be overemphasized. The severity of the precarious situation had been exacerbated by the huge and ever-increasing therapeutics and vaccines' supply-demand gap, largely experienced in the developing world. The solution lied in rapid access by every country to affordable diagnostics, therapeutics and vaccines to combat COVID-19. Given the race against time to save lives, that could only be achieved by ramping-up the production of those products in developing countries. Members had a shared responsibility to work together to ensure that intellectual property rights did not create barriers to scale-up research, development, manufacturing and supply of medical products, essential to combat COVID-19. That was why they had co-sponsored the proposal and had been encouraged by the significant number of co-sponsors with many Members, external groups and personalities

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voicing their support for the proposal. Constructive text-based negotiations in the TRIPS Council would enable balanced outcomes and the subsequent adoption of the waiver.

4.17. The representative of Cameroon associated with the statements of the ACP Group and of the African Group. The WTO had to live up to the health and economic emergency faced by humanity. No other interest could prevail over the distress of people and nations, confronted with the harshness of the pandemic, at a health, economic and social level. Exceptional circumstances called for exceptional measures. It was important to focus discussions on the substance of the proposal submitted by India, South Africa and endorsed by several Members including the African Group; to formulate relevant observations that would facilitate access to vaccines and pharmaceuticals products, while avoiding a misuse of the adopted measures. Lifting those TRIPS rules could be complemented by other measures related to export restrictions and other goods. However, it did not seem wise to reduce those discussions to whether or not production capacities exist – they could also be reconfigured and enlarged, as needed and as had been observed. By refusing to commit to text-based negotiations, discussions on production capacity would be seen as a delaying tactic.

4.18. The representative of Nepal associated with the statement of the LDC Group. Nepal reiterated its full support to the proposal, to save millions of lives across the globe. The COVID-19 pandemic had been posing further challenges through its different waves and variants. It had been worrisome to note that across the world, every day more than ten thousand people were dying and above six hundred thousand people were infected by the virus. Developing countries, including landlocked developing countries, had been severely impacted by the pandemic. Nepal urged all Members to consider the waiver proposal positively.

4.19. The representative of Afghanistan associated with the statement of the LDC Group. The pandemic had continued to affect society and the economy worldwide, it was a mass human catastrophe. The pandemic's effect on the health sectors, especially that of LDCs, was horrific. Governments could not provide affordable equipment, treatment and vaccines for their citizens. The situation in Afghanistan had been deteriorating, with a third wave in the horizon. According to the World Health Organization, the eastern region of Afghanistan had experienced a particularly sharp increase of COVID-19 cases and hospitalizations. Aside from the impact of the virus, the pandemic had continued to hit communities that had not yet recovered from the first and second waves.

4.20. Afghanistan had received the first batch of COVID-19 vaccines, half of them from COVAX and the other half from India. Afghanistan thanked the international community and India for their valuable aid and cooperation. However, they expressed their deep concern regarding the problematic situation - only 0.62% of their population had received the first dose of the vaccine. Afghanistan recalled the importance of solidarity to ensure that intellectual property rights did not create barriers to developing, manufacturing and supplying affordable and timely critical medical products, essential to overcome the challenges posed by COVID-19. Therefore, they urged all Members to consider the severity of the crisis, adopt a solution-finding approach and move to text-based negotiations. It was the proper time to put in place practical measures to ensure the availability of affordable and timely vaccines and the required medical products to combat the pandemic.

4.21. The representative of the United Kingdom highlighted the importance of the issue, all the more so when so many countries around the world found themselves still in the full front of the pandemic. It was essential to work together as an international community to find effective ways to ensure equitable, affordable and timely access to COVID-19 related technologies and supplies. As said all too often, no one was safe until everyone was safe. Since the last General Council meeting, new ground had been broken in the fight against the pandemic, especially in approving and distributing vaccines to those most in need. The United Kingdom was proud to be at the forefront of those efforts to protect people across the globe from the virus. The United Kingdom was a founding donor to the ACT Accelerator, and had made one of the largest commitments to the COVAX advanced market commitment for low and middle-income countries, with commitments to those ACT-A partners of over USD 1 billion. An unprecedented global response to the threat should allow COVAX to supply over 2 billion COVID-19 vaccine doses to all participants in the course of the year.

4.22. The United Kingdom was proud that a UK vaccine, developed at Oxford University and produced by Astra Zeneca, was at the heart of the response. Astra Zeneca had entered into more than a dozen collaborations in countries around the globe, for example in China, Mexico, Brazil, the Russian Federation, the Republic of Korea and India; to deliver billions of doses to people around the world. Now was the time to ramp-up global manufacturing. It was vital to keep trade flowing to

ensure that issues such as skills' and raw materials' shortages did not hold it back. The United Kingdom had been working to ensure that industry and research institutes had the resources they needed to identify and scale-up production of safe vaccines as quickly as possible, while taking on significant risks and investment themselves.

4.23. A balanced and effective intellectual property regime had proved invaluable in the crisis, as in others, in supporting innovation and supporting collaboration, as well as ensuring that the results of that innovation, including safe and effective diagnostics, vaccines and therapeutics could reach those who needed them. The United Kingdom stood ready to engage in further evidence-based discussions and was committed to finding solutions to those issues. Meanwhile, they were delighted to see the WTO bringing together key stakeholders to look carefully at all the relevant trade, health and intellectual property elements so that the development, production, and equitable access to those vaccines could be supported. The United Kingdom remained committed to work in the fight against COVID-19; and had hosted a meeting of G7 Foreign and Development Ministers in London, to look into this issue, among others.

4.24. Governments could not do this on their own. Industry, manufacturers, and innovators, had to look carefully at how they could do more as well, including more partnerships that used voluntary licensing to ensure access to innovations, whether in vaccines, therapeutics or diagnostics for those who needed them. The United Kingdom was also committed to working with all parts of the innovation and the production chain, to ensure that they had the right tools. This would require industry, developers and manufacturers alike, to collaborate in making available the information needed to engage in effective partnerships. This would also require delivering assistance to partners to allow them to deliver sufficient quality, for example through model agreements or trade agreements. The international community in turn needed to focus its effort on providing appropriate guidance rather than engaging in polarized discussions.

4.25. The United Kingdom welcomed the positive steps that had been made towards vaccine equity, including on the collaborations that were needed to deliver unprecedented numbers of innovative health products to those most in need. Their vital work was far from over, and as a country the United Kingdom would continue to play its part in driving the work forward towards a successful conclusion.

4.26. The representative of Jamaica, on behalf of the ACP Group, commended the waiver's cosponsors for bringing to the fore the importance of access to vaccines and other items for the prevention, containment and treatment of COVID-19. The ACP Group had been encouraged by the robust discussions and exchanges on the proposal; and called for the continuation of discussions with the same vigour, in different formats, so as to find an outcome as soon as possible in the interest of humanity. The proposal should continue to be prioritized in the Work Programme of the TRIPS Council. The ACP Group continued to endorse the genuine public health objectives of the proposal and would support proponents in their bid to contribute to international initiatives, to ensure that their people had affordable access to medicines, vaccines and other items required to prevent, treat and contain the virus.

4.27. Vaccination was the only durable solution to contain the virus and, therefore, facilitating access, especially by developing countries and LDCs, should be the priority. Fiscal targets had been dislocated due to the impact of the pandemic, and health care and economies faced unprecedented challenges. No Member was safe until all Members were safe, and COVID-19 induced economic and social challenges in one Member affected the others. The ACP Group invited other Members to engage constructively and in a collaborative manner with a view to finding a landing zone. The health and lives of people should always be the priority. The ACP Group was confident that Members were capable of delivering for and on behalf of their people in such difficult times.

4.28. The representative of Bangladesh associated with the statement of the LDC Group. Suffering and death of people was being witnessed, particularly in developing countries, due to the lack of medical support and vaccines which could have greatly helped control the spread of COVID-19, as successfully done in some developed countries. Nobody was safe if everyone was not safe. Members should rise above narrow national interests and use the tools at hand to save the world from the public health disaster. The priority should be to ensure unconditional, affordable, equitable and timely access to vaccines, medical equipment and other measures to stop the pandemic. The TRIPS Agreement or any other regulatory framework should not stand in the way of the transfer of technical know-how to fight the virus. Exploiting the situation for profits during the most severe health crisis

of the humanity in modern history should be refrained from. The LDC Group, including Bangladesh, was pleased to co-sponsor the proposal; and urged for a text-based discussion. Time was not on their side. Efforts should be redoubled to make quick progress so that an agreement was possible before it was too late.

4.29. The representative of Pakistan recalled their previous statements in the General Council and the TRIPS Council at formal and informal meetings. Every day that an affirmative decision on the waiver was delayed, several thousand people across the world died due to COVID-19. While supply constraints of vaccines became more acute, new variants of the virus were making the disease more virulent. The world outside the WTO in every sphere of life, and at every tier, from country leaders to civil society, was calling aloud for the removal of IP protection from those vaccines and for an open sharing of vaccine technology. It was unfortunate that not only was there still a struggle to understand the gravity of the situation, but there were also regressive steps, such as vaccine hoarding by countries that had pre-purchased millions of doses, and monopolistic profiteering by large companies at the cost of human lives. One of the vaccine originator companies had reaped millions of US dollars in profits from its sale of vaccines, and had been lobbying towards not supporting waiving IP rights. The world had many divides, an income divide, a technological divide, a digital divide, and several others; and people on the wrong side of the divide suffered. The vaccine-divide, however, was different, since the disease did not discriminate between the rich and the poor. The vaccinated might feel secure for a few weeks but they would not remain safe until the others were also safe. Closing borders to keep people out would cause problems at another level.

4.30. Waiver proponents had shown how vaccine supply could be enhanced by utilising all the available capacity across the world; how compulsory licenses were limited and impossible to implement; and how voluntary licenses were hard to come by. They had questioned how companies could be otherwise forced to make effective, open, and transparent partnerships to ensure large-scale production of vaccines. A market solution to the pandemic was not working nor was it workable given the time constraint. There was no existing mechanism at a global multilateral level that could effectively deal holistically with a pandemic. The WHO came close, but its mechanisms were not sufficient. The TRIPS Agreement provided a lever in form of a waiver, and that was perhaps why so many around the world had supported to it. Pakistan had been working bilaterally with delegations to revise the proposal and would lay it afresh for the Membership, so that collective work on the new text would be possible. After all, if there was such drive to save the fish in the oceans, and some profits of private enterprises, people wouldn't be left to die on the streets while waiting for the pandemic to burn itself out. A pandemic, like large fires, could not be put out by dousing out the flames only on one side.

4.31. The representative of the Maldives noted the growing number of the proposal's co-sponsors, which demonstrated its importance. It was critical to remove impediments to capacity utilization in order to speed-up vaccine manufacturing and enhance vaccine equity. In the United Nations, the Secretary General had launched the global campaign "Only Together" in March 2021, which underscored the need for global solidarity to ensure fair and equitable access to COVID-19 vaccines worldwide. Maldives believed that the waiver was an effective and pragmatic way for WTO Members to meaningfully contribute to the global initiative. They therefore urged Members to recognize the unprecedented and exceptional nature of the circumstances, to move towards text-based negotiations and reach consensus on the waiver to increase production to ensure fair, equitable and affordable access to COVID-19 products in a timely manner. It was the time to show global solidarity to end the pandemic.

4.32. The representative of Tanzania associated with the statements of the African Group and of the ACP Group. Tanzania reiterated its long-standing support to the proposed waiver, which would enhance global production of COVID-19 vaccines and related medical products. Members were grappling with preventive measures to contain the virus, but it was still difficult. Herd immunity would only be possible through extensive global vaccination, but the centralized manufacturing and supply were limiting the possibility to meet the huge demand in a short period. The TRIPS Agreement's flexibilities could not deliver the immediate scaled-production and technology-transfer needed to respond to the demand of COVID-19 vaccines. Therefore, the adoption of a temporary waiver was the only meaningful solution to stand against the COVID-19 challenge. The proposed waiver had gained tremendous traction across the globe from members of parliaments, eminent people, scientists, trade unions, civil societies, and the public in general. Only few Members were opposing this important initiative. Tanzania urged them to allow the WTO to make an important and expected contribution towards stopping COVID-19 from continuing to claim lives.

4.33. The representative of Norway looked forward to a revised proposal that would reflect the comments and concerns raised by Members and hoped it could constitute a constructive basis upon which they could pursue their discussion in the direction of a pragmatic compromise.

4.34. The representative of Chad, on behalf of the LDC Group, and as a co-sponsor of the waiver, noted the progress that was being made and supported the commitment to find a consensual solution to the proposal. Every day they were devastated by the toll that ravaged communities — more recently what was being seen in India was worrying. The WTO had to act quickly and decisively.

4.35. The representative of Uruguay referred to its statement delivered at the meeting of the Heads of Delegations and the Trade Negotiations Committee that had taken place on 3 May, and stood ready to negotiate a concrete proposal which would allow for a satisfactory and tangible outcome at MC12.

4.36. The representative of Chile looked forward to the revised proposal from the proponents, seeing its relevance and effectiveness to solve the regrettable challenge of the production and distribution of vaccines and reiterated Chile's commitment to the work in the TRIPS Council.

4.37. The representative of China underscored that vaccine shortage and uneven distribution was a serious challenge to the combat against the pandemic. The second and third waves of the pandemic and COVID-19 variants had further highlighted the urgency of finding effective solutions. The WTO should play a positive role in this process and thanked the Director General for her efforts in organizing the COVID-19 and Vaccine Equity webinar in mid-April. The objective of ensuring a timely, fair, equitable, and affordable access to vaccines, could be supported by the TRIPS Council. China supported a continuous discussion on the waiver and stood ready to work with other Members to bring the negotiation into a text-based phase.

4.38. The representative of Zimbabwe spoke under agenda items 2, 4, 7 and 8. On agenda item 4, Zimbabwe associated with the statements of waiver co-sponsors. Zimbabwe had been disappointed by the lack of discernible progress towards agreement on the proposed waiver since it had first been tabled by India and South Africa in October 2020, when there had been around 1 million COVID-19-related deaths globally. Since then, there were more than 3 million deaths and more than 150 million recorded cases. Whilst grim milestones were being reached, co-sponsors had been engaged in formal and informal consultations where questions, queries and requests for clarification had been raised by opponents to the waiver, rather than finding a practical way forward. Co-sponsors and waiver-supporters were increasingly focused on urgently addressing "vaccine nationalism", others insisted on the adequacy of existing TRIPS flexibilities to address the pandemic. WHO statistics on the number of vaccine doses that had been produced, distributed and administered across the globe, revealed in graphic and deeply troubling detail, the extent of the inequality — indeed the iniquity — of the situation.

4.39. An overwhelming share of the more than 1 billion doses that had been manufactured had been availed to, and even stockpiled, by developed countries. The COVAX facility, designed to ensure equitable availability of vaccines to the developing world, was nowhere near attaining its stated targets. The fundamental challenge was the limited supply of the vaccine. IP monopolies — and their profit margins — in the midst of a deadly global pandemic, was not ethical and did not make sense when idle or under-utilized manufacturing capacity existed across other countries, including in some developing countries, which with support could potentially increase vaccine production by as much as 1 billion doses a year. As a global community, every tool and mechanism available had to be used to bolster the inadequate response to the pandemic, and to address core supply-side issues. The proposed waiver constituted such a tool. Although, in itself, it did not provide a panacea solution to the supply challenges, it would assist in removing existing barriers to ramped-up global production of and more equitable access to vaccines.

4.40. On agenda item 2, Zimbabwe welcomed the update on the implementation of the Bali, Nairobi and Buenos Aires mandates, and recalled that in paragraphs 1.9 and 30 of the Bali and Nairobi Ministerial Declarations respectively, Members had reaffirmed the importance of completing the Doha Development Agenda of 2001. Zimbabwe remained committed to the full and effective implementation and operationalization of all Ministerial decisions and urged other Members to do the same.

4.41. On agenda item 8, Zimbabwe thanked the delegations of India and South Africa for their paper on the Legal Status of Joint Statement Initiatives and their Negotiated Outcomes. The issues under discussion had potentially far-reaching implications for the integrity of the legal framework of the WTO, as set out in the Marrakesh Agreement; and there was need for caution. Zimbabwe looked forward to more detailed responses from JSI proponents on the various factual and legal issues raised in the paper.

4.42. On agenda item 7, Zimbabwe supported the proposal for the reinvigoration of the 1998 E-Commerce Work Programme and was of the view that a decision on the extension of the moratorium on customs duties should be made on an evidence-based approach.

4.43. The representative of El Salvador remained interested in working on collective solutions. They looked forward to a revised version of the proposal and to increased cooperation between Members, to promptly reach a balanced solution, which was acceptable to all.

4.44. The representative of Namibia associated with the statements of the African Group and the ACP Group. Namibia co-sponsored the proposal and supported moving to text-based negotiations urgently. COVID-19 was a unique situation which required a quick intervention, and the WTO had a role to play. Namibia encouraged all Members to consider supporting the proposed waiver.

4.45. The representative of Sri Lanka associated with the statements of the waiver proponents. Many experts agreed that a country had to vaccinate around 80% of its population to achieve herd immunity against COVID-19. Sri Lanka had received, or was expecting to receive, vaccine donations and other financial access plans from the COVAX facility to cover approximately 20% of their population. The total cost of financing the vaccination of the other 60% of the population was estimated at around USD 139 million, which included the cost of purchasing the cheapest vaccine, that was AstraZeneca Oxford, and the cost of delivering the immunization. Using World Bank financing cost as a basis, two doses of the vaccine for 60% of Sri Lanka's population would amount to USD 336 million, over double the minimum estimated using local proxy data – the estimated expected range to finance Sri Lanka's long-term vaccination strategy. Further, according to health experts, mutated versions spreading rapidly globally would require a third vaccination dose which would mean that the cost was likely to increase substantially.

4.46. Given the difficulty of securing all necessary vaccines from a single producer, due to supply shortages, Sri Lanka had moved towards purchasing some of the other vaccines in limited quantities, which further increased their cost. The cost of a speedy vaccination would be lower than the cost of continuous testing, managing current incentives and prolonged lockdowns. Empirical data indicated that the availability of both patented and generic versions of vaccines in abundant quantities around the world, would not only secure access to vaccines over the next few years but would also ease the financial burdens of many developing countries and LDCs. IP rights were hindering the free flow of technology, technical data and other raw materials towards destinations with capacity to manufacture and supply generic versions of vaccines. The waiver intended to address this issue by providing a temporary solution and help large populations in developing countries, particularly countries without manufacturing capacity which had to rely on imports.

4.47. The representative of the Plurinational State of Bolivia noted that action was required to ensure access to vaccines and inputs. Suspending patents would address the shortage around the world. Countries should work together to ensure sufficient production and distribution, so that at least 70% of the population could be vaccinated as soon as possible. This would require production throughout the world, through an innovative approach based on solidarity and complementarity. COVID-19 vaccination should be seen as a public good.

4.48. The representative of Brazil said that Brazil had joined as a co-sponsor the communication on "Enhancing the Role of the World Trade Organization in the Global Effort toward the Production and Distribution of COVID-19 Vaccines and other Medical Products" in WT/GC/230. Brazil aimed to find constructive and pragmatic ways to promote a fast scale-up of the production of vaccines, medicines and therapeutics against COVID-19, so that they were available, in sufficient quantities, for all those in need. Brazil had been working with bilateral partners, international organizations and different stakeholders to find solutions to address existing constraints to rapidly scale-up vaccine production. Developing countries faced challenges in accessing technology and know-how to produce vaccines and other therapeutics. This required a strengthening of collaboration and technology transfer to

guarantee their access to those who wished to engage in the production of vaccines and other life-saving supplies.

4.49. The representative of the Kingdom of Saudi Arabia emphasized the importance of safeguarding intellectual property rights and ensuring affordable access to essential supplies to combat the pandemic. The COVID-19 pandemic had severely affected every country, no one had been spared. There was a collective responsibility to overcome the pandemic and to make vaccines available to everyone across the globe, at an affordable price. The more the capacity of developing and least developed countries was enhanced to produce the necessary medical equipment and supplies to respond to COVID-19, the faster the world would overcome the pandemic. While understanding that intellectual property rights granted legal certainty to support innovations, Members should also ensure that intellectual property rights did not pose an obstacle to enhance the production of vaccines for non-commercial purposes, and to ensure equitable access to them and other essential supplies across the globe. The Kingdom of Saudi Arabia urged Members to move forward to text-based negotiations with the aim of achieving convergence at the earliest possible.

4.50. The representative of Ecuador reiterated the importance of guaranteeing universal access to vaccines against COVID-19, ensuring their affordability and eliminating obstacles and delays in their delivery. The issue concerned the right to health of billions of people and had an evident impact on the social life and the economy of nations. Ecuador would continue to work constructively towards a consensus and multilateral action to eliminate trade obstacles that impeded equitable access to vaccines and their components, as well as to other medical materials for the fight against the pandemic.

4.51. The representative of Fiji valued the proposal as it addressed the medical loopholes they had been faced with in the pandemic, and the disproportionate access to vaccines and relevant diagnostics for the global north when compared to the global south. There was no one single solution to address the dire needs of Members to contain the pandemic and to save lives. Fiji asked about the time it would take for the WTO to move forward on this. The several discussions and debates that had taken place in the TRIPS Council and other forums would have offered clarity and comfort regarding the waiver, as one of the key solutions to address the wide disparity in access to vaccines. This was even more so the case for geographically isolated small island nations, whose distance from key producers and suppliers had a bearing on access and costs. Similar mistakes could not be afforded in the future. Finally, they cautioned against the solution being bigger than the problem and supported the urgent efforts to move forward and to proceed with a text-based discussion for the consideration of the General Council. Fiji also associated with the statements of the ACP Group and of the Pacific Group.

4.52. The representative of Turkey called upon the global community to find urgent solution to address the worsening COVID-19 crisis and recognized that production capacity and distribution of vaccines and other relevant medical products still faced extreme challenges. The WTO should play a central role in finding an effective solution to these challenges by using all its available mechanisms, ensuring that no one was left behind. Strong solidarity for ramping-up supply was needed, and Turkey believed the WTO could craft creative solutions to save lives. Turkey looked forward to the revised text of the proposal and hoped it would move discussions forward, towards an assessment to enter text-based discussions.

4.53. The representative of the United States reiterated their commitment to advance the work on finding solutions to problems related to the global shortage of COVID-19 vaccines.

4.54. The representative of the European Union shared the objective to rapidly develop safe and effective therapeutics and vaccines, to manufacture them in required quantities as soon as possible and to distribute them equitably across the world. With several vaccines developed and approved in record time, the next challenge would be how to increase global manufacturing of COVID-19 vaccines in the shortest time possible. Global production of vaccines was rapidly increasing, so the efforts were paying off. It was estimated that 10 billion doses of COVID-19 vaccines would be produced in 2021, while the total global output of all vaccines combined before COVID-19 had only been 5 billion doses. Vaccine production was a highly complex process, which required adequate facilities, trained personnel, raw materials and other inputs; and setting that up took time. Under the leadership of the Director-General, the WTO was actively exploring its role in the common goal of equitable access to COVID-19 vaccines and therapies. There were many promising avenues and actions that the WTO could and should take in order to contribute to the goal. One set of such actions were disciplines on

transparency of production and supply chains as well as trade facilitation measures that could be further developed in the context of the Trade and Health initiative.

4.55. Another element was the collaboration with industry — given the urgency and technical complexity of manufacturing COVID-19 vaccines, governments should facilitate broad co-operation between vaccine developers and manufacturers, based on transfers of technology and know-how. The European Union considered that vaccine developers should be ready to enter into arrangements that would facilitate the supply at cost of vaccines to low- and middle-income countries. That would be the best way to speed up supply in the European Union and globally; and it would also be the best way to tackle new variants of the virus. The TRIPS Agreement and the principles of the Doha Declaration could play a role in addressing the crisis. They reflected a careful balance between protecting intellectual property on one hand, which was a crucial incentive to innovation, and promoting widespread access to medicines and health care, on the other. The flexibilities offered by the TRIPS Agreement, including compulsory licensing, were absolutely legitimate tools in times of the pandemic.

4.56. Even if voluntary arrangements were the most promising avenue to ramp-up vaccine production, it was important for each Member to ensure that its legal framework on compulsory licensing was effective. For instance, to ensure that in the context of a national emergency such as the pandemic, certain requirements — such as the obligation to negotiate with patent holders — could be waived. Not all Members of the WTO foresaw that possibility in their domestic laws. Several Members had not yet implemented the TRIPS amendments concerning compulsory licences for export. An effective legal framework was key for a swift reaction and should be available to all Members. The European Union was ready to discuss how to facilitate the implementation of the TRIPS Agreement flexibilities and to support a statement that reaffirmed the TRIPS flexibilities, confirming that during a pandemic the obligation to negotiate with the right-holder could be waived and that a compulsory license could cover exports to all countries that lacked manufacturing capacity.

4.57. The representative of Egypt associated with the statement delivered by the African Group, and recalled their previous statement at the Council on that issue emphasizing the increasing number of co-sponsor countries of the waiver while the supply demand gap was widening, and letting the vaccine inequality problem to continue, simply indicated that the current efforts of the international community to contain the pandemic were not enough and that vaccinating the global population as quickly as possible required additional production capacity. They stressed the urgent need to explore all alternatives at hand, including the TRIPS waiver, and to move to text-based negotiations on how to ensure that IP rights were not creating barriers to access medicines, diagnostics and therapeutics, while at the same time maintaining the motivation for research and development.

4.58. The representative of Japan noted that Japan continued to actively contribute to the ACT Accelerator and believed its framework for multilateral cooperation was the most effective way to achieve timely, fair and equitable access to medical products. The production of vaccines was a very complicated process. Japan had been importing all vaccines and struggled to create production lines. With regard to the complexity of technology transfer, it was essential to encourage cooperation with pharmaceutical companies in order to scale-up the global production capacity of vaccines. Japan supported the Director General's initiative to find a third way, through dialogues with pharmaceutical companies and promoting a pragmatic cooperation among capable manufacturers. Japan would engage in the discussion at the TRIPS Council on how the proposed waiver related to real solutions to the concrete challenges being faced, through increased production and procurement of COVID-19 vaccines, therapeutics, diagnostics and other medical products.

4.59. The representative of the Philippines supported the recommendation to continue discussions on the waiver, as part of the broader conversation on the role of trade and intellectual property in combating global pandemics, such as COVID-19, to make it an essential component of an effective and comprehensive multilateral response of the WTO to the current pandemic. The Philippines was keeping an open mind on the issue and supported consideration of the third way or the third approach, proposed by the Director General.

4.60. The representative of Switzerland observed that the Membership shared the common objective of ensuring global, equitable and timely access to medical products, including vaccines. However, different views remained on the approach to achieve the shared objective. As outlined in the status report, further consideration of the matter was needed in the TRIPS Council.

4.61. Switzerland referred to their statement delivered at the TNC/HODs meeting the previous Monday where we set out the four axis of the holistic approach that should be applied to deal efficiently with this and future pandemics, and highlighted the importance of the third way.

4.62. The representative of Singapore noted that while Members wanted to ramp-up production of COVID-19 vaccines to collectively vanquish the virus, they had also learnt from the vaccine event that the Director General convened on 14 April, that increasing production and enhancing the distribution of COVID-19 vaccines was a highly complex and non-linear process. It involved more than just acquiring a patent, it required know-how, including the skills and equipment for quality control. A practical and pragmatic way forward had to be found, and the way to achieve that was to listen to vaccine developers and manufacturers regarding impediments such as export restrictions, disruptions to supply chain connectivity and domestic regulations, as important factors. Importantly, they had also heard that: (a) intellectual property had never hindered efforts to ramp up vaccine production; (b) intellectual property had facilitated partnerships between vaccine developers and manufacturers; and (c) it was important to avoid any actions that could jeopardize the trust that the IP system had engendered between developers and manufacturers, especially at this critical juncture. A holistic response should be sought, one that struck a balance between adopting practical steps in the short term and starting to think about how to ensure that the WTO was better prepared for the next pandemic in the longer term. Singapore looked forward to deepening discussions and bridging the gaps.

4.63. The representative of India said that that, as they spoke, the pandemic continued to raise globally with more than 155 million cases and 3.2 million deaths. The rapid surge in many developing and developed countries of COVID-19's new variants and mutations were an ongoing and increasing risk. The pandemic was more severe than ever, more transmissible, there were not enough vaccines, and the virus was gathering strength and speed.

4.64. Despite public funding and tremendous scientific progress by publicly funded universities that resulted in successful COVID-19 vaccines, global vaccination had been lagging behind. Vaccine manufacturing could not be relied on to meet the needs of the world, vaccine production needed to be scaled-up as rapidly as possible. Addressing intellectual property challenges was a prerequisite to meet that objective in the shortest possible timeframe. Since the meeting in March, two events had taken place to encourage vaccine manufacturers to scale up vaccine production. The Secretariat had been urged to compile data as part of a monitoring and transparency exercise, on how many voluntary licensing agreements had been achieved as an outcome of those events, how many additional vaccine doses had been added to the overall capacity from the base-line scenario and how many of such doses had been delivered to developing and least developed countries. This transparency exercise would be useful to see the extent to which these initiatives delivered. India supported all such initiatives that could help in ramping-up manufacturing in parallel. The present approach had raised serious concerns that production and supply were being artificially constrained as they observed a consistent failure to leverage global manufacturing capacity to deliver equitable access. Notwithstanding the requirement of booster doses that were produced in response to the emergence of variants and mutations, the world needed more than 10 billion doses annually. Given that the existing approach could deliver only 4% of the output in 2020, India encouraged a reflection on how and from where current requirements would be met.

4.65. The current system was not adequate. Manufacturers in different parts of the world with vaccine production capacity in the millions were lying idle. There had been estimates that there would be enough vaccines in 2021 but overall production had not reached one fourth of the projections for the first quarter of 2021. Economists had shown that delaying vaccine deployment in the developing world threatened the safety of citizens in the developed world.

4.66. Most Members had appropriated trillions of dollars as fiscal and monetary stimulus for emergency relief for travel, tourism, hospitality and other industries and were planning billions more such stimulus. Those industries would remain in crisis and reliant on government help until the pandemic eased. The faster the emergency could be brought to an end, the faster those industries could recover. The TRIPS waiver was one of the tools to help end the pandemic and a strong global recovery. Global recovery could not rely on uncertain vaccine production, moral reasons had failed, and a temporary TRIPS waiver was an option worth exploring.

4.67. Globally, there were 1.8 million deaths reported from COVID-19 in 2020 and there would be even more deaths in 2021, but that was not inevitable. Pandemics were not natural disasters, as

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the Director General had said, they were under Members' control. COVID-19 could be controlled if manufacturing was boosted through textual discussions on the waiver proposal. Failure to respond in a timely manner on the TRIPS waiver proposal undermined the legitimacy and credibility of the WTO. India urged Members to give the tool a chance to succeed and save lives and the economy.

4.68. The Director-General extended again her sympathy to the Members whose countries were experiencing an upsurge in COVID-19 cases at that moment — India, Brazil, Nepal, Sri Lanka, and others — and thanked other Members who had also sought to help those countries under stress, which was the sign of solidarity that the WTO sought to promote among its Members. The fact was that it showed that they were all in it together. The way the WTO handled that matter was critical. Members needed to have a sense of urgency on how they approached that issue of response to COVID-19 because the world was watching. The issue of equitable access to vaccines, diagnostics and therapeutics was both the moral and economic issue of the time. Vaccine policy was economic policy because the global economic recovery could not be sustained unless they found a way to get equitable access to vaccines, therapeutics and diagnostics. Members needed to act on four fronts and have the wholesome approach that some of them had mentioned.

4.69. First, Members should share their vaccines. Those who had ordered more than they truly needed should share with others, either through the COVAX Facility or other mechanisms. Those who had raw materials should allow them to flow through supply chains so that all who could manufacture could take advantage of them. Members should pay attention to the availability of skilled workers who could also help in the production of those commodities.

4.70. Second, Members needed to look at the issue of export restrictions and prohibitions, bureaucratic procedures and customs procedures that could confront supply chain mobility with respect to the manufacture of products to combat COVID-19. When listening to manufacturers at the 14 April event that many Members had referred to, it had been clear that Members needed to be mindful to the issue of allowing supply chains to work. Otherwise, no matter what capacity they had, they would still not be able to manufacture what was needed. She was happy to say that the number of export restrictions or prohibitions had come down from 109 to 51, but Members needed to keep it moving down.

4.71. Third, Members needed to work with manufacturers to enable them to mobilize existing capacity that was idle to manufacture. Members had heard from countries like Pakistan, Bangladesh, India, South Africa, Indonesia and Senegal, among others, that there was some existing capacity that could be turned around in some months to be able to allow them to manufacture the kinds of doses they would need to go from the 5 billion doses produced in the world at present to the 10.8 billion being forecasted for 2021 to 15 billion, in particular, if the world were to need booster doses.

4.72. Members could not act soon enough to put manufacturing capacity that was idle at work immediately and to invest in additional manufacturing capacity for the future. They also had to think of how to deal not just with the pandemic, but of what role the WTO was going to play to ensure that the organization met the needs of its Members in a future pandemic or even the continuation of the current one. Countries like the Russian Federation, China, Brazil and Cuba, who had vaccines under development or who were already sharing their vaccines with others, should look at ways to boost supplies so they could increase the volume of vaccines in the world. Those who needed to get Emergency Use Authorization from the WHO to enable access to their vaccines should do so.

4.73. She was happy to hear that the proponents of the TRIPS waiver were putting together a revised text. It was incumbent on Members to move quickly to put the revised text on the table but also to begin and undertake text-based negotiations. She was firmly convinced that once Members could sit down with an actual text in front of them, they would find a pragmatic way forward acceptable to all sides that allowed the kinds of answers that the developing country Members were looking at with respect to vaccines while at the same time looking at research and innovation and how to protect them. Members just needed the will to sit down. Too many people were dying as many Members had already repeated with numbers. They needed to treat the whole issue with a sense of urgency. On her part, she was following up on the workshop by trying to engage with manufacturers to see how the WTO could work faster with them. The WTO was also joining the Vaccine Manufacturers Task Force put together by CEPI, Gavi and the WHO. She thanked all Members for trying to move towards the conclusion on the issue.

4.74. The Chairman encouraged all Members to remain positively engaged in the further discussions in the TRIPS Council with a view to finding a solution that was acceptable to all. Members were engaging and exchanging intensively – and that was positive. That was an important matter which required willingness to listen to each other, understanding and flexibility. He again thanked the TRIPS Council Chairman for his status report and, as had been mentioned earlier, the TRIPS Council would report back to the General Council in line with Article IX:3 of the Marrakesh Agreement.

4.75. The General Council took note of the TRIPS Council Chairman's report and of the statements<sup>4</sup>.

## **5 TRADE RELATED CHALLENGES OF THE LEAST DEVELOPED COUNTRIES AND WAY FORWARD: A DRAFT FOR MC DECISION (WT/GC/W/807)**

5.1. The Chairman recalled that the item was included in the agenda at the request of Chad on behalf of the LDC Group and was related to the Communication from the LDC Group on Trade Related Challenges of the Least Developed Countries and Way Forward in document WT/GC/W/807, that included a proposed Draft Ministerial Conference Decision. He recalled that, in March, the LDC Group had requested assistance from the General Council Chairman to facilitate a conversation on the matter. In response to that request, he had held a preliminary round of informal consultations with 21 delegations. Those had included the delegations that had intervened in the General Council meetings in December and March, nine Group Coordinators and the Chairs of the bodies in which the issue had also been raised. He had also held very constructive conversations with the Coordinator of the LDC Group and the LDC Focal Point on Graduation.

5.2. During the consultations, delegations had expressed their sympathy and understanding about the challenges faced by LDCs and were open to engage with them in a constructive manner. Some specific clarifications on the proposal had been sought and most of those questions had also been raised in last two General Council meetings. Those included: (i) the rationale of the proposal including its relationship with the UN process; (ii) the length of the 12-year transition period and its relationship with other existing flexibilities; (iii) the horizontal approach in seeking a solution in particular in light of the different challenges LDCs faced and the varying impacts of graduation on the LDCs and (iv) the issue of graduated LDCs benefiting more in particular *vis-à-vis* Members at similar levels of development who had never enjoyed LDC preferences.

5.3. Delegations had also put forward some initial suggestions which he had shared with the LDC Group. Other delegations had also noted that the substance of the proposal intersected and carried implications for the broader discussion on S&DT and development at the WTO as well as for LDC proposals discussed in other WTO Bodies which should be borne in mind. As he had said, he had met with the LDC Coordinator and the Focal Point on LDC Graduation at the beginning and at the end of the initial round of consultations. They had had a very constructive exchange. He understood that the LDCs had been reaching out to delegations and he had encouraged the Group to continue its outreach in particular to clarify the questions that Members had raised on the proposal.

5.4. The representative of Chad, on behalf of the LDCs, thanked the Chairman for the various consultations that he had undertaken on the LDC proposal as well as the main points raised during those discussions which he had shared with the LDCs. That greatly helped to clarify the different positions of Members and to identify areas where differences still needed to be resolved. Overall, many Members understood the challenges faced by graduating LDCs and that they were willing to engage constructively to address them. Certain Members however still had concerns regarding certain aspects of the proposal, namely: the rationale, the proposed 12-year period, the horizontal approach and the issue of differentiation. Chad would briefly address the concerns related to the reasoning of the proposal and Bangladesh, the LDC Focal Point on Graduation, would elaborate on the other elements.

5.5. Regarding the process of a smooth transition to the WTO, some Members had asked whether the United Nations preparatory period before graduation was sufficient. The main objective of graduation was to avoid the graduating country returning to the LDC category. That required the establishment of a support mechanism after the country had graduated from the LDC category. In view of that, the concept of a smooth transition was one that began after graduation and not during or before. To graduate from LDC status, a country should meet the graduation criteria in two

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<sup>4</sup> At its request, the statement of the delegation of Colombia is incorporated in the Minutes of this General Council meeting and can be found in Annex 1 of this document.

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consecutive triennial reviews. During the three-year period following the second review, once the country had been recommended for graduation, LDCs were encouraged to develop a smooth transition strategy to identify the necessary steps to be taken after graduation in accordance with UNGA Resolution A/RES/59/209. That transition began only when the country ceased to be an LDC.

5.6. During that period, trade and development partners should support the transition and avoid the sudden removal of specific support measures for LDCs. UN Resolution A/RES/67/221 on a smooth transition clearly stipulated that the extension of provisions on special and differential treatment or the phasing out of preferences should be granted to those countries that had already graduated and not those that were in the process of graduation. For those reasons, any smooth transition mechanism for graduated LDCs should therefore be designed to start once graduation was effective. All smooth transition mechanisms followed that approach. For example, some Members, such as the European Union or Turkey continued to apply their DFQF plans to LDCs for a certain period after graduation. Similarly, LDCs continued to have access to the Enhanced Integrated Framework facilities for a number of years after graduation from LDC status.

5.7. Concerning the other points raised by Members, Bangladesh, as the LDC Focal Point on Graduation, would continue providing responses to them. The LDCs hoped that those elements would help to clarify the issue and lead Members towards consensus. The LDC Group encouraged the Chairman to continue to facilitate consultations in small groups and looked forward to working with Members to bridge the remaining gaps. The LDCs also thanked him for keeping that critical item on the General Council's agenda until final consensus was reached before MC12.

5.8. The representative of Bangladesh associated with the statement of the LDC Group and thanked the Chairman for the consultations he had undertaken on the LDC Proposal and for sharing the main elements of those discussions. That had certainly helped the LDCs to clarify and respond to some of the queries and concerns. Bangladesh also thanked all Members and Group Coordinators who had already extended their support to that submission and who had given the LDCs the opportunity to engage with them to clarify certain issues. Chad had already addressed some of the concerns earlier and had provided further rationale in support of the submission. Bangladesh would complement Chad's statement by responding to a few questions that had been conveyed to the LDC Group.

5.9. On the duration of the proposed transition period, some Members had questioned its length of twelve years. That period corresponded to the estimated time graduating LDCs could require to adapt themselves to the new status i.e. before losing the trade-related support measures. That said, the LDC Group was open to discussing the duration period. What was important was however to acknowledge and agree in principle that the smooth transition was necessary and should apply to all LDC specific provisions and to all LDCs after graduation. Several recent UN reports predicted that the ongoing pandemic would severely affect the progress made by the LDCs over the past decades and would significantly reverse their hard-earned development gains accrued during that period. UNCTAD's LDC Report 2020 forecasted that the pandemic would push LDCs to their worst economic performance in thirty years, with falling income levels, widespread employment losses and widening fiscal deficits. The UN 2021 Financing for Sustainable Development Report had projected that the pandemic could lead to "a lost decade for development". Overall, the future was an uncertain journey for LDCs, including those on the path to graduation. Members should consider those uncertainties while taking positions on the current proposal for the graduated LDCs.

5.10. On the issue of the horizontal approach, some Members had questioned the approach that the LDCs had adopted on the issue, saying that the smooth transition question should not apply to all LDC-specific support measures or to all graduating LDCs equally. Such proposition to apply selectivity or categorize those within the LDC Group which were by default at the bottom of the development echelon, was not only unhelpful but also lacking any justification or legality. It would negate the main objective of the proposal, which was to provide predictability and legal certainty for a smooth transition to graduation, as envisaged under relevant UN resolutions. Limiting the scope to specific measures or to some Members, would in essence defeat the whole purpose of a formalized and predictable smooth transition process. More specifically, a case-by-case approach as suggested by some would result in a situation where the success in securing support for smooth transition would depend on the negotiating capacity of a single graduating LDC. It would be unfair on the graduating LDCs, who were known to have capacity constraints. A case-by-case approach would not be practical for another reason. There were sixteen LDCs in the graduation pipeline. It would mean sixteen separate submissions to be negotiated, costing huge time and energy of the Membership, particularly of the LDCs, who did not have sufficient resources to deploy for such. It made no sense.

As all LDC-specific support measures applied to all LDCs, support for smooth transition should also be accessible to all LDCs, irrespective of differences in one or a few indicators among them.

5.11. On differentiation, some Members had raised concerns that the proposal could lead to graduated LDCs receiving better treatment than some non-LDC developing Members. The proposed decision did not suggest new or additional S&DT for graduating LDCs but simply the continuation of existing support measures for a few more years to them. It could be true that some graduating LDCs had a few development indicators better than some non-LDC developing Members, but that would have been the case regardless of the fate of the proposed LDC Decision. The LDC Graduation threshold was set at a higher level than the inclusion threshold. It was therefore possible that some graduating LDCs could have higher indicators of income, human asset or economic vulnerability than a few developing countries. That was done by design to avoid a situation where a Graduating LDC fell back in the LDC Category. The notion of smooth transition, as envisaged by the UN, was not conditioned to the Graduating LDCs to have lower development indicators than any other non-LDC. There was no rationale to apply that conditionality in the WTO context either.

5.12. The LDCs were demanding nothing new. They were simply requesting the continuation of the flexibilities already given to them for a few more years, to support their smooth transition. The LDC Group contributed to less than 1% of world trade. Extending the special treatment to LDCs for twelve years after graduation would hardly have any impact on global trade but would greatly benefit the LDCs in their sustainable development journey.

5.13. Bangladesh joined Chad in requesting the Chairman to continue facilitating small group consultations. Bangladesh looked forward to engaging with Members to resolve the remaining differences. What was important was to achieve a positive outcome before MC12 which would send a strong signal to all LDCs awaiting graduation that the international community would stand by them – not abandon them immediately after graduating.

5.14. The representative of Angola associated with the statement of the LDC Group. All Members knew that graduated LDCs would continue to face enormous development challenges, aggravated lately by the COVID-19 pandemic and its disastrous economic consequences, that had put those countries at a disadvantage in their international trade participation. Graduating and graduated LDCs that had high export concentration on one commodity would first need development strategies that looked to achieve concrete results in key areas such as agriculture, services and trade facilitation, infrastructure, training, diversification and improvement of productivity and competitiveness of their economies and institutional development. It was in that spirit that it requested Members to consider the proposal for a Ministerial Decision.

5.15. The representative of Nepal associated with the statement of the LDC Group. Sustainable and inclusive export constituted a critical pillar for the overall socio-economic development of a country. LDCs covered about 13% of the world population, however accounted for less than 1% of world export. 21.3% of Members and 32% of Observer Governments in the WTO were LDCs. Achieving global targets of LDC Graduation and SDGs was a common agenda. Since the creation of the LDC Category, six LDCs had graduated, three would graduate in the near future and five more were in the path to graduation after a few years. LDCs did not intend to be in their current status forever. Even at a time of severe uncertainty, none of the LDCs were denying the UN process of graduation. Encouraging all LDCs towards graduation through necessary support mechanisms therefore became urgent. The COVID-19 pandemic had impacted the LDCs, including graduating LDCs, most severely. Recovery of those economies was almost impossible without specific additional and robust support measures. Graduation presented additional challenges to their trade and development, with a great risk of falling back into the LDC Category if their progress were not sustained.

5.16. LDCs needed Members' special attention on future ways of sustaining their graduation. Graduation was not an end in itself but just a threshold with some artificially set number to measure some indicators, whereas several other aspects of socio-economic development remained untouched. Graduated LDCs lost access to a wide range of international support measures which could create a further gap if sufficient support was not strengthened to sustain their progress. It was therefore imperative that the globally accepted principle of "smooth transition" was recognized and support measures were continued for a longer transition period. UNCTAD's LDC Report 2020 forecasted that the pandemic would push LDCs to their worst economic performance in thirty years with falling income levels, widespread employment losses and widening fiscal deficits. The UN 2021 Financing for Sustainable Development Report had projected that the pandemic could lead to "a lost

decade for development". Overall, the future was an uncertain journey for LDCs including those on the path to graduation. The report had strongly recommended post-graduation extension of existing special support measures. The Progress Report on Implementation of the Programme of Action for the Least Developed Countries for the Decade 2011–2020 called for "stepped-up support for the smooth transition of and a package of incentives for graduating countries".

5.17. In international trade, those measures ranged from DFQF market access for LDC exports and S&DT in WTO provisions, to technical assistance and capacity building measures. An incomplete and fragile graduation without a specific support mechanism could lead LDCs after graduation to more difficulties in addition to the existing constraints they faced. Graduating LDCs were therefore in dire need of continuing existing LDC-specific support measures for twelve years, as reflected in the submission. It would be instrumental in sustaining LDCs' export performance even after graduation and would contribute to establishing a smooth transition mechanism in the WTO which would provide predictability and legal certainty. LDCs were not demanding any new or additional support from Members. They were simply requesting to continue the flexibilities already given to LDCs for a few more years to support their smooth transition after graduation. That support would not make any visible negative implication in the global trading system, as the entire LDCs accounted for less than 1% share in world export. It was not a matter of the LDCs begging from Members to grant that mechanism. It was rather a vital aspect of global cooperation and collaboration towards achieving the broad objectives of the Marrakesh Agreement jointly and contributing to attaining other global goals including LDC Graduation, SDGs and others. Once Ministers at MC12 decided on the matter, a strong signal would be sent in favour of both LDCs and the entire multilateral trading system. It would not only contribute to sustain LDC Graduation, it would also encourage all LDCs towards early graduation and to attain SDGs by 2030, through an enhanced level of global cooperation.

5.18. The representative of Fiji was fully cognizant of the context of many small island developing States, as in the Pacific, and the varying degree of challenges faced by LDCs including the newly graduated LDCs in the Pacific, which were in a similar state as other LDCs. Over the years, that had been a concern. There were no proper support mechanisms in place to allow such Members to transit smoothly once flexibilities they had previously been entitled to were withdrawn. In many circumstances, they were worse off, placing their economies in dire need of support. As it had raised in its previous intervention on the Work Programme for Small Economies, many of the small economies who were also LDCs were susceptible to natural disasters, which posed billions of dollars in losses and damages each year – aggravating their situation in view of their limited trade capacities and distance from trading markets, among others. Fiji therefore recognized and supported the initiative, which should feature as an outcome at MC12. Fiji associated with the statements of the ACP Group and of the Pacific Group.

5.19. The representative of Tanzania associated with the statement of the LDC Group and supported the proposal for adoption by the General Council for a Ministerial Decision that would provide a soft landing for graduating LDCs. The LDC Category had been established by the UN General Assembly in 1971 for countries with special economic needs. The Istanbul Programme of Action was an important UN instrument intended to lift LDCs from poverty cycles by 2021. Its focus had been to reduce vulnerabilities of LDCs from externalities through increasing productive capacities and linkage to the markets. Over the decade, the WTO, like other UN Agencies, had played a key role as one of the vehicles to implement the programme. Among the key roles played by the WTO for LDCs included the implementation of preferential market access, preferential rules of origin, S&DT such as the LDCs' exemption from certain WTO commitments, or flexible commitments and the provision of trade-related technical assistance, among others. All those measures had immensely supported the growth of LDCs – a couple of whom were scheduled to graduate soon. Those achievements could however easily be ruined in a short period of time if graduating LDCs were not provided a soft landing. Considering the important role the WTO had been playing in lifting LDCs from structural challenges and supporting them in their graduation, it would be wise for Members to support the proposed decision to help graduated LDCs avoid from falling back to LDC status in the future. Even birds knew better how to slowly get rid of their hatchlings from nests. Members should therefore appropriately handle LDC graduation without disrupting the gains attained.

5.20. The representative of Barbados recalled that since the UN had recognized the LDC Status in 1971, only six countries had graduated from the LDC Category – with four others set to graduate between 2021 and 2024. Graduation from LDC Status was a significant milestone in a country's development. Despite the alleviation in development status, the shock of losing development assistance, S&DT and other concessions required some transition for small and developing Members

graduating from such status. Flexibilities should be given due to their high susceptibilities and vulnerabilities to external shocks, especially economic and environmental in terms of climate change. Barbados supported the proposal presented by the LDC Group and urged Members to approve that decision at MC12. Barbados associated with the statements of CARICOM and the ACP Group.

5.21. The representative of Vanuatu, on behalf of the Pacific Group, associated with the statements of the LDC Group and the ACP Group and noted that Vanuatu had recently graduated from the LDC Category. Apart from the loss of trade preferences and Aid for Trade support after graduation, LDCs faced ongoing challenges from climate change and frequent and severe natural disasters that undermined development efforts. SVEs were small, open economies that were still susceptible to external shocks and faced high trade costs. Graduation would not remove those threshold challenges. The Pacific Group reiterated its support for the draft decision as it provided certainty and predictability for LDC Members through the continuity of market access and Aid for Trade support for twelve years from graduation. That would facilitate their smooth and successful transition into the multilateral trading system. The Pacific Group therefore encouraged Members to support the draft decision.

5.22. The representative of Jamaica, on behalf of the ACP Group, pledged its full support for that important submission on behalf of the LDC Group. The ACP Group commended the approach being taken to further the interests of LDCs and graduated LDCs within the WTO and in the global trading system, especially in light of the COVID-19 pandemic, which would have a lasting impact on those Members. Graduation was never automatically accompanied by favourable conditions that warranted immediate relinquishment of LDC flexibilities. A transition period was of utmost importance to graduating LDCs. The proposed transition period in the submission was reasonable to allow those Members to face significant trade and development challenges post-graduation. As a group of developing and LDC Members, the ACP Group could relate to the LDCs' vulnerabilities which the COVID-19 pandemic had exposed and exacerbated. LDCs had already been grappling to be fully integrated into the global trade system and the pandemic could undo all the strides that would have been made over the past few years. The ACP Group supported the LDCs' submission and looked forward to further productive engagement on the matter to support LDCs, including graduating LDCs, in their developmental aspirations and their efforts to integrate into the multilateral trading system.

5.23. The representative of China recognized the enormous challenges and high vulnerability LDCs faced, particularly during the global pandemic. A recent analysis by the Secretariat revealed that LDCs had been hit harder by the COVID-19 crisis compared to the world as a whole. LDCs had seen a 10.3% decline in exports of merchandise trade in 2020 and a 10.5% decline in imports – sharper than the global 7.7% decline in exports and 7.8% decline in imports. The drop of LDC services exports was estimated to be around 40% in the first three quarters of 2020, double the decline by the rest of the world, which was 19%. China saw the importance and necessity for continued international support for LDCs to keep the pandemic in check and to better integrate into the world economy. As one of the most open markets to the LDCs, China was and had continued implementing zero tariffs for 97% of its tariff lines for LDC exports to China. Transitional periods had already been provided for recently graduated LDCs. For the purpose of the proposal, China called on Members' collective engagement towards a possible solution and a meaningful outcome by MC12.

5.24. The representative of Saint Lucia, on behalf of CARICOM, associated with the statement of the ACP Group. The Marrakesh Agreement recognized the need for positive efforts designed to ensure that developing countries, and especially the least developed among them had a share in international trade commensurate with the needs of economic development. It was in that context that the WTO system had been designed to guarantee maximum flexibilities for LDCs. The CARICOM Group therefore fully endorsed the proposal contained in document WT/GC/W/807 on LDC transition.

5.25. The representative of South Africa associated with statements of the African Group and the ACP Group and referred to the statement it had made on the issue in the December and the April General Council meetings. The Istanbul Programme of Action for the LDCs for the Decade 2011–2020 included as an overarching objective the graduation and smooth transition of LDCs. Graduation from the UN LDC Category was seen as an important milestone in the development path of each LDC. At the same time, the phasing out of benefits associated with the LDC Status could present challenges for graduating LDC governments to integrate into the global economy. LDCs faced significant trade and development challenges – more so in the context of the COVID-19 pandemic. South Africa reiterated its support for the LDCs' submissions in documents WT/GC/W/806 and WT/GC/W/807 and looked forward to constructive discussions towards a decision at MC12.

5.26. The representative of Mauritius, on behalf of the African Group, reiterated its support to the submission by the LDC Group in document WT/GC/W/807 and called on the General Council to approve that the draft decision be submitted for a decision by MC12. The draft decision proposed by the LDC Group would allow LDCs to continue benefitting from LDC specific support measures and S&DT and flexibilities for twelve years after graduation. There was no need to reemphasize that graduation was a continuous process and that LDC should be given adequate transition time to adequately prepare to face post-graduation challenges. There was no one better placed than the LDCs themselves to propose the most appropriate duration of such transition period. Immediately removing S&DT and flexibilities from graduating LDCs would certainly put the latter in a difficult situation especially given their already vulnerable situation. In the absence of appropriate support, the LDCs' transition would not therefore be sustainable and their graduation would make little difference. An incomplete and fragile graduation without a specific support mechanism could lead newly graduated LDCs to be subject to more difficulties. The draft MC12 Decision would be a genuine response to the UNGA Resolutions A/RES/59/209 of 2004 and A/RES/67/221 of 2012 that invited "all Members of the WTO to consider extending to graduated countries the existing special and differential treatment measures and exemptions available to least developed countries for a period appropriate to the development situation of the country".

5.27. The representative of India said that India had been a strong supporter of LDC integration into the multilateral trading system and had been at the forefront of efforts to increase their share in global trade. India provided DFQF market access to about 96% of tariff lines for goods originating from LDCs, and an additional 2.15%, bringing the total to 98.15% of tariff lines. India was the fourth biggest export destination for goods originating in LDCs. India also ran a dedicated centre for WTO studies for technical assistance and capacity building activities to help LDCs to better integrate into the multilateral trading system. As the submission noted, LDCs suffered from various capacity constraints and economic vulnerabilities. India therefore supported that a reasonable period of time be granted as a transition period for ensuring a smooth transition for graduating LDCs under the WTO system, and requested Members to consider the proposal.

5.28. The representative of Indonesia acknowledged the challenges faced by LDCs, especially during the pandemic. Indonesia also viewed S&DT in trade rules as one of the key tools to address those challenges. The WTO should also expand the period of time where graduating LDCs could still enjoy a safety net period under the S&DT blanket. That period would provide a clear path for them to ensure full integration into international trade despite the challenges. Indonesia extended support to the draft decision as annexed in document WT/GC/W/807.

5.29. The representative of Uganda associated with the statements of the LDC Group. The impact that the COVID-19 had had and continued to have in many economies could not be ignored. While many LDCs had made significant economic progress in structural transformation, much of the progress had been and would continue to be undermined by the virus. As other LDCs, many Graduating LDCs would have to grapple with the effects of the rapid slowdown of activity particularly in the urban informal sector and movement of labour back to farming. Equally challenging would be the significantly reduced income, a vital issue given the high levels of vulnerability and poverty in LDCs – making the extension of support and flexibilities for the smooth transition of Graduated LDCs even more necessary. The provision of the conditions favourable for graduation required carefully calculated intervention executed in the right manner and for a little more time. LDC Graduation was not only a win for LDCs. It was also a win for all Members. Uganda therefore called upon all Members to accord much-needed support to graduating LDCs and to agree to the draft Ministerial Decision proposed by the LDC Group for adoption at MC12.

5.30. The representative of the United States appreciated the LDCs' outreach and looked forward to continuing the discussion with them as it worked to understand several aspects of the proposal and its potential implications. The proposal raised interesting questions about horizontal equity, or in that case, potentially significant inequity. That was, under the proposal, any graduating LDC would continue to receive special treatment and preferences that were available only to LDCs for twelve years past graduation. A non-LDC Member that scored lower on various development indicators than the graduating LDC would not however receive such special treatment. That raised an obvious question of fairness. It was not a theoretical question. From colleagues at the UN, the United States understood that Bangladesh and Lao PDR could graduate as soon as 2026. Both Bangladesh and Lao PDR, as of 2019, already had a GNI per capita (measured on a PPP basis) that had been significantly higher than that of non-LDC Members, including Nigeria, Kyrgyz Republic, Pakistan, Kenya, Tajikistan, Cameroon, Congo, and Zimbabwe. The United States asked whether the LDCs had

consulted with those and other Members to discuss those inequities. The proposal also raised questions about the relationship between WTO rules and development. Some of the LDC-specific S&DT provisions that would be extended for twelve years past graduation would delay those Members' implementation of WTO rules. That would appear to suggest that such WTO rules were somehow in conflict with development. Implementation of WTO rules fostered development and that Graduating LDCs would not want to delay their implementation. It would be helpful for the LDC colleagues to explain their views on that, including on whether they had considered what a graduating LDC would do, and by when, to ensure that WTO rules were implemented in their trade regimes. The United States looked forward to continuing its careful study of the proposal.

5.31. The representative of the Kingdom of Saudi Arabia, on behalf of the Arab Group, understood the concerns and challenges faced by the LDCs during the graduation process due to various capacity constraints. The Arab Group was a strong supporter to better integrate LDCs in the multilateral trading system and was ready for further discussions towards a positive outcome in that regard.

5.32. The representative of Nigeria associated with the statements of the African Group and the ACP Group, supported the LDC proposal and called on the General Council to approve the proposal as it would go a long way to assist Graduating LDCs in addressing their development challenges.

5.33. The representative of the European Union understood fully the challenges that LDCs faced in integrating in the global trading system. While graduation was a positive and remarkable milestone to be celebrated, most graduated LDCs had not, at the time of their graduation, achieved the same level of capacity and integration in the global economy of most other developing countries. A smooth transition after graduation could therefore be needed. There should be support and flexibilities for Members, commensurate with their needs and capacity constraints, beyond the group of LDCs. That was established in the European Union's trade and cooperation policies that provided support for LDCs, for countries that had recently graduated from the LDC Status as well as other developing countries. In the trade area specifically, the aim of the European Union was to focus on how to facilitate and enhance the capacity of countries to assume commitments that fostered integration in the global economy. That was the best way that the WTO could effectively contribute to sustainable development. In that spirit, the European Union would continue to support constructive initiatives to better integrate Members with capacity constraints into the multilateral trading system and to take into account in that connection the specific situation of graduating LDCs. The European Union especially encouraged discussions on the basis of analysis that showed where specific difficulties existed. The European Union had previously put forward a number of questions on that proposal and would continue to assess the text. The European Union looked forward to hearing the views of other Members and thanked the LDC Group for its continued and constructive engagement in the matter.

5.34. The representative of Bangladesh thanked all Members who had taken the floor and who had supported the LDC submission. Bangladesh was grateful to them and expected their continued support going forward. The issue raised by the United States had already been adequately answered in its earlier intervention. Even then, Bangladesh would engage with the United States and other interested delegations to further clarify questions, if any. Bangladesh urged the Chairman to initiate an informal process so that Members could engage meaningfully to advance negotiations in attaining a positive outcome on the matter soon. The LDCs had full confidence in his wisdom and leadership.

5.35. The representative of Chad, on behalf of the LDCs, echoed the words of Bangladesh and reassured Members that the LDC Group remained flexible and would continue its dialogue with them with the hope of arriving at a consensus-based decision.

5.36. The Chairman noted that it was the third time that Members had discussed the matter at the General Council. He hoped that all Members were listening to each other carefully. While more time was needed to discuss the various aspects of the proposal, Members remained willing to engage in those discussions, which was positive. He again called on the LDC Group and all Members to continue to talk to each other in an effort to clarify questions or concerns, take suggestions on board and find a way forward that was acceptable to everyone. He remained available to assist in that endeavour.

5.37. The General Council took note of the Chairman's statement and of the other statements.

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## **6 SUPPORTING THE CONCLUSION OF FISHERIES SUBSIDIES NEGOTIATIONS FOR THE SUSTAINABILITY OF THE OCEAN AND FISHING COMMUNITIES – DRAFT MINISTERIAL DECISION - COMMUNICATION FROM BRAZIL (WT/GC/W/815)**

6.1. The Chairman recalled that the item was included in the agenda of the General Council for the second time by Brazil together with the communication in WT/GC/W/815.

6.2. The representative of Brazil had requested the inclusion of the item on the agenda to continue the discussion of Brazil's proposed draft Ministerial Decision in support of the conclusion of fisheries subsidies negotiations, which had been presented to Members at the last General Council meeting. As previously stated, in the context Members' inability to meet the deadline set by SDG 14.6 to conclude the negotiations, the purpose of the initiative was to signal to the international community that Members remained committed to fulfil their mandate and reach a meaningful agreement – one that delivered the highest level of sustainability of the ocean and fishing communities while tackling fisheries subsidies.

6.3. Since the last General Council meeting, the pace of negotiations had been intense and had strongly benefited from the leadership and engagement of Dr Ngozi. More recently, Brazil had received with great enthusiasm her announcement of a possible Ministerial Meeting in July aimed at reviewing a very advanced, hopefully final, text. Brazil fully supported Dr Ngozi's initiative for a Ministerial Meeting in July. As Members entered the final phase of the negotiations, it was even more important to renew their commitment in securing an agreement on comprehensive and effective disciplines to curb subsidies that threatened global marine fish stocks. Members could not afford to reduce the level of ambition at that stage. They did not need just any agreement, but one that truly changed the current practices of subsidization and contributed to the sustainability of the ocean and fishing communities. It had been widely recognized that certain forms of fisheries subsidies were major contributors to overcapacity and a key driver of overfishing.

6.4. Each year, governments spent an estimated USD 22 billion on capacity-enhancing subsidies that artificially reduced the cost of fishing and enabled fishers to travel farther or fish for longer than they would be able to without subsidies. By artificially lowering costs, capacity-enhancing subsidies encouraged more fishing than stocks could support profitably and sustainably. Twenty years after the launch of negotiations, the percentage of fish stocks within biologically sustainable levels had dropped continuously. According to the FAO, more than one-third of fish stocks were currently overfished. The persistent deterioration of the health of the marine fish stocks had an important impact on the livelihoods of millions of people around the world dependent on fishing resources.

6.5. Members therefore had a crucial role to play in helping to revert that global trend by tackling one of its main causes. As discussions on trade and environmental sustainability intensified at the WTO, it seemed reasonable to call for the conclusion of a two-decade-old negotiation that particularly enhanced the positive relationship between trade rules and environmental objectives. Failure to deliver on that goal would have a deep impact on the credibility of the WTO's negotiating pillar. Brazil's draft Ministerial Decision called for a much-needed political response from the WTO to the just aspirations of the international community. As Members approached the UNGA and MC12, stakeholders would be expecting the organization to deliver multilateral outcomes.

6.6. Brazil reiterated that its initiative did not bring new elements to the negotiating table and it did not seek to modify the already agreed upon mandate. It aimed solely at conveying a message on the WTO's commitment to reaching environmental sustainability objectives through fisheries subsidies disciplines. Brazil looked forward to working constructively with Members at the final phase of the negotiations and hoped that Members could find the appropriate landing zones in order to conclude the agreement as soon as possible.

6.7. The representative of the Philippines was encouraged by the momentum and positive engagement in the April cluster of fisheries negotiations. The Philippines found Brazil's proposal particularly useful in light of the upcoming virtual Ministerial Meeting in July as envisioned by Dr. Ngozi. The proposal stressed the kind of MC12 deliverable and the level of ambition that Members should be aiming for. Focus on curbing harmful subsidies should be the WTO's contribution to SDG 14.6. The Philippines stressed the need to be mindful of the mandate and exercise restraint and prudence to facilitate consensus building. Members needed to act together for an ambitious and pragmatic outcome. The Philippines therefore looked forward to the release of the next Chair's Text

on 11 May and to the urgent action and collaboration with Brazil and other Members in coordination with the NGR Chair, Dr Ngozi and the Ministers in July.

6.8. The representative of Chad, on behalf of the LDCs, welcomed the continued commitment of Members to conclude the fisheries negotiations no later than MC12 to fulfil expectations under SDG 14.6 and the WTO mandate for those negotiations. LDCs were actively engaged in negotiations that were strictly text based and hoped that Members would find common ground in areas that would enable them to achieve a positive outcome. Those negotiations should result in rules which did not transform the WTO, de facto or de jure, into a fisheries management organization, but rather which covered what Members could do under the aegis of the WTO. That meant not resorting solely to the WTO when it came to that very important issue. The negotiations should focus on the discipline of large-scale industrial fisheries subsidies that contributed to overcapacity and overfishing.

6.9. The representative of Nigeria associated with the statements of the African Group and the ACP Group. Nigeria reemphasized its readiness to support the early conclusion of the fisheries subsidies' negotiations, due to its importance. Members should limit their ambition and keep them in line with SDG 14.6 and the Ministers' mandate that required the prohibition and elimination of subsidies which contributed to overfishing, overcapacity and IUU fishing. Members had already missed the 2020 timeline to deliver on SDG 14.6 and had no option than to work hard with a view to ensuring that they achieved outcomes by or before MC12 – if possible in July – so that Ministers would only come to MC12 to adopt the text. Nigeria urged Members to avoid the insertion of wordings or issues that reflected fisheries management obligations to the WTO, as that approach had proven in the past to be ineffective in addressing global overcapacity and overfishing problems, focus on main issues; and exhibit flexibilities to reach convergence in all areas where differences still existed; and enforce Members' commitment to ensure the conclusion of the negotiations as soon as possible.

6.10. The representative of Barbados associated with the statements of CARICOM and the ACP Group. As a small and developing State, the sustainability of Barbados' ocean and fishing community was of core importance to its development and people and the earth itself. Barbados was therefore pleased to be able to contribute to the discussions on the matter. Barbados continued to be concerned with the state of the global fisheries stocks and more systemically the oceans – one of the main reasons for its long-standing commitments and participation in the deliberations and the Negotiation Group on Rules on fisheries subsidies. Barbados was guided by SDG 14.6 and the mandates of the Ministers in past Ministerial Conferences and stressed that those mandates allowed Members to continue their work and pursuit of outcomes in that area. In fulfilling their mandate on fisheries subsidies, Members should target major subsidizers and large-scale industrial fishing while allowing adequate policy space for developing and LDC Members that had underdeveloped fishing industry and that did not contribute to the problem of overfishing and overcapacity. Barbados would not be in a position to accept provisions which did not adequately take that and other factors into account and which used per capita income as an indicator defining Members' ability to access S&DT.

6.11. The representative of Cameroon associated with the statement of the ACP Group, welcomed the interest in the draft and hoped that it would lead to the conclusion of the fisheries negotiations. Like many Members, Cameroon wished to see the conclusion of the negotiations on the prohibition of fisheries subsidies by MC12. The mandate of those negotiations concerned precisely the prohibition of fisheries subsidies, and effective and operational S&DT. For decades, Members had undertaken to sustainably manage their fisheries resources in accordance with the United Nations Convention on the Law of the Sea and other instruments. Various manuals, guides and agreements on sustainable fisheries management had been adopted yet had not reduced the appetite of some parties for continuing to expand and broaden their capacities, which largely surpassed the resources available in their waters and which resulted in overfishing. The WTO had therefore been called on to curb those subsidies.

6.12. Nations like Cameroon saw hundreds of vessels pass through their waters, vessels that fished illegally, evaded the surveillance systems from their coasts, were sometimes stopped and penalized, and then immediately returned to fish, as the penalty incurred was far less than the profits obtained. The profits made from illegal industrial fishing in world trade were estimated at around USD 20 billion, which was higher than Cameroon's annual budget. Cameroon's small-scale fishers, those using dugout canoes, who struggled to feed their families and communities, and who had limited resources, had to navigate further and further out to catch fish, which were then sold on the local market. Their seas were drying up and they were aware of the urgent need to increase their means of surveillance to dissuade foreign industrial vessels from entering their waters, to give their small-

scale fishers a chance, and to rationally manage their resources. Members should also assist their small-scale fishers in acquiring appropriate navigation tools. Cameroon however had scarce resources and many needs. Furthermore, in light of the large subsidies granted by other Members for their industrial fisheries, under the guise of programmes with uncertain sustainability outcomes, there were fears that their efforts, whatever they were, would not bear fruit.

6.13. Cameroon was being asked to tell, in the future, small scale fishers who would have received a subsidy of USD 100 to acquire an outboard motor and adapt their nets to meet standards, that they should fish exclusively in the waters with the lowest fish stock in the territorial sea. If not, they would be subject to the same rules as the industrial vessels that received thousands of dollars in subsidies and fished illegally in their country's exclusive economic zone, which such vessels were prohibited from entering. And when, months or even years later, fishers were confronted once again with such industrial vessels that had already been found guilty of illegal, unreported and unregulated fishing, and wished to know whether the vessels returned the subsidies granted by their States, or what sanctions had been taken against them by those States, Cameroon would tell them that the States in question were not bound by time limits to fulfil their obligations to eliminate subsidies.

6.14. Moreover, Members would have created a new level of jurisdiction, where, in addition to being informed of the actions initiated against its industrial vessels by the coastal State for the purpose of monitoring the regularity of procedures and exercising its right to consular protection, the flag State, which was usually the State granting the subsidy, would be able to question, *a posteriori*, the conformity of a procedure with the WTO, even if it had not made such a claim during the course of the actions that had led to the decision. It would thus be both judge and jury. Those assumptions were not taken from the scenario of a Netflix film, but from the provisions of the current and highly lauded text on fisheries subsidies which Members were being asked to adopt and which legitimized subsidies for industrial fisheries and criminalized artisanal and small-scale fisheries.

6.15. Members had the sovereign right to support their economies. Cameroon had however been following with interest the new fisheries support measures of certain Members. Cameroon asked whether those subsidies would increase or reduce the overcapacity and overfishing observed in the seas. Cameroon was working constructively with all Members to conclude, as soon as possible and without delay, an agreement in line with the mandate. Such an agreement should take into account the realities on the ground, avoid increasing the burden on artisanal and small scale fishing operators, effectively penalize illegal fishing, encourage some sustainable fisheries subsidies, and give developing countries, which were not the problem, appropriate and effective S&DT. Cameroon was confident that, together, Members could achieve that.

6.16. The representative of Jamaica, on behalf of the ACP, reiterated its statement made at the General Council meeting in March on the issue. The ACP Group had always valued the sustainability of the oceans. An outcome should be an effective policy tool in the global fight against IUU fishing and global fish stock depletion. As Members, they should always be mindful that the WTO's competence in the area was limited to subsidies and, to the extent possible, collaboration with other international organizations that had mandates in oceans and fisheries management. Members' focus and priority should therefore be to conclude the negotiations through the NGR process. They already had a Ministerial mandate, which was sufficient to guide work in the negotiations. The Ministerial mandate was also in line with SDG 14.6. The ACP Group reaffirmed its commitment to the implementation of SDG 14.6 and the MC11 mandate. The focus of Members' engagements should be on major subsidizers and large-scale industrial fishing. They should ensure that the outcome provided adequate policy space for developing and LDC Members to develop their fisheries sector. The ACP Group could not live with transition periods alone without technical assistance and capacity building. An outcome should ensure that sovereign rights of Members were respected, national judicial processes were unfettered, implementation was not more burdensome than necessary to achieve the sustainability objective, the provisions remained within the competence of the WTO and that there was policy space for small scale and artisanal fishing. The negotiations should be concluded in 2021 and the ACP Group would work towards making that a reality – but flexibility, empathy and compromise from all parties were key ingredients to getting that done.

6.17. The representative of Kenya associated with the statements of the ACP Group and the African Group. In 2015, the international community under the auspices of the UN General Assembly and the SDGs had committed to eliminate certain forms of fisheries subsidies by 2020. The deadline had been missed despite efforts made. The fisheries negotiations were at a critical stage necessitating Members to exercise more flexibility to move the process to the next level as they progressed and

looked for ways to reach consensus on the few diverging areas. They should take into account the complexity of the matter and its political sensitivities. As time was running out and as Members could not afford to carry on that subject beyond MC12, they should strive for a final or at the very least an advanced text that Ministers could consider in advance of MC12. Kenya therefore supported Dr Ngozi's roadmap for a July package. Members had an opportunity to demonstrate to the world that the multilateral trading system was still alive and relevant including in the context of the SDGs.

6.18. The representative of Vanuatu, on behalf of the Pacific Group, reiterated its statement at the previous General Council meeting and associated with the statement of the ACP. The Pacific Group recognized the urgency to complete the negotiations – which was a top priority – and took notes of the July deadline for concluding the negotiations announced by Dr Ngozi. The Pacific Group looked forward to the revised text that would be presented the following week and was committed to delivering a meaningful outcome on fisheries subsidies at MC12. The agreement should focus on disabling harmful subsidies and not fisheries management, provide policy space for small developing Members especially small island developing States that had little to no fishing capacity at present, provide security for small scale and artisanal sectors and should not undermine Members' rights under UNCLOS to offer access to EEZ on terms they decided.

6.19. The representative of Saint Lucia, on behalf of CARICOM, associated with the statement of the ACP and reiterated that Members had already had a negotiating mandate at MC11 in line with SDG 14.6. CARICOM needed to better understand the objective of Brazil's proposed declaration. CARICOM remained committed to the original mandate and reiterated that targeting big subsidizers and large scale industrial fishing should be the main priority of the negotiations while ensuring appropriate and effective S&DT for developing countries that took into account the unique circumstances of small island developing States. CARICOM looked forward to more dedicated discussions among Members on the de minimis exemption for those Members whose total global catches were under 2%. CARICOM called for those discussions to be conducted with constructive engagement and with the view to finding solutions. CARICOM could not afford an outcome on S&DT that was based on the per capita income criteria. CARICOM remained committed to engage constructively in those negotiations and urged all Members to work towards a successful outcome that could be presented to Ministers, and by extension the international community, by MC12.

6.20. The representative of the Russian Federation shared the objective of reaching a meaningful outcome on fisheries subsidies by MC12 and reiterated its statement on the issue at the previous General Council meeting. The Russian Federation welcomed the negotiating process which had been achieved largely due to Dr Ngozi's engagement with Members. Members should do their best to reach a consensual agreement on core issues and stabilize their common understanding at the Ministerial Meeting in July, so that the autumn period would be dedicated to finalising the technical issues. On substance, the Russian Federation was committed to fulfilling the mandate while ensuring the sustainable economic development of Members' fisheries sectors. Now was the moment of truth when all Members should honestly admit to themselves how they would ensure full implementation of the disciplines. The agreement should stimulate sustainable exploitation of resources and should not contain indefinite exemptions for some Members or some types of fishing. The greatest threat to the negotiations was the maintenance of unrealistic requests. Constructive engagement from all Members would ensure the resolution of core issues that the negotiations faced. Members should keep in mind that the eventual fisheries subsidies agreement should not be counterbalanced by gains from other WTO negotiating tracks that would make it tough to convince capitals to accept the result of their work.

6.21. The representative of Mauritius, on behalf of the African Group, referred to her delegation's statement at the previous General Council meeting. The African Group remained committed to a balanced outcome on fisheries subsidies at MC12. An outcome that would be based on the principle of sustainability and would discipline subsidies that contributed to overcapacity, overfishing and IUU fishing. The provision of effective S&DT for developing and LDC Members should be an integral part of the agreement. Members' focus should be on finding convergence on all the issues especially given the recent encouraging developments and the decision to move discussions to higher levels. In so doing, they should ensure that the provisions remained within the competence of the WTO.

6.22. The representative of the United States remained committed to a constructive engagement in the WTO fisheries subsidies negotiations and to developing a meaningful agreement. That meant an agreement that disciplined the most harmful fisheries subsidies to protect the environment and the sustainability of the oceans and fisheries resources, and that had a meaningful connection to the

lives of the fishers and workers. Members therefore needed effective disciplines on subsidies that contributed to IUU fishing, overfished stocks and overfishing and overcapacity with limited or no exceptions. That included additional, focused prohibitions on subsidies contingent on fishing beyond national jurisdiction and subsidies for vessels that did not fly the flag of the subsidizing Member. A meaningful agreement should also consider the ways in which harmful fisheries subsidies impacted their fishers and workers. As it had indicated during the recent cluster, the United States intended to explore how effective disciplines could contribute to Members' efforts to combat forced labour on fishing vessels and would soon put forward ideas in that area. The United States recognized that its aim was to successfully conclude the negotiations by MC12 or sooner and it supported that objective. That would require Members to put aside calls for exclusions and additional flexibilities, and focus on agreeing to disciplines that would actually improve the status quo and would have a positive impact not just on the sustainability of fisheries resources but on the lives of fishers and workers.

6.23. The representative of South Africa was guided by the MC11 mandate and SDG 14.6 in the fisheries negotiations. South Africa was concerned that the proposed draft Ministerial Decision seemed to reinterpret the mandate in ways it did not find helpful and made no reference to S&DT – a critical element of the mandate. In view of the mandate's sustainability objectives, the principle of common but differentiated responsibility should underpin the negotiations. As it had previously pointed out, the mandate was to prohibit certain forms of fisheries subsidies which contributed to overcapacity and overfishing, and to eliminate subsidies that contributed to IUU fishing. Given the substantial amount of work to be completed for the fisheries subsidies negotiations, South Africa did not see how work on a draft decision would assist Members in completing the outstanding work. Dr Ngozi wanted an accelerated outcome on fisheries subsidies by July – a very optimistic timeframe. If Members were to achieve it, they could not be diverted by additional discussions that did not contribute to such an outcome. South Africa reiterated its view that, notwithstanding the good intentions of the proposed Draft Ministerial Declaration by Brazil, Members' time would be best served prioritising the conclusion of the current fisheries negotiations. The NGR Chair had indicated in his TNC report that he intended to issue a revised text. Members would do well to focus on that process without any further diversions. South Africa shared the sentiments communicated by Brazil that all Members should commit towards the successful conclusion of those negotiations.

6.24. The representative of Bangladesh associated with the statement of the LDC Group. It was imperative to have consensus on fisheries subsidies before MC12. Members already had a clear negotiating mandate on that area. Subsidy was a WTO issue and fisheries were a common good. Members therefore had a clear responsibility on the matter. The genesis of the fisheries subsidies negotiations could be found in the Doha Ministerial Declaration and the importance of the sector for developing and LDC Members as had been demonstrated at the 2005 Hong Kong Ministerial Conference. Members should therefore consider the development priorities, poverty reduction and food security concerns of Members in any outcome in that area. SDG 14.6 was not something new nor was the Hong Kong mandate and the mandate to conclude the negotiation. Bangladesh thanked Ambassador Santiago Wills for his hard work in facilitating the discussions on the text. Time was not on their side. Members should redouble their efforts to reach consensus. Bangladesh reassured Members of its constructive engagement to reach consensus on those negotiations before MC12.

6.25. The representative of Angola supported Brazil's proposal that called on Members to conclude negotiations on fisheries subsidies to contribute to the sustainability of the oceans and fishing communities. Angola expressed its concern to some of the positions that were dividing Members on important issues after a long period of negotiations and called on everyone to redouble their efforts to reach the desired agreement as soon as possible. It was in everyone's interest to have a healthy future for the oceans. The most effective way to achieve that goal was the elimination of harmful subsidies. Members needed to reach consensus based on fair, sustainable and inclusive proposals which would bring them more concrete commitments and reach their objectives.

6.26. The representative of India remained committed to the negotiations on fisheries subsidies as provided under SDG 14.6 and the MC11 mandate. India was slightly puzzled on whether the purpose of the draft declaration was to have an add-on to the process in the NGR which was accelerated with Dr Ngozi's help or was it a fallback arrangement that if the negotiations failed to meet the deadline then Members were expecting that kind of declaration at MC12. India suggested to be optimistic and try to follow the path of Dr Ngozi and Ambassador Wills to conclude the negotiations. If Members were taking it as a fallback arrangement, then India shared the concern regarding the lack of explicit reference to S&DT. In the previous General Council meeting, India had highlighted and had sought clarifications on some of the phrases used in the communication such as an ambitious outcome,

improving existing WTO disciplines in trade subsidies and upholding highest standards of environmental sustainability. India hoped to receive some clarifications on the tone used in that communication. In the name of collective responsibility, it was disconcerting that the communication put no or very few industrial fishing fleets in countries that had highly developed industrialized fishing fleets. Environmental sustainability of fisheries resources was a classic case for the application of the principle of common and differentiated responsibility while ensuring that the sustainability of the oceans remained a shared responsibility. The livelihood of vulnerable fishermen across the globe depended on an appropriate and effective S&DT for developing and LDC Members addressing their developmental priorities and concerns of food and livelihood security.

6.27. The representative of Indonesia reiterated its commitment to finalize the negotiations the soonest and was fully committed to ensure that the fisheries discipline would be effective in addressing harmful subsidies that contributed to overcapacity and overfishing and in protecting the artisanal and small-scale fisheries. There were many aspects of the proposal that needed to be looked at further and negotiated to reflect Members' divergent views on the fisheries subsidies negotiations. The proposal could have a significant effect to the mandate that Members already had. Indonesia also questioned whether it was in Members' best interest to negotiate different documents concerning fisheries subsidies aside from the negotiating text itself at that point in time.

6.28. The representative of the European Union said that the negotiations was a determinant for the credibility of the WTO and the whole SDG agenda. The mandate that Members had, both SDG 14.6 and the MC11 mandate, was clear. Members should address certain forms of harmful subsidies leading to overfishing and overcapacity and IUU fishing, while ensuring appropriate and effective S&DT. The mandate was addressed to all of Members. It was not a mandate only for a certain category of Members – the largest subsidizers or fleets, large-scale industrial fishing – but for all WTO Members. Their mandate did not introduce concepts like "polluter pays". And that was because ensuring healthy oceans and sustainable fish stocks was a responsibility of all of them. The only way to address food security and growing the fisheries sector in the future was by ensuring that fishing was sustainable. Members were already late and indeed on borrowed time. The European Union fully supported the NGR Chair's and Dr Ngozi's efforts and ambition to have an outcome in July.

6.29. The representative of Morocco was in favour of a significant balanced and fair outcome to ensure the reestablishment of marine ecological balance and the preservation of fisheries resources for future generations. Morocco had presented its proposal characterizing industrial and large-scale vessels which received the bulk of subsidies and contributed for the most part to overfishing. That proposal would affect a quarter of its national fleet but nonetheless Morocco had taken the bold step of seeking through that proposal to target those vessels as responsible for exhaustion of fisheries resources for the most part. Morocco remained committed to cooperating with all Members to achieve an appropriate outcome through the negotiating mandate while respecting their food security and socioeconomic development.

6.30. The representative of Pakistan was hopeful for the conclusion of the ongoing fisheries negotiations. Fisheries subsidies was one of the most important elements of WTO negotiations carried over from the Doha Agenda. Pakistan would welcome discussions on other elements as well. On the proposal itself, it was hard to understand its motivation. The proposal was a draft Ministerial Decision to be agreed at MC12 aiming for a high standard of environmental sustainability in concluding the discussions. Pakistan asked whether that would imply that Members were not seeking a conclusion at MC12. The document also affirmed a commitment to SDG 14.6, but the language of the draft decision reduced the mandate to only a higher standard of environmental sustainability. It did not mention the most crucial aspect of S&DT which was the core of SDG 14.6. While ensuring environmental sustainability was a much-needed objective, all Members had a responsibility to their people to allow them the opportunities for sustainable livelihoods as well. While considering sustainability, Members should address all aspects of sustainable development to make it truly meaningful. Pakistan was not yet convinced of the usefulness of the proposed decision at that time.

6.31. The representative of Brazil thanked all Members for their constructive criticism and the analysis of the text. Brazil was ready to discuss with anyone interested in the scope of its proposal. It was time for Members to understand that food and livelihood security required an ambitious agreement. Members could not afford to have an agreement that was not meaningful, was full of carve outs and that preserved the current status quo because what was at stake in the long run was food security and the livelihood of the fishermen and the livelihood of people who depended on fisheries resources. An ambitious agreement was not an agreement to the detriment of the livelihood

of anyone. On the contrary, to save the oceans was to save people's livelihood and fishing communities. That was why Members needed an ambitious agreement. That was the only way to understand sustainability. Sustainability was not to the detriment of development of higher levels of wellbeing. Sustainability was an integral part of all of those.

6.32. The General Council took note of the statements.

## **7 WORK PROGRAMME ON ELECTRONIC COMMERCE AND MORATORIUM ON IMPOSING CUSTOMS DUTIES ON ELECTRONIC TRANSMISSIONS – REQUEST FROM INDIA**

7.1. The Chairman recalled that India had requested that the item concerning the Work Programme on Electronic Commerce and Moratorium on Imposing Customs Duties on Electronic Transmissions be included in the agenda of that day's meeting. The item had also been included on the agenda of the March meeting, and the previous ones in October and December 2020.

7.2. The representative of India thanked the Chair for engaging the Members on that subject through bilateral consultations and for organizing an Informal Open-ended General Council Meeting on that subject on 29 April. The digital revolution was still unfolding, and the digital infrastructure, while it had played its role during the ongoing pandemic, had brought out the early, existing and widening digital divide among Members, which had been further exposed during the COVID-19 crisis. Members fully comprehended the implications of e-commerce on competition and market structure, issues related to transfer of technology, data storage, automation and its impact on traditional jobs and the gaps in e-commerce policy and regulation framework, particularly in developing countries. That was why India had been a proponent of strengthening the multilateral work under the non-negotiating and exploratory 1998 Work Programme on Electronic Commerce. Under the multilateral work programme, with the intention of better understanding the implications of the moratorium on customs duties on electronic transmissions, India along with South Africa had introduced submissions which explained their understanding of the scope and the impact of the moratorium. In December 2019, Members could recall that India had joined the consensus for a six-month extension of the moratorium, with an understanding that the Work Programme would be reinvigorated with the objective of achieving clarity on various issues, including the scope of the moratorium and its impact on Members' policy space and revenue.

7.3. Since then, due to the repeated postponement of MC12, the Moratorium had been extended by about two years – much beyond the six months agreed to in December 2019. During the months leading up to MC12, Members should constructively engage on various issues of the Work Programme and have an understanding of the scope, definition and impact of the Moratorium to enable them to make an informed decision on its extension, or otherwise at MC12. Multilateralism was vital in a world facing development challenges and through constructive discussions under the multilaterally mandated Work Programme. The WTO had a unique opportunity to contribute towards an inclusive and development-oriented approach to e-commerce. India along with South Africa had also circulated a paper in document WT/GC/W/812, seeking the General Council to conduct discussions under the Work Programme. Paragraph 1.2 of the Work Programme provided that the General Council should play a central role and keep the Work Programme under continuous review by placing it as a standing item on its agenda. Since Members were not able to do that, India was forced to introduce that subject through request that such item be added in every General Council agenda. India accordingly urged Members to ensure that the Work Programme was kept as a standing agenda item for meetings of the General Council to ensure that the Council took up considerations of various trade-related issues of crosscutting nature including the imposition of customs duties on electronic transmissions.

7.4. Members also needed to ensure that, as mandated in Paragraphs 2 to 5 of the Work Programme, the relevant WTO bodies engaged constructively and reported to the General Council on issues assigned to them under the Work Programme including on the issue of challenges to enhance participation of developing countries, in e-commerce in particular, as exporters of electronically delivered products, the role of improved access to infrastructure and transfer of technology and movement of natural persons, the use of information technology in the integration of developing countries in the multilateral trading system, the implications for developing countries of the possible impact of e-commerce on the traditional means of distribution of physical goods, and the financial implications of electronic commerce for developing countries. India was working with like-minded Members to introduce submissions in all the relevant WTO bodies to engage in

constructive discussions on a non-negotiating basis. India urged Members to constructively engage in discussions on the Work Programme in the General Council and in other relevant WTO bodies.

7.5. The representative of the Philippines said that e-commerce played a critical role in the global pandemic recovery to boost economic growth, making it vital to maintain a stable and predictable digital trading environment, not only for big businesses but also for MSMEs. In line with that and as agreed in the December 2019 General Council Decision, the Philippines reiterated its commitment to reinvigorate work under the Work Programme on Electronic Commerce and expressed its support to the current practice of not imposing customs duties on electronic transmissions until the next Ministerial Conference. The Philippines hoped that, until the Ministerial Conference, there would be positive development in that regard. The Philippines welcomed continuous discussion on the Work Programme and the moratorium and was open to engage in constructive discussions in the relevant WTO bodies mandated under the Work Programme. Work on e-commerce overall could be pursued in parallel in the proposed structured discussions as well as in the Joint Statement Initiative on Electronic Commerce. Discussions in the JSI complemented the proposed structured discussions on the Work Programme by reflecting Members' e-commerce priorities. The Philippines stood ready to work constructively with Members on that important issue, to deliver a possible Ministerial Decision on e-commerce at MC12.

7.6. The representative of the Republic of Korea reiterated its strong support for permanently extending the moratorium on customs duties on electronic transmissions. Even before the pandemic, the revenue implication of allowing the Moratorium to lapse had been called into question by the OECD and others. The COVID-19 situation had made the case for its permanence even stronger. The advantages of duty-free digital trade had never been more clearly felt than they had in that increasingly contactless era. On a personal note, as she would soon be departing, she recalled that the schedule for MC12 had first been decided in the July General Council meeting in 2018. That had been her first General Council meeting. Members had agreed at that meeting to hold MC12 in June 2020. They all knew what had happened in those three years. While she would not be in Geneva to participate at MC12 in person and while the case for pessimism could be strong, she would nonetheless return to Korea with a sense of optimism. She was hopeful because she believed in the professionalism and dedication of her fellow colleagues. She knew Members would not settle for failure. She trusted them and Dr Ngozi to work towards a successful MC12 – one that would reform the WTO by strengthening its core functions and making it more relevant, responsive and efficient. The WTO would always have a cherished place in her heart. She assured Members of her continued strong support for multilateralism and the rules-based multilateral trading system.

7.7. The representative of Nigeria said that the need for the WTO to deliver outcomes that would underpin the growth and development of global digital trade and address issues undermining the gains of developing countries from the sector, could not be overemphasized. Nigeria had been consistent in calling for the Membership to reinvigorate the Work Programme and explore ways of addressing the difficulties undermining the gains of developing countries from global digital trade. Nigeria had co-sponsored the Australian-led proposal on exploratory discussions on supporting digital capability of business and consumers in the CTS which was gaining traction with more Members engaging in the discussions. Nigeria supported having more structured and targeted discussions on horizontal and vertical issues on trade-related aspects of e-commerce under the Work Programme to set an inclusive and development-oriented agenda for Ministers' consideration at MC12. Such discussions should clarify the scope, among others, and address classification issues.

7.8. Regarding the moratorium, Nigeria supported the call for broad based discussions on scope and definition to gain greater insight and deepen understanding of those issues. Nigeria was also mindful of the legitimate concerns of some Members on the effect of the Moratorium on fiscal revenue. Nigeria therefore supported the call by some Members for the four designated bodies under the Work Programme to delve deeper into the benefits and costs of the Moratorium, especially for developing countries. Such assessment should not however only focus on the static effects but also on the dynamic effects so Members could be properly guided. Digital trade had become the engine of economic transformation in Nigeria and had set the country on a new growth trajectory. An objective assessment of the impact of the Moratorium on economies would reveal that the benefits associated with the dynamic effects of the Moratorium outweighed the revenue loss. Members should also consider the negative effects of an unpredictable global e-commerce environment for businesses and consumers that would likely occur from the non-renewal of the moratorium at MC12. In that regard, Nigeria supported the temporary extension of the moratorium at MC12.

7.9. The representative of Indonesia said that Members should bear in mind that their objective should be to conclude their work on the 1998 Work Programme on Electronic Commerce, particularly on the issue of the scope and definition of electronic transmissions and the fiscal implications arising from the Moratorium. Indonesia drew attention to the General Council Decision of 10 December 2019 where Members had agreed to reinvigorate the multilateral work under the Work Programme, as agreed and mandated in 1998. Considering the unfolding and rapid development of e-commerce in the digital era, the multilaterally mandated work had never been more important than now. Members fully comprehended the complexity and many aspects related to e-commerce and the relation to their social developmental processes. There were serious asymmetries in global e-commerce currently being dominated by a handful of companies that had made billions of dollars of profit during the pandemic. Those asymmetries should be addressed in considering the Moratorium to ensure a level playing field which allowed developing countries to promote their digital industrialization policies.

7.10. The global benefit from e-commerce should be accessible to people within and across countries. Indonesia fully supported the acceleration of work under the Work Programme so that Members could decide whether to extend the moratorium at the MC12. Indonesia supported the submission presented by India and South Africa on reinvigorating the Work Programme and shared their view that the multilateral work to clarify the scope, definition and impact of customs duties on electronic transmission should be completed before MC12 to enable Ministers to decide on the issue one way or another. The fact that some Members had attempted to advance an ambitious agenda on digital trade negotiations through other mechanisms should not hinder the continuation of the work under the Work Programme and degrade the relevance of that mandate. Indonesia reiterated that its position on the moratorium remained unchanged. Indonesia urged Members to seriously commit and concretely contribute to advance the mandated work under the 1998 Work Programme.

7.11. The representative of Pakistan reiterated that, on the Work Programme, the General Council should fulfil its mandate to reinvigorate the structured discussions on various aspects of electronic commerce. That should be done with a view to finding solutions for developing Members' fundamental problems, such as the digital divide, to be placed in a flexible framework that would allow them to catch up with the rest of the world. Such structured discussions should be carried out within the various Councils and Committees mandated to do so on relevant aspects. Pakistan urged the Membership to engage in earnest and meaningfully in those discussions. The Moratorium had been discussed for some time now. Pakistan had been consistent in its view that new technological developments and emerging realities meant Members had to take a step back and reassess the situation. That was probably why the moratorium's extension had always been temporary.

7.12. Rapidly evolving technologies in the digital age, while becoming great enablers, were also a reminder of how far behind developing countries were in modern digital times. At the same time, such developing countries, most often constrained financially, and at the same time seeking to advance sustainable development through modern technologies, could not ignore serious revenue and industrial implications for their economies. Those implications had become more evident from latest research on artificial intelligence, 3-D printing and growth of the digital industry. The removal of the Moratorium would not automatically translate to imposing duties. It would only allow Members the right to do so however much and whichever electronic transmission they deemed appropriate. Any decision on the continuation of the Moratorium could not be straightforward and should consider all aspects for developing countries on their own merit without linking it with any other issue.

7.13. The representative of Australia said that the idea that Members would let the moratorium expire in the year where digital trade had blossomed was a bit strange. As it had stated previously, including at the Informal Open-ended meeting, Australia continued to support making the Moratorium permanent. It was a critical part of the modern trading system, providing businesses better access to markets and consumers more choice. Letting the moratorium expire would encourage restrictions on digital trade, which would be the last thing Members needed at that time, given the crucial role digital trade was playing in the global economy and would play in efforts to promote recovery. Australia was also committed to revitalising the Work Programme as envisaged in the December 2019 decision as it had demonstrated.

7.14. The representative of Vanuatu, on behalf of the Pacific Group, supported the reinvigoration of the Work Programme – an important platform to help address the digital divide faced by small economies. The Pacific Group supported the continuation of the Work Programme as agreed by the General Council in December 2019, including by having structured discussions on the Work

Programme and the impact of the Moratorium. The Pacific Group supported the call for the Chairman to establish a process for structured discussions on those issues in the lead up to MC12.

7.15. The representative of Chinese Taipei was pleased that, at the recent Informal Open-ended meeting on the Work Programme convened by the Chairman, Members had reaffirmed their collective interest and willingness to engage in constructive discussions following the General Council Decision made in December 2019 in document WT/L/1079. Chinese Taipei continued to support the sharing of best practices, experiences and information among Members, in the relevant WTO Committees, to advance the Work Programme. On the Moratorium, it had been proven that the practice of not imposing tariffs on cross-border electronic transmissions had significantly supported the growth of the ICT sector and had assisted SMEs and MSMEs to integrate into global trade. At that critical time when Members were facing the pandemic situation, that practice would ensure a stable and predictable trading environment and provide businesses and consumers with more choices at lower cost. While Chinese Taipei supported a decision at MC12 to extend the moratorium until MC13, Chinese Taipei called on Members to consider strengthening the existing multilateral commitments to make the moratorium permanent.

7.16. The representative of Nepal noted that e-commerce had been an important agenda item since 1998 with the Work Programme being established at MC2. The Work Programme had been expected to take into account economic, financial and development needs of developing and LDC Members to enable them to effectively participate in and benefit from the global trading system through e-commerce. Rapid increase over the period and a paradigm shift during the pandemic, had further raised its importance. Its development had however unevenly divided the world. Despite continuous efforts made in that area, no tangible progress had been reached so far. LDCs and LLDCs had an interest in e-commerce due to its potential benefits in terms of low price and high-quality products, as a result of increased competition and reduced costs of trade, better market opportunities for MSMEs, cost-saving in the financial sector such as e-banking, and new export opportunities to their companies, among others. Huge digital divide and several other constraints including institutional and human capacity constraints, weak regulatory mechanisms, lack of specific skills of e-commerce, poor access to computer hardware, software and servers, cyber security issues, and data management, among others, however, posed severe challenges in conducting e-commerce.

7.17. Nepal recalled the submission made by the LDC Group where it had identified some critical challenges for LDCs in the utilization of e-commerce. Enabling LDCs to participate in e-commerce and ensuring just benefits from it, remained a critical concern that required addressing their major constraints and challenges, as earlier outlined. Widespread access to telecommunications at low prices and the latest technology; human, institutional and technical infrastructure; capacity-building in the field of information technology and promoting technology transfer and foreign direct investment, could be some important initiatives that needed to be undertaken to enhance capacity to participate in e-commerce, and to make e-commerce inclusive and a win-win for all.

7.18. Benefits of e-commerce would not flow automatically to LDCs and LLDCs. A comprehensive approach would therefore be necessary to ensure that they could benefit from e-commerce. Technical assistance alone would not be sufficient. Measures would have to be taken in relation to the access of basic ICT infrastructure, technology, investment and market, as well as enhancing the quality of human resources and education. The COVID-19 pandemic had increased an urgency of enabling LDCs and LLDCs to participate in e-commerce, not just to benefit from it but, more importantly, to survive in the global trading system in the digital era of a global trade regime through the Work Programme. On the moratorium, clarity on its scope was extremely crucial. The implications of the continuation of the moratorium should be assessed before taking any decision on it. Equity, certainty, avoidance of economic distortions, flexibility in tax treatment and fairness in the division of tax revenue among Members, were also no less important in their consideration.

7.19. The representative of Norway continued to support the moratorium as it had created predictability for consumers, businesses, domestic regulators and customs authorities. Creating more uncertainty should not be the purpose of the WTO. When assessing the economic implications of the moratorium, Norway believed in taking a holistic approach. Members should consider the real economic benefits associated with the moratorium, not only theoretical customs revenue implications. Members should keep in mind that the moratorium did not prevent Members from imposing internal taxes, fees or other charges, nor did it preclude necessary regulatory measures at the national level. The WTO's core function was to reduce barriers to trade and economic exchange because such exchange contributed positively to social and economic development. Raising new

barriers to trade and economic cooperation went against that fundamental rationale. Introducing market access barriers on electronic transmissions could only have a negative effect on the development of digital industries that depended on cross-border data flows. Norway agreed that it was important to continue Members' dialogue on the relationship between development and e-commerce and was looking forward to continuing discussions under the Work Programme. Members could benefit from analytical work done by other international organizations, academia and the private sector in that regard.

7.20. The representative of Uganda associated with the statements of the LDC Group and the African Group. Uganda echoed India by restating that the General Council had been mandated to continually review the 1998 Work Programme, including the aspects of the moratorium, in accordance with Paragraph 1.2 of document WT/L/274. In that regard, Uganda recalled that in December 2019 Members had decided to reinvigorate the Work Programme with a mandate including to hold structured discussions on trade-related topics for Members, including LDCs, and the scope and definition of the Moratorium.

7.21. The representative of the United Kingdom recalled that the United Kingdom's position on the matter was adequately contained in the minutes of many previous meetings. The United Kingdom reiterated its support to the Moratorium which should be made permanent.

7.22. The representative of Mauritius, on behalf of the African Group, noted that Members had often heard that there was need to intensify their efforts on the 1998 Work Programme and to review the merits of the moratorium. Unfortunately, little progress had been noted over the past twenty years despite the fact that their dependence on e-services had accentuated the need to make swift and effective progress in that area. Discussions on e-commerce should focus on the fair and equitable distribution of benefits and on technology transfer and capacity building. The African Group therefore advocated the need to reinvigorate the 1998 Work Programme with a view to comprehensively address the development aspects of e-commerce facing African countries. Members would soon be faced with the need to take a decision on the extension or not of the moratorium. Successively extending the Moratorium for the last two decades had not really been based on facts. Members needed to have a clear understanding of the impact of the Moratorium on areas of interest to African countries, including the costs to developing and LDC Members' consumers and businesses, discrepancies between traditional goods or products and electronic equivalents, and the application of internal taxes on electronic transmission. The African Group supported the elements highlighted by the LDC Group in their submission to the General Council in December 2019 and the proposal by South Africa and India which had been submitted to the General Council in December 2020.

7.23. The representative of Chad, on behalf of the LDCs, was aware of the lack of time, as the Decision on Electronic Commerce would expire before the next Ministerial Conference taking place at the end of the year. The Decision was being led entirely under the auspices of the General Council, and for that reason, should be a standing item on the agenda, as agreed in the 1998 Work Programme on Electronic Commerce, despite the specific work assigned to four regular bodies. Paragraph 1.2 of the Work Programme stipulated: "The General Council shall play a central role in the whole process and keep the work programme under continuous review through a standing item on its agenda". The relevant bodies had reported on their work under the General Council's work programme. Nothing prevented the General Council from holding its crosscutting discussions in dedicated sessions. It had done so for several years. As agreed in the extension in December 2019, Members should continue the structured discussions under the 1998 Work Programme based on Members' proposals, which included the proposal that LDCs had submitted in 2019 in document WT/GC/W/787.

7.24. The LDCs also supported a reinvigoration of the 1998 Work Programme and structured discussions based on Members' proposals, including its proposal submitted in 2019. That submission had developed a number of specific areas that required discussion, and concrete solutions to support LDCs and other developing countries facing the same constraints. The LDCs thanked the other developing countries that had recently confirmed their support for the points made in the LDC submission, bearing in mind the importance of the structured discussions in the General Council. The aim was to seize the opportunity offered by electronic commerce. The communication also addressed the interest in resolving issues relating to electronic transmissions as raised in the communication from India and South Africa. More specifically, they had mentioned in their communication that the lack of clarity on the characteristics of electronic transmissions and the

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capacity of LDCs to implement internal taxes instead of tariffs, where appropriate, was one of the Group's concerns.

7.25. The representative of Bangladesh associated with the statement of the LDC Group. The 1998 Work Programme remained relevant. Bangladesh referred to its statement at the March General Council meeting and expressed its readiness to engage in constructive discussion with Members.

7.26. The representative of South Africa recalled its submissions and statements made in that regard and thanked the Chairman for the consultations he had initiated on that issue. South Africa reiterated the points entailed in the Joint Paper in document WT/GC/W/812 with India submitted in December 2020. In that Paper, they had recalled that the 1998 mandate called for sustained discussions on all trade-related aspects on e-commerce in the four relevant WTO bodies. It was also imperative for the General Council to ensure that the 1998 Work Programme remained under "continuous review through a standing item on its (General Council's) agenda and take up consideration of any trade-related issue of a cross-cutting nature (of issues) as entailed in the 1998 Work Programme." South Africa supported the continuation of "structured discussions in the General Council " which could include the following items: developmental aspects of electronic commerce, scope, definition and impact of the moratorium on customs duties on electronic transmissions and examination of the challenges experienced by developing countries and LDCs in relation to electronic commerce and explore ways of enhancing the participation of developing countries in electronic commerce. When the Work Programme had been launched in 1998, it would not have been possible nor imaginable to predict the far-reaching and fast-paced evolution of digital technologies and their effect on trade, that had led to the spread of e-commerce, as Members had now come to know, including its implications on production processes. It was only through a truly multilateral process that issues identified by Members under the Work Programme, such as classification, definition and scope, could be clarified to enable a common understanding on e-commerce.

7.27. The definition and the scope of electronic transmissions were being expanded continuously. Some definitions broadened the scope to cover all goods and services delivered via Mode 1. Mode 1 services were disciplined under the GATS in the WTO with a positive list approach and that provided considerable flexibilities to Members, especially developing countries, in terms of regulating their imports of services. More importantly, such a definition expanded the trade coverage of the moratorium manifold. Using the WTO's database on Trade in Services by Mode of Supply (TISMOS), UNCTAD estimated that total imports of services via Mode 1 had amounted to USD 705 billion in 2017, while total imports of digitizable products had been around USD 80 billion in 2017. Therefore, using the broader definition of electronic transmissions substantially increased the trade coverage of the moratorium by multiples and had implications for Members' current obligations under the GATS.

7.28. South Africa took note of the growth of e-commerce including during the COVID-19 pandemic but also noted that its benefits were highly uneven with high levels of concentration. E-commerce was evolving rapidly and was a multi-faceted issue that could not be reduced to rules only. The Work Programme had been designed to adopt a comprehensive and holistic approach to e-commerce to ensure equitable benefits for all in e-commerce. The reinvigoration of the Work Programme was critical, given its interest on the development dimension of the longstanding area of work in the multilateral framework of the WTO, including digital industrialization, and the need to address the digital divide. The lack of commitment to the developmental aspects of the WTO mandated work was a cause for concern and contributed to lack of progress on many issues in the WTO. Internal taxes served a different purpose to customs duties. Customs duties, by their nature, were utilized as an instrument for industrialization and Members should have the flexibility to deploy that policy tool to support the development of their local digital economy. It was for that reason that South Africa believed that the continuation of discussions on the scope and definition of e-commerce was required. Otherwise, a decision at MC12 would be a challenge in the absence of a shared understanding and a Work Programme that ensured equitable benefits in WTO rules. South Africa stood ready to engage constructively on the issues under the Work Programme.

7.29. The representative of Chile said that studies had shown the benefits of the moratorium. Lifting the Moratorium would have limited fiscal benefits and would remove many other benefits. On that basis, Chile was convinced of the benefits of maintaining the moratorium and hoped it would be renewed on a permanent basis. Chile could not support the proposal to make discussions on the Work Programme and the moratorium as a standing item on the General Council agenda nor any other competent bodies. The Chairman's report on the implementation of outcomes from the Bali,

Nairobi and Buenos Aires already included those topics. It was under the Work Programme where Members could table matters of interest. Chile recalled that the existing structure of the Work Programme already provided many opportunities for discussion on concrete substantive matters.

7.30. The representative of Singapore heard the call for greater attention to be paid to e-commerce. As previously communicated at the Informal Open-ended meeting on 29 April, Singapore strongly supported the permanent renewal of the Moratorium. It was not necessary to have a standing agenda item in the General Council. Singapore urged all Members to focus on the substance rather than the form of the issue at hand. They all had a shared objective and interest to better understand e-commerce, especially on how it could drive post COVID-19 pandemic recovery. Instead of bickering over procedural matters, Members should focus on building on the existing work in the various Committees. For example, in recent months, Members had seen constructive and useful conversations in the CTS on the agenda item: "Exchange of Information and Experiences based on Submissions by Members". It was clearly in Members' interest that the WTO was well equipped to address digital trade and e-commerce effectively. Digital trade was the future of trade. From the ongoing JSI negotiations to the Work Programme, those were all pathways that would enable the WTO to remain a forum at the forefront in shaping global trade discourse. For example, issues around digital divide and digital inclusion, such as MSMEs and women entrepreneurs, were clearly important to all. For as long as Members continued to regurgitate entrenched positions and focus on form over substance, be it on the JSI or the Work Programme, they would not be able to constructively advance that issue in the WTO and would all be worse off. Singapore reiterated its call to shift gears and begin to engage in genuine discussions. Specifically, on the Work Programme, Singapore welcomed any discussion or ideas on how to deepen the existing technical work in the various Committees.

7.31. The representative of Saint Lucia, on behalf of CARICOM, associated with the statement of the Pacific Group. The CARICOM Group attached great importance to the Work Programme and was committed to its reinvigoration, in keeping with the December 2019 decision. Key for the reinvigoration, as Members prepared for MC12 and beyond, was the scheduling of structured discussions over the coming months, as had been referred to in the report of the Chairman's initial consultations and the views expressed by Members at the Informal Open-ended meeting. CARICOM looked forward to updates regarding possible dates for those discussions and the identification of the specific trade-related issues of relevance to Members which would be the focus of their dialogue. The structured discussions should have a development focus and the CARICOM Group had offered some ideas in that regard in its statement the previous week. CARICOM stood ready to engage meaningfully and highlighted the value that could be derived through the involvement of relevant international organizations. On the moratorium, engagement was key at that stage as Members ramped up preparations for MC12. Their discussion in 2020 had been useful but more clarity on scope, definition and implications was critical to move the Membership closer to the common understanding on the way forward. Dialogue on the moratorium should form part of Members' structured discussions in the period ahead. CARICOM stood ready to engage constructively towards the collaborative formulation of the mutually agreeable recommendation on the moratorium for the consideration of Ministers at MC12.

7.32. The representative of the Republic of Moldova welcomed discussions from the previous week under the Work Programme, particularly on the Moratorium and on e-commerce in the context of the pandemic. As previously noted, Moldova would continue to support the extension of the moratorium which created flexibilities for businesses, consumers and governments. Considering its undoubtedly positive economic implications, as demonstrated by several studies, Moldova was positively thinking of making the moratorium permanent in the future. Additionally, similar to many other Members that had spoken, Moldova viewed that introducing a new burden on electronic transmissions could have a very negative impact on the development of the digital industry. Additional trade barriers would definitely paint a negative image for the WTO – sending a wrong signal in the context of e-commerce activities during a global pandemic.

7.33. The representative of Hong Kong, China reaffirmed its continued support to the Work Programme. Hong Kong, China remained open-minded to any concrete suggestions from Members, especially other developing and LDC Members, that would contribute to organising structured discussions under the Work Programme, that responded to Members' priorities. Hong Kong, China was also open-minded about the format in which further discussions under the Work Programme were to be held, including discussions at the relevant WTO bodies, dedicated General Council meetings or thematic workshops outside regular meeting cycles in the lead-up to MC12, but did not support including it as a standing agenda item in regular General Council meetings. Hong Kong,

China looked forward to engaging constructively with other Members on that important subject. On the moratorium, Hong Kong, China supported making it permanent. Even if consensus on making it permanent could not be reached by MC12, Members should at least extend it until the next Ministerial Conference. That would be critical to the post-pandemic global economic recovery and would avoid bringing unnecessary uncertainties and disruptions to the global e-commerce activities.

7.34. The representative of Japan recognized the importance of the Work Programme which had provided a solid foundation for the longstanding practice of the moratorium on customs duties. Japan would continue to engage in the work under the Work Programme in an appropriate manner in the run up to MC12 based on the agreement in the General Council in December 2019. Under the General Council, the discussion related to the Work Programme could be covered under the agenda: "Implementation of the Bali, Nairobi and Buenos Aires Outcomes". Japan was not convinced that there was a need to have a dedicated standing agenda item for the Work Programme. Furthermore, there would be opportunities to have discussions on the Work Programme in other relevant WTO bodies such as the CTS and the CTG. The objective of the moratorium was to provide certainty and predictability in digital trade and better access to digital products for both consumers and businesses, including MSMEs. The importance of the Moratorium gained its gravity in a world experiencing a serious pandemic. Members should extend their current multilateral practice of the moratorium at MC12 and Japan hoped that this would become permanent eventually.

7.35. The representative of Switzerland recalled that the Work Programme was already periodically discussed by the General Council under the agenda item on the implementation of Ministerial Decisions. Switzerland thanked the Chairman for holding an open-ended meeting the previous week. In addition, other WTO bodies offered ample opportunities for substantive discussions. It was therefore better to follow past practice. Switzerland did not see any added value in a permanent item on the agenda of the General Council. Switzerland was ready to participate in the revitalization of the Work Programme and to continue the structured discussions as agreed in December 2019. Those discussions should take place at the right time and with appropriate preparations. Switzerland was also ready to continue discussions on the various aspects of the moratorium. Bridging the digital divide on the one hand and putting in place rules to regulate digital trade on the other, were not contradictory undertakings. Work on those two fields of action was necessary and complementary. The Moratorium was an important framework condition for the digital economy and had contributed to the development of international trade. Switzerland believed that it should be made permanent.

7.36. The representative of India thanked Members for the engagement that day in that agenda item. India was expecting that the discussion in the last three General Council meetings and also that day would have thrown some light on the scope and impact and definition of the Moratorium. Unfortunately, Members were not getting anywhere near clarifying those subjects. Not having that clarity would make it difficult for Members to guide or advise their Ministers for a decision on that crucial issue at MC12. Time was running out. Members had less months left. India again requested the Chairman to start this structured discussion on the moratorium including on its scope, impact and definition. Members had had the fisheries subsidies negotiations for twenty years where they were willing to conclude disciplines. The moratorium was a case where a matter had been given a decision for the last twenty years without Members being certain of its scope and impact. While the proponents of the continuation of the moratorium continued to seek S&DT for digital trade – given that it was treated differently from physical trade of goods – they did not see similar merit in S&DT for developing Members in fisheries negotiations. It was interesting to see how long a fast-growing sector like digital trade would need this moratorium. Members always heard the phrases "need based", "case-by-case" and "evidence based" while discussing fisheries, TRIPS Waiver or LDC Graduation. But those phrases were not mentioned when talking about the Moratorium's continuation. Duty free, quota free had been a tool given for LDCs. Unfortunately, this tool in the guise of the moratorium was coming to the aid of developed Members. Growth in digital trade was not reliant on the moratorium. At the same time, loss in revenue and impact on domestic digital industry policy space was a fact. India therefore requested the Chairman to start the structured discussion and keep it as a standing item on the agenda for the succeeding General Council meetings.

7.37. The General Council took note of the statements<sup>5</sup>.

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<sup>5</sup> At its request, the statement of the delegation of Colombia is incorporated in the Minutes of this General Council meeting and can be found in Annex 1 of this document.

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**8 PAPER TITLED "THE LEGAL STATUS OF 'JOINT STATEMENT INITIATIVES' AND THEIR NEGOTIATED OUTCOMES" – REQUEST FROM INDIA AND SOUTH AFRICA (WT/GC/W/819/REV.1)**

8.1. The Chairman recalled that the item was on the agenda at the request of the delegations of India and South Africa and related to the paper on "Legal Status of Joint Statement Initiatives and their Negotiated Outcomes", together with the communication in document WT/GC/W/819. The item had been first introduced at the General Council meeting held on 1, 2 and 4 March; and a revision to the document had been issued to add Namibia as a co-sponsor.

8.2. The representative of India spoke under agenda items 4 and 8. On agenda item 4, India thanked the United States for supporting the waiver and for agreeing to participate in text-based negotiations at the WTO. India urged other Members to also join and support text-based negotiations regarding this proposal.

8.3. On agenda item 8, India thanked Namibia for co-sponsoring the paper and the negotiated outcomes submitted by South Africa and India. India reiterated what they had said at the last General Council meeting, that they were not questioning the right of Members to meet and discuss any issue, but that when such discussions turned into negotiations and their outcomes were to be brought into the WTO rulebook, the fundamental rules of the WTO should be followed.

8.4. Any attempt to introduce new rules resulting from Joint Statement Initiatives (JSIs) negotiations into the WTO, without fulfilling the requirements of Articles IX and X of the Marrakesh Agreement, would create a precedent for any group of Members to bring any issue into the WTO without the required consensus, by-passing the collective oversight of Members for bringing in new rules or amendments to existing rules, and usurping limited WTO resources available for multilateral negotiations. Most importantly, such an approach would undermine the balance in agenda-setting and result in Members disregarding existing multilateral mandates arrived at through consensus, in favour of matters without multilateral mandates, leading to the marginalization or exclusion of issues which were difficult but critical, such as agriculture.

8.5. The paper only stated that basic fundamental principles and rules of the rules-based multilateral trading system, as enshrined in the Marrakesh Agreement, should be followed by all Members, including by participants of JSIs. The paper also listed options for JSI proponents to bring in their negotiated outcomes in the WTO, including an option for proponents of a flexible multilateral trading system advocating various JSIs, to even seek an amendment to Article X of the Marrakesh Agreement, following procedures enshrined therein to provide for such an approach.

8.6. A number of delegations had stated that they did not agree with the contents of the paper. However, India had not heard a legal basis for the disagreement and urged those Members to express their views more explicitly on the various elements of the paper.

8.7. Regarding some of the institutional aspects of the paper and the argument that if JSIs were not allowed to go through, the multilateral trading system or the WTO would be under threat, India recalled the Tokyo Round Plurilateral Codes which had created a fragmented system of rules. For some Contracting Parties, GATT rules had been applicable, while for others, GATT rules and the rules of the Plurilateral Codes had been applicable, which had created considerable complexity in determining which obligations were applicable to which Contracting Parties.

8.8. Recognizing the problems that had been created by the fragmented system of trade rules on account of the Tokyo Round Codes, WTO Members had sought an end to the problem. That had been clearly articulated in the Preamble to the Marrakesh Agreement which stated "[r]esolved, therefore, to develop an integrated, more viable and durable multilateral trading system" – with emphasis on the term "integrated". Reference to an "integrated multilateral trading system" clearly highlighted the concerns of WTO Members arising from the fragmentation of multilateral rules on account of Tokyo Round Plurilateral Codes.

8.9. This had also been evident from the observation of the Appellate Body in one of the earliest disputes under the WTO, which stated that "[t]he authors of the new WTO regime intended to put an end to the fragmentation that had characterized the previous system. This can be seen from the preamble to the WTO Agreement in pertinent part: Resolved, therefore, to develop an integrated,

more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations."

8.10. Therefore, going back to plurilateral agreements would be a step in the wrong direction and would be contrary to the Preamble. JSIs did not have a multilateral mandate and, at the end, for MC12 to be successful, WTO Members needed to build trust among each other and build confidence in the multilateral trading system. This should be done in the path towards MC12 and also at the Ministerial Conference itself.

8.11. The representative of Nepal pointed out that the WTO had been established to safeguard multilateralism and facilitate rules-based, predictable, transparent and inclusive trade, with the broad objectives of raising living standards; reaching full employment, high real income and effective demand; and expanding the production of, and trade in, goods and services.

8.12. Consensus-based decision-making was one of the main strengths of the WTO and, therefore, should be maintained not only in major decisions but also in the entire negotiation process. Successful conclusion of mandated negotiations such as fisheries subsidies negotiation, agriculture negotiation, and special and differential treatment negotiation, among others, would be more relevant for the Membership rather than focusing on plurilateral initiatives in a multilateral organization.

8.13. Nepal had observed that over the past few years, the WTO had been making huge efforts on some plurilateral initiatives. The size of the economy and the share of global trade behind those JSIs, might not have been sufficient to drive the initiatives to ensure an inclusive and sustainable multilateral trading system. Leaving a significant number of Members outside the initiatives, might not contribute to achieving the broad objectives of the organization.

8.14. Any initiative needed to bring all Members onboard, irrespective of the size of their economy and their volume of trade. The number of Members outside the JSIs and the size of the population they covered were in no way less important. Therefore, Nepal was in favour of the paper submitted and supported its essence, as it was consistent with the promotion and protection of the multilateral trading system. Concluding the mandated negotiations at the highest possible level through the upcoming Ministerial Conference was what was most important.

8.15. The representative of Tanzania recalled their statement in the previous General Council meeting of March 2021, that the paper should guide and remind Members of the agreed rules, principles, and procedures of the multilateral organization. JSIs were the product of the lack of consensus among Members on issues, for which like-minded groups of Members had decided to pursue on their own, outside the framework of the WTO.

8.16. The outcomes that would be attained in JSI configurations, would be binding for participating Members. JSIs had issues of serious implication to existing policy space and would constrain development endeavours. However, Tanzania would not object to other Members pursuing their interests through JSIs. Nevertheless, Tanzania encouraged them to subject the issues being pursued to Article X.9 of the Marrakesh Agreement, for their inclusion in the WTO Agreements as plurilateral outcomes.

8.17. The representative of Costa Rica noted that the arguments and doubts raised in the paper in relation to JSIs were based on an incorrect reading of the WTO Agreements, as well as an incorrect interpretation of the work carried out under those initiatives. Costa Rica participated in all the JSIs and did so with the conviction that they had a solid legal basis in the WTO Agreements. JSIs contributed to the multilateral trading system, reinforcing its negotiating role.

8.18. Negotiations on Services Domestic Regulation, the JSI coordinated by Costa Rica, and the outcome it would produce, were firmly grounded in WTO rules. The result would consist of a set of disciplines on licensing, qualifications and technical standards that would only bind participating Members, but would benefit service providers of all Members who traded with participating Members, who represented more than 70% of world trade in services.

8.19. The expected result would be incorporated into the GATS Schedules of Specific Commitments of participating Members. In essence, this would encompass the types of measures listed in the GATS as additional commitment areas, namely, "qualifications, standards and licensing issues". The paper had suggested that the disciplines developed by the JSI would constitute a kind of "norm", unspecified, that did not fit into the architecture of the services lists, which was not the case. Rather, those disciplines constituted enhancements to existing commitments of participating Members, who would give legal effect to the results by inscribing the disciplines as additional commitments in their respective GATS schedules, following multilateral procedures established in the WTO to improve Members' schedules of specific commitments.

8.20. While JSI participants did not agree that the disciplines in question could be understood in any way that would undermine existing GATS obligations, they fully agreed that the disciplines should not be understood as a weakening of any provision contained in the GATS. Indeed, participants had recently added language to the negotiating text that clearly stated that disciplines should not be construed as lowering any obligation under the GATS. The mandate of Article VI:4 of the GATS — to develop any necessary discipline on domestic regulation — was not seen, would not be seen and could not be affected by the fact that Members participating in the JSI would make commitments and include additional information in national regulations.

8.21. JSIs remained open and transparent, and all Members were welcome to join their meetings and engage constructively with the participants, to ensure that the outcome would benefit providers around the world, and that it would include as many Members as possible.

8.22. The representative of Chad, on behalf of the LDC Group, took note of the paper and called on the General Council to provide answers to the questions it raised.

8.23. The representative of Australia reiterated, as at the last General Council meeting, their strong support for plurilateral initiatives as a means to address modern trade challenges, strengthen the WTO's rulemaking function and restore the WTO's health more generally.

8.24. Australia was participating in all ongoing JSI negotiations and noted that more than 110 Members were participating in one or more of those negotiations. That demonstrated the broad acknowledgement from across the Membership that it was a legitimate and useful form of rulemaking. Those negotiations remained inclusive, transparent and open to all Members to join.

8.25. Australia did not agree with the legal arguments put forward in the paper – including the need for consensus in order for Members to either launch plurilateral initiatives or collectively improve their schedules, as the possible legal pathway to implement the outcomes of JSIs. Australia agreed with the points made by Costa Rica with respect to the Services Domestic Regulation negotiations, that the improvements to Member's Schedules was a legitimate and well understood means to implement agreed changes.

8.26. Plurilateral initiatives had always been a key part of the WTO architecture and would remain vital in modernising and enhancing the WTO rulebook for the benefit of the whole Membership. Australia encouraged all Members to participate in — or at least keep an open mind on — those plurilateral initiatives.

8.27. The representative of the European Union said that plurilateral agreements had been a driving force under the GATT and beyond, and had paved the way for many of the multilateral agreements that were an integral part of the WTO Agreement. They were not antithetical to multilateralism; on the contrary, they paved the way towards it. Beyond those agreements, the WTO's negotiating arm had not been able to deliver many of the significant improvements in the multilateral trade rulebook that were needed to respond to important trade issues. It was clear that modernising WTO rules could not be achieved only through multilateral agreements based on a single undertaking. It was therefore vital for the WTO's relevance and credibility to maintain the option of developing rules that responded to the economic and trade realities of the 21st century through plurilateral agreements.

8.28. A very large number of WTO members were involved in plurilateral negotiations under the JSIs on Services Domestic Regulation, Electronic Commerce and Investment Facilitation for Development. JSIs brought many benefits and were essential to making global trade rules responsive

to the digital transformation of economies, the growing importance of services and the need to facilitate investment, which was key for development.

8.29. If no effective formula was found to integrate plurilaterals into the WTO, there would be no other option than developing such rules outside the WTO framework, which would increase the fragmentation created by the multitude of Regional Trade Agreements and risked eventually condemning the WTO to irrelevance. Meaningful WTO reform should recognize that reality. The European Union favoured an inclusive approach to open, plurilateral agreements that facilitated participation by developing countries and allowed them to decide whether they wished to join the agreement, leaving the door open for them to join at a later date.

8.30. There were various ways in which plurilaterals could be incorporated in the WTO. Some were included already in the WTO Agreements, such as in the GATS, which provided that Members could inscribe additional commitments in their schedules, which was the legal architecture that the participants in the JSI on Services Domestic Regulation had chosen.

8.31. Nobody could doubt the benefits of various types of plurilaterals. What mattered was not their legal form, but that they brought undeniable benefits. Legal form should be a secondary consideration. The focus should be on how the organization could remain relevant by developing rules that addressed pressing issues.

8.32. The European Union favoured further discussions on the paper with Members and to seek to establish a Working Group on WTO reform at MC12, to serve as a forum for discussion around institutional aspects of WTO reform that were of systemic interest, such as the issue of plurilaterals and how to better integrate them into the WTO architecture.

8.33. The representative of the Russian Federation was disappointed with the repeated attempts of challenging the compliance of JSIs with the core principles of the Marrakesh Agreement. JSIs were broadly supported by Members, a large number of whom were involved in plurilateral negotiations. Those discussions were not conducted behind closed doors, they were open for every interested Member. The outcomes of such deliberations would benefit not only participating Members but the entire Membership on an MFN basis.

8.34. WTO Agreements traditionally encouraged Members to enter into reciprocal and mutually advantageous arrangements towards further trade liberalization. For instance, disciplines on domestic regulation in services did not impose any rules on non-participating Members, but constituted a step forward to a higher level of commitments regarding the supply of services in the markets of all participating Members.

8.35. Overall, the negotiating function of the WTO was seriously lacking, with a crisis looming over the whole system. Obstructing JSIs would further accelerate the tendency to use other forums to develop trade rules, just because consensus within the WTO was unattainable and every new initiative was immediately blocked.

8.36. The Russian Federation referred to its statement at the previous General Council meeting and reiterated that the WTO should find ways to adapt the existing WTO legal framework to modern trends and challenges. Progress achieved in all JSIs demonstrated the effectiveness of the approach.

8.37. The representative of the United Kingdom noted that it had spoken in detail on the issue before, and their comments could be found in the official minutes. They continued to think - as pointed out by the European Union, Australia, Costa Rica and the Russian Federation - that there was real value in those JSIs.

8.38. Indeed, they saw those JSIs as shining examples of how Members of this organisation could come together to free up trade in some of those areas where business was getting ahead of what had been agreed here; and they could make real benefits to businesses and people as they try and build back better from the current pandemic.

8.39. The representative of Chinese Taipei noted that, as the DG had once stated, "plurilateral initiatives had brought new energy into the multilateral trading system"; evidence of which was the

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large proportion of Members participating in JSIs. The creative JSI approach was highly important to update the WTO rules and to make the WTO a living organization.

8.40. The JSI on Services Domestic Regulation sought to improve market access commitments of participating Members; the Electronic Commerce JSI aimed to respond to the prevalent digital trade; and the Investment Facilitation for Development JSI worked on helping Members streamline their own investment procedures. Those JSIs did not pose a threat to non-participating Members, and instead, benefitted all Members, including those who did not participate in them.

8.41. At a critical time of rebuilding the credibility of the WTO, seeking the enhancement of its negotiation function and responding to the real needs of global trade, Members needed to jointly think about how plurilateral agreements could be integrated into the multilateral trading system for WTO rules to respond to the rapid development in the real world.

8.42. Chinese Taipei urged Members to discuss a way forward, taking into account the respective development stages and maintaining the existing rights and obligations of Members.

8.43. The representative of Norway noted that the multilateral, rules-based trading system had gone through tremendous changes since 1947; and initiatives by individual Members and groups of Members had been a natural part of its development. Nothing impeded Members from working on and negotiating new rules at the WTO. JSIs responded to Members' ambitions to update their rule book by addressing issues of relevance in the 21st century.

8.44. Such initiatives were both welcome and needed, as they injected energy into the organization and prevented it from stagnating and becoming irrelevant. Norway agreed with Costa Rica's description of the JSI on Services Domestic Regulation. Current initiatives covered a variety of issues and the format of the negotiated outcomes would be diverse, also in their legal architecture, and could not therefore be predefined or prejudged.

8.45. The representative of Indonesia said that the discussion on the legal status of JSIs and their negotiated outcomes were both timely and important. While Indonesia participated in two JSIs, it had also put forward the same question upon joining those initiatives.

8.46. On the JSI on Investment Facilitation for Development, Indonesia had sought information on what steps would be taken to integrate the outcome to the WTO, knowing that there was no WTO mandate on that initiative. Indonesia looked forward to such discussions and would like to understand better how the co-convenors of JSIs would try to integrate them into the WTO framework. The pursuance of an ambitious agenda on several trade-related matters through the WTO should respect the fundamental principles set out in the Marrakesh Agreement. An agreed understanding would provide a level of comfort for all Members to engage in JSI negotiations.

8.47. The representative of Nigeria noted that they had shared their views on the issue at the CTS of 5 March. They reiterated their disagreement with the assertion that JSIs were likely to undermine the multilateral trading system. Plurilateral arrangements had always been critical building blocks of the multilateral trading system, even during the times of the GATT.

8.48. Nigeria considered that the views that had been expressed in the paper regarding the likely implication of introducing new JSI rules into the WTO due to perceived inconsistencies, was premature because negotiations were ongoing and participants in the JSIs were working towards achieving balanced and equitable WTO-consistent outcomes. For instance, participants under the JSI on Services Domestic Regulation were working towards inscribing additional commitments into their GATS schedule, in accordance with Article XVIII, which would confer benefits to every Member, including non-participants, on an MFN basis. This would further strengthen the multilateral trading system and should be commended and encouraged.

8.49. The legal opinion of a Member or group of Members on the scope of application of specific provisions of the Marrakesh Agreement or other WTO Agreements could also be inaccurate. For instance, even though Article IX of the Marrakesh Agreement emphasized decision making by consensus, it also envisaged other decision-making situations and made provision for alternative options. JSIs were of critical importance if the WTO was to be responsive to the economic realities of the 21<sup>st</sup> century.

8.50. The representative of Chile emphasized that JSIs had contributed to strengthening the multilateral trading system. They covered areas that were fundamental for trade in the 21<sup>st</sup> century and for sustainable development. Discussions under JSIs took place in an open, transparent and inclusive manner. JSIs had opened up a pragmatic, respectful and necessary path to overcome the challenges in negotiations at the WTO, which had been reflected in the crosscutting nature of the issues being addressed in each JSI and in the involvement of two-thirds of the Membership participating in those initiatives. Because of the significance and the benefits that they could have, Chile respected the decision of some Members not to associate themselves in them. At the same time, those Members should respect the decision of those who had decided to participate in JSIs and who wanted to move towards negotiations.

8.51. Chile agreed with Costa Rica's description of the JSI on Services Domestic Regulation. With regards to the Structured Discussions on Investment Facilitation for Development, coordinated by Chile, some Members had expressed their interest in discussing the legal architecture of a future agreement. They would hold an academic session at the end of May, to explore various options. As with all JSIs, it remained open to all WTO Members.

8.52. The representative of Mexico said that JSIs provided an excellent opportunity to furnish the WTO with tools that would allow it to face the current challenges in global trade. Since some Members were not ready to advance at the same speed as the rest, JSIs presented a good alternative to prevent the WTO from irrelevance due to the inability to incorporate rules on areas that had not been covered.

8.53. JSIs did not erode the rights and obligations of non-participating Members. In the spirit of promoting trade as a vehicle for development, Mexico was a strong supporter of JSIs, whose work was carried out in an open, inclusive, transparent manner and on the basis of voluntary participation.

8.54. The representative of the Republic of Korea noted that at a time when the role of the WTO itself was being questioned by governments and businesses, JSIs represented the most viable path to update the rulebook and making the WTO more relevant. JSIs were also open to all, transparent to all and responsive to all. More than 125 Members were taking part in one or several JSIs, and they encouraged others to do so as well.

8.55. The representative of Pakistan said that the paper raised pertinent questions on an element of fundamental nature for the WTO. Notwithstanding the content or topic in any JSI, they posed a serious challenge to the consensus-based decision-making principle of the multilateral system. While some Members wished to advance certain discussions, that did not take away the desire of a large number of Members to address other issues or consider some of the subjects taken up by JSIs as premature for negotiations. Consensus lied at the core of the WTO. Taking everyone along, regardless of their background, objectives or speed at which they could move, had been a hallmark of multilateralism; its centre would be struck if that were compromised.

8.56. JSI participants noted that JSIs were open, transparent and inclusive, but so was the WTO and its main bodies. Moving ahead without consensus could only mean two things: either Members wished to head in a direction where others did want to go, or they had wished to move away from those that were not yet ready for those discussions.

8.57. Pakistan had joined the initial exploratory discussions on JSIs, but since then they had developed into fully fledged negotiations on potential agreements that could cut across existing rights and obligations of Members that were not part of JSIs. True inclusivity would have called for that to be manifested before launching the JSIs. Pakistan saw the questions posed in the paper as pertinent and looked forward to discussing that aspect, particularly with reference to upholding the fundamental pillars of the system.

8.58. The representative of Turkey considered the matter as crucial not only for the future of ongoing JSIs but also for the WTO itself. Turkey was a strong supporter of the multilateral trading system and recognized that multilateral platforms were ideal for an incremental dismantling of obstacles for trade in goods and services. However, reaching multilateral agreements could sometimes not be an easy task for the Membership and some Members could want to advance their discussions on certain areas they considered necessary.

8.59. In this context, Turkey believed that additional instruments and different configurations would benefit the Membership and reinforce their negotiations, which should remain open, transparent and inclusive, and adhere to the main principles of the WTO. Relevant methods to integrate the outcomes of JSIs into the WTO acquis could be further discussed among the Membership.

8.60. The representative of Bangladesh associated with the statement delivered by Chad on behalf of the LDC Group. Bangladesh was a strong supporter of multilateralism and underlined that it should be the main principle of the WTO. The questions and concerns that had been raised in the paper were important and demanded a deeper discussion involving all WTO Members.

8.61. The representative of Hong Kong, China noted that they had expressed their views on the issues raised in the communication from India and South Africa on the legal status of Joint Statement Initiatives (JSIs); and highlighted a few key points. They believed that JSIs would serve to modernize and strengthen the multilateral trading system in areas of increasing relevance to the global trading system, and they would allow Members to discuss new trade rules that responded to the aspirations of consumers and business communities across the globe.

8.62. JSIs built upon rather than competed with the ongoing mandated work under existing WTO bodies and programmes, such as the Working Party on Domestic Regulation and the Work Programme on Electronic Commerce. In particular, JSIs were progressing well and the JSIs on Electronic Commerce and Investment Facilitation for Development had scheduled discussions on their legal structure before the summer break.

8.63. Hong Kong, China encouraged Members, including those who could have concerns about the legal structure of JSIs, to join those discussions so that their views could be taken into account fully and accurately. JSIs' participants should first focus their discussions on the substance, and after reaching broad consensus on the substance, participants would be able to identify a suitable legal format to incorporate their outcomes into the WTO framework.

8.64. The representative of Singapore made three points: first, that plurilateral processes such as JSIs were legitimate within the WTO, and that to argue otherwise would be misleading. There were precedents of plurilateral negotiations in the WTO, including the Information Technology Agreement (ITA) and the Government Procurement Agreement (GPA). The most significant feature of ongoing JSIs was that they remained open, transparent and inclusive. Participation of all Members was encouraged, as had always been the spirit of negotiations at the WTO. JSIs enjoyed very broad support in the WTO — over 140 Members participated in at least one JSI, and barely 20 Members sat out completely.

8.65. Second, it was premature to discuss the legal nature of JSI outcomes. The substance of the agreements should be determined before considering the legal modalities, without pre-judging the outcome. There had been good momentum across all JSIs, as had been evidenced by the high level of constructive engagement, and the various milestones that had been periodically announced. Negotiations should not stop because of different views held by some Members. The WTO was at a crossroad where the choice could be made between a more productive and constructive approach, and the forging of fruitful outcomes through JSIs, or proving critics right, that the WTO had become paralysed.

8.66. Third, plurilaterals ensured that the WTO would remain relevant by allowing Members to address current important issues. The emergence of JSIs around the year 2017 had taken place after prolonged periods of languishing talks without prospects of attaining consensus from the full Membership. In that context, JSIs represented concrete bright spots that had brought together Members who were determined to work towards meaningful outcomes that would address new and emerging issues. JSIs had demonstrated that the WTO remained relevant to all stakeholders and could deliver results.

8.67. The momentum of JSI negotiations should be maintained, and as responsible WTO Members, Singapore encouraged bridging differences and working together to strengthen the WTO.

8.68. The representative of Japan appreciated the contribution of JSIs to update the WTO rulebook and to ensure the relevance of the WTO. Without JSIs, the WTO risked becoming less relevant and even losing its *raison d'être* as a cornerstone of the multilateral trading system. Japan recalled that

a number of achievements made in the GATT and the WTO had been initially taken up or discussed in plurilateral initiatives and had later been merged into the multilateral system.

8.69. Japan believed that JSIs were legitimate and consistent with the WTO. JSI meetings were organized in an open, transparent and inclusive manner. The convenience of Members and the size of their delegations had been taken into account to organize the process, and the fact that many WTO Members were participating in JSIs and actively engaging in negotiations in a creative and innovative way, clearly showed their importance and relevance. Japan had high hopes that JSIs would be a key part of MC12 outcomes. Japan would continue to work with other Members to deliver substantial outcomes in the JSIs.

8.70. The representative of Sri Lanka supported the arguments presented in the paper submitted by India, South Africa and other co-sponsors, and echoed their concerns as expressed at the previous Council meetings on this proposal. From the reports circulated by the JSIs' Chairs, Sri Lanka was of the understanding that the JSI on Domestic Service Regulation would be ready to be presented to MC12 for a decision and that other JSIs would aim to harvest focused work programmes for further work. Sri Lanka reminded Members that the WTO was fundamentally a multilateral institution, the only multilateral trade institution. The Marrakesh Agreement called on Members to "facilitate" and "further the objectives of this Agreement", which included its multilateral nature. JSIs were eroding the multilateral character and mandate in very problematic ways.

8.71. Some Members had argued that any issue could be discussed and that outcomes could be pushed through into the WTO framework without consensus, as long as they were provided on an MFN basis. The WTO was not just any organization, it was the international trade organization. If the new rules that were sought to be included were not development-oriented, they would have an impact on all Members. If JSIs were allowed, the WTO would effectively set standards for new trade rules, without a collective, multilateral agreement or oversight about these standards. This would have an impact on all Members in the long run.

8.72. The representative of China said that as a creative approach to negotiations, JSIs had brought new energy into the multilateral trading system, with increasing participation from Members. They were also essential to making the rules of international trade responsive to the digital transformation of the global economy. Since their very beginning, JSIs had been strictly conducted in line with the WTO's principles of openness and transparency. China was of the view that JSI negotiations should take into account the diversity of the Membership and their level of development, providing Members more comfort as to how and when to participate in JSIs.

8.73. China noted that the ultimate goal of the work at the WTO was to establish universally applicable multilateral rules, rather than to be taken as a substitute for multilateralism. To this end, they saw a need to explore ways of better integrating JSI agreements into the WTO framework. In this regard, the paper helped Members to reflect upon those issues. China believed that as long as the outcomes of JSIs benefitted Members as well as the organization, a solution would be found regarding their legal status.

8.74. The representative of Canada disagreed with the argumentation presented in the paper. Plurilaterals of all different kinds had been an essential part of the WTO and the GATT system before it. Interested Members had always had the right to discuss and negotiate trade-related issues in the WTO context. Canada supported the JSI model as it allowed interested Members an avenue to address pressing issues of common interest, including through the creation of rules when multilateral negotiations were not yet a viable alternative.

8.75. Existing JSIs were transparent, inclusive and open. The majority of WTO Members were participating in at least one JSI, demonstrating the broad support for the approach among the Membership, including from developing Members.

8.76. The representative of El Salvador echoed the support expressed by other Members to the various JSIs that were being negotiated at the WTO. They recalled the decades-long difficulties to achieve concrete outcomes and to make progress in terms of achieving new transparent and predictable multilateral trading rules. El Salvador was committed to the system and acknowledged the importance of trade as a development tool. As such, plurilateral initiatives provided the

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opportunity to continue to work on deepening rules on trade that were deemed important for JSI participants, while at the same time contributing to strengthening the organization.

8.77. El Salvador was involved in the majority of the JSIs and was considering joining the others. Even as a small country, they co-sponsored the JSI on Trade and Gender, among others, since they were convinced that issues such as MSMEs, gender, e-commerce and investment facilitation would yield tangible benefits for all Members due to the MFN principle, including those that were not participating in the initiatives. JSI discussions were open to all Members, and they invited those who had questions and concerns to join those discussions, so that they could ensure that their points of view would be duly taken into consideration.

8.78. El Salvador hoped for solid results from the JSIs in MC12; and stood ready to discuss the best way to address the topic of the legal vehicle to be used to integrate JSIs into the system of WTO rules.

8.79. The representative of Kazakhstan noted that ongoing negotiations on the development of a new set of trade rules on Electronic Commerce, Investment Facilitation and Services Domestic Regulation that were taking place under JSIs, were fundamental to making WTO rules responsive to the challenges and needs of a modern global economy. Those new initiatives were also important for Members' efforts to combat unprecedented economic challenges caused by the COVID-19 pandemic and to sustain the global economic development.

8.80. Disciplines on Services Domestic Regulation, for example, were vital for the services sector, to ensure a predictable business climate and transparent procedures for trade in services. As a recently acceded WTO Member, Kazakhstan had made extensive and high-quality commitments in its accession package, including with respect to commitments on services market access, as compared to founding WTO Members. Hence, Kazakhstan believed that JSIs could also address the imbalance between WTO Members' commitments and provide a level playing field.

8.81. Kazakhstan also noted that plurilateral initiatives were not new to the WTO. The WTO framework had been updated through key plurilateral agreements, such as the Government Procurement Agreement and the Information Technology Agreement. Thus, Kazakhstan was positive that Members could agree on ways to incorporate the outcomes of JSIs into the scope of the WTO in the different forms they could take; and encouraged Members to address their concerns in JSI negotiations in order to deliver meaningful results at MC12.

8.82. The representative of Thailand said that they were a strong supporter of multilateral trade rulemaking, but recognized that, as a policy and rulemaking body, the WTO and its Members might be unable to stay ahead of new developments, new technologies and incumbent changes, not only as a result of the pandemic but also because of the technological developments that were taking place in the world. They therefore called for ensuring that the WTO and its Members included rulemaking efforts to keep pace with changes in the world.

8.83. Thailand participated in some and not all of the JSIs, but did not doubt the legality or legitimacy of participating in JSI discussions. JSIs presented an opportunity to try to modernize existing WTO rules. At the same time, they did not attempt to undermine the importance of the multilateral trading system. JSIs would rather strengthen the system, making it more relevant and able to keep pace with other developments in the world. Thailand encouraged working collectively to reinforce the WTO's ability to respond to a changing context and to avoid that the WTO would fall into oblivion or would become irrelevant in the global economy of the future.

8.84. Thailand recalled successful plurilateral initiatives such as the ITA, which many developing countries had joined and had benefited from its negotiations, including Thailand. Further, questioning the legitimacy at this stage presupposed that plurilaterals such as the ITA were not legitimate.

8.85. The representative of the Republic of Moldova said that her delegation participated in JSIs and had been a strong supporter of the initiation of their important work within the WTO since 2017. The activities of JSIs took place openly, inclusively and transparently, with voluntary engagement by Members. JSIs remained open to all Members at any stage. Moldova had participated and had closely followed the intense discussions within all the JSIs. They acknowledged that the amount of

work and effort, professionalism and expertise that had been invested by Members in those discussions had been tremendous, inspiring and highly commendable.

8.86. Moldova had been and continued to be fully committed to the rules-based multilateral trading system within the WTO. That commitment went hand in hand with their strong support for the need to preserve Members' rights to improve WTO commitments under the legal framework of the WTO, and in keeping the organization relevant to the current realities of the 21st century.

8.87. The representative of Vanuatu, on behalf of the Pacific Group noted that, noted that over recent years, they had seen the growing number of JSI initiatives in the WTO. As small Members with very small delegations, the Pacific Group had not been able to follow and participate in JSIs; it had been very difficult and sometimes impossible. The paper had raised important issues that needed to be clarified in terms of the relationship between JSIs and the multilateral rules. While they appreciated that some Members wanted to proceed at a faster pace than others, they called for ensuring that different speeds were legally accommodated within the multilateral rules, without undermining the fundamental principle of decision-making by consensus. They encouraged Members to engage in the paper.

8.88. The representative of Cameroon took note of the legal issues contained in the paper. Cameroon was a strong supporter of multilateralism and understood that it was important to make the organization relevant and address new issues that were important to international trade, but weakening the multilateral trading system and the WTO should be avoided.

8.89. The representative of South Africa welcomed Namibia as a co-sponsor of the paper; and recalled their prior statement from March 2021. South Africa emphasized that the WTO had been established as the forum governing multilateral trade relations. Their fundamental interest in submitting the paper had been aimed at reminding Members of the legal architecture that governed the functioning of the WTO and to highlight the systemic importance of preserving its multilateral character, including the underpinning principles that should inform the incorporation of new rules in the WTO legal framework.

8.90. The multilateral character of the WTO and its scope was articulated in Article II.1 of the Marrakesh Agreement, stating that "[t]he WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement." Article III.2 further provided that "[t]he WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations (...)".

8.91. There was a difference between sectoral negotiations that changed schedules versus rules' negotiations. The paper outlined the options that Members could consider in bringing new rules into the WTO, amendments to rules had to follow Article X of the Marrakesh Agreement. Each JSI would likely pose different legal challenges to existing WTO rules and mandates, given the differences in the nature and scope of issues that were covered under each; the legal implications of which had been outlined in the paper.

8.92. Importantly, issues under JSIs had been proposed in the run up to the last Ministerial Conference. They had not obtained consensus due to serious substantive concerns raised by many Members. JSIs did introduce new systemic and developmental challenges that the Membership had to reflect on: implications for decision making in the WTO and what their impact would be on the core principles of the WTO. They were concerned by the implications there would be on existing multilateral mandates that had been arrived at through consensus, in favour of matters without multilateral mandates; including the marginalisation of issues which were difficult but yet critical for the multilateral trading system, such as agriculture and development; thereby undermining the balance in agenda setting, negotiating processes and outcomes.

8.93. South Africa reiterated that they did not question the right of any group of Members to discuss any issue informally, but where such discussions turned into negotiations, and their outcomes were sought to be formalized into the WTO framework, that could only be done in accordance with the rules set out in the Marrakesh Agreement. In addition, their paper was not about the number of Members that participated in a specific initiative, but about the legal provisions that underpinned the functioning of the WTO, which had to be respected.

8.94. Regarding the ITA, they recalled that it did not amend GATT rules, and had been given legal effect through the amendment of schedules through a certification procedure, after negotiations with Members, and offered on an MFN basis. Regarding Basic Telecoms, they recalled that its negotiation and implementation had been explicitly mandated by the Ministerial Decision on Negotiations on Basic Telecoms, which had been adopted by consensus, with a specified mode of adoption, as part of the Uruguay Round.

8.95. With regards to the specific legal implications on services domestic regulations, Article VI.4 of the GATS had entrusted the task of developing "any necessary disciplines" regarding domestic regulations to the Council for Trade in Services. The WTO's Working Party on Domestic Regulation (WPDR) had been multilaterally mandated to undertake that work. At no time had there been a multilateral agreement to discontinue the mandate of the WPDR, or the mandate in Article VI.4 of the GATS. The JSI on Domestic Services Regulation thus subverted the WPDR's multilateral mandate by not just undertaking exploratory discussions, but actually negotiating such disciplines through a parallel discussion format, designed to bypass the multilateral process.

8.96. Legal questions were important in a rules-based system, and they encouraged the Membership to engage in those legal and systemic questions as they stood to create issues going forward. It was good to hear that the JSIs were also looking at issues of legal architecture. The need to deepen the multilateral discussion on those issues was not only timely but also important.

8.97. The General Council took note of the statements<sup>6</sup>.

**9 GENERAL COUNCIL DECLARATION, TRADE AND HEALTH: COVID-19 AND BEYOND (JOB/GC/251/REV.1) – UPDATE FROM AUSTRALIA; BRAZIL; CANADA; CHILE; CHINA; THE EUROPEAN UNION; HONG KONG, CHINA; ICELAND; JAPAN; KENYA; REPUBLIC OF KOREA; MEXICO; REPUBLIC OF MOLDOVA; MONTENEGRO; NEW ZEALAND; NORTH MACEDONIA; NORWAY; SINGAPORE; SWITZERLAND AND THE UNITED KINGDOM**

9.1. The Chairman recalled that the item was included in the agenda by the co-sponsors of document JOB/GC/251/Rev.1.

9.2. The representative of Canada, on behalf of the 46 co-sponsors – counting the European Union as 27 – of the General Council Declaration on Trade and Health: COVID-19 and Beyond, provided their common views on how the WTO should contribute to the fight against current and possible future pandemics. Developments around the world over the last few months and weeks had shown how pressing the need remained for Members' coordinated response to the COVID-19 crisis. International organizations needed to take action. Global cooperation was imperative to ensure access to essential goods including therapeutics and vaccines. Such cooperation was needed at all levels – from the industry and governments to international organizations working together.

9.3. In that global cooperation, the WTO had a role to play. As the event on Vaccine Equity organized by the Director-General on 14 April had shown, vaccine production needed to be scaled up and vaccine distribution needed to be made more equitable. There were several avenues to achieve that and they included increasing transparency of supply chains to tackle bottlenecks, streamlining customs procedures and eliminating export restrictions, among others. Transparency was one area where the WTO could contribute. Under the leadership of Dr Ngozi, the co-sponsors supported the pooling of expertise of different Geneva-based organizations to facilitate access to information so crucial in the event of a crisis and increase legal certainty.

9.4. In addition to those inter-institutional cooperation efforts, the WTO had a lot to do on its own. The co-sponsors had already made a concrete proposal for a declaration entitled "COVID-19 and Beyond" circulated on 22 April in document JOB/GC/251/Rev.1. The draft declaration included various dimensions that they believed should constitute a basis for further work and agreement among Members. Members should make sure that governments did not introduce unnecessary restrictions to trade in essential goods. In line with G-20 Declarations, the co-sponsors considered

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<sup>6</sup> At its request, the statement of the delegation of Colombia is incorporated in the Minutes of this General Council meeting and can be found in Annex 1 of this document.

that restrictive measures, if necessary, should remain targeted, proportionate, transparent and temporary to avoid disruption of global supply chains.

9.5. As Members strived towards ensuring equitable access to vaccines across the globe, they should also ensure that the COVAX Facility could operate unimpeded by trade restricting measures. Members should also intensify the work in the different WTO Committees to seek solutions for the challenges posed by the pandemic. For instance, the work already undertaken in the Trade Facilitation Committee was a good example. Members should accelerate the implementation of the TFA and share best practices on measures taken during the pandemic. Members should build on that. The co-sponsors were ready to further engage and refine their thinking. But it was the co-sponsors' collective view that such initiatives could combine with other efforts and provide realistic and reasonable means to contribute to the fight against the current pandemic and create the conditions for better addressing future ones.

9.6. Since the previous General Council meeting, seven additional Members had decided to actively support this initiative, namely, China; Hong Kong, China; Iceland; the Republic of Moldova; Montenegro; North Macedonia and the United Kingdom. The co-sponsors warmly welcomed them for joining this effort. Together, counting the European Union as 27, they represented almost a third of the WTO % reflecting a variety of domestic situations. The 46 co-sponsors of the Trade and Health Initiative were calling on the rest of the WTO Members to also join the effort for a successful outcome on Trade and Health as soon as possible. In that regard, the co-sponsors welcomed the recent expressions of support. Members should grasp the opportunity to show the relevance and importance of the WTO doing what it could to support the global fight against the pandemic.

9.7. On behalf of Canada, he said that, irrespective of parallel developments, it remained imperative that Members made every effort to ensure the frictionless movement of vaccines and other medical supplies. This Trade and Health Initiative provided realistic and reasonable means to support their collective fight against the current pandemic and create the conditions for better addressing future crises.

9.8. The representative of Colombia reiterated his delegation's general position of support for the initiative and was ready to contribute to its discussion hand in hand with the growing number of sponsors. Under item 11 on vaccines that Colombia together with other Members had requested to be added in the General Council's agenda, Colombia would provide a more detailed statement on the multidimensional nature of the trade and health issue and on the need to address various additional matters. Members could count on Colombia to contribute to future discussions in that regard.

9.9. The representative of Iceland associated with the statement of the co-sponsors of the Trade and Health Initiative. The COVID-19 pandemic had taught Members that in times of global health crisis, enhanced trade policy cooperation among the Membership took on increased importance. Trade restrictive measures should be kept to the absolute minimum. What was needed was to ensure efficient and predictable flows of essential medical goods across borders to fight the pandemic and any future health crisis. Iceland particularly highlighted the declaration's emphasis on clear disciplines on export restrictions of essential medical supplies to combat COVID-19. Far from being necessary especially during the current situation, such measures created uncertainty, disrupted supply chains and tended to have a disproportionately worse impact on smaller States. Any implementation of trade restrictions affecting the response to COVID-19 should therefore be temporary, transparent, justified and in line with WTO obligations. Iceland reminded Members that had not yet done so to co-sponsor the declaration.

9.10. The representative of New Zealand noted that, as an original co-sponsor of the draft declaration, New Zealand strongly supported this declaration for all the reasons set out by Canada. New Zealand also noted India's reference earlier that day to the statement by the US Trade Representative, H.E. Katherine Tai, and drew attention to another statement from New Zealand's Minister for Trade and Export Growth, H.E. Damien O'Connor, in which he had expressed that New Zealand welcomed and strongly supported the announcement made by the USTR to work for a waiver of IP protections on COVID-19 vaccines at the WTO. New Zealand looked forward to taking this work forward with urgency.

9.11. The representative of Hong Kong, China was pleased to join as a co-sponsor of this draft declaration and thanked fellow co-sponsors for their ongoing outreach efforts and other Members for sharing their valuable views and comments. As Canada had already recalled the salient elements of the draft declaration, Hong Kong, China highlighted that, in the face of a global pandemic, it was crucial for Members to work in a coordinated and collaborative manner. They needed to demonstrate to stakeholders worldwide that the WTO was relevant and responsive to the most pressing issues. The draft declaration would bring Members closer to that common goal. Hong Kong, China strongly supported the draft declaration and called on other Members to also consider joining.

9.12. The representative of the Russian Federation welcomed all efforts undertaken at both national and international levels to curb the negative impact of the COVID-19 pandemic. With the proliferation of Trade and Health Initiatives in the WTO, the Russian Federation hoped that the exercise would lead to tangible outcomes. At the same time, every Member should try to deliver its concrete input in the fight against COVID-19. Russian research institutions were creating a series of COVID-19 vaccines. Three of them had already been registered in Russia and two of them – Sputnik V and EpiVacCorona – had been produced in large quantities by its pharmaceutical companies and were being used for vaccination. Contracts with foreign manufacturers who would be producing its vaccines on their territory had been signed for a quantity of doses enough to vaccinate 700 million people per year. To meet the global demand for its vaccine, the Russian Federation was working on transferring technology abroad. The Russian Federation had agreements on this with manufacturers in ten countries. Russia had been the only country to have come up with the offer to build production partnerships with various countries with their transfer of technology.

9.13. From the very beginning, Russia had sought to establish wide-ranging international cooperation not only in the creation of vaccines but also in their provision to the world's population to overcome the pandemic as promptly as possible. Active international cooperation in the fight against the pandemic was a common good – a pre-requisite for the re-launching of the world economy and trade. Russia associated with the statements on refraining from imposing trade restrictions on essential medical goods to ensure access to these goods, to facilitate its transportation and customs clearance and to ensure access to finance to purchase these goods through any channels. The Russian Federation strongly discouraged Members from introducing trade restrictive measures particularly when it came to access to vaccines. In respect of considerations for MC12, the Russian Federation stood ready to engage in the respective discussions.

9.14. The representative of India said that, while certain measures highlighted in the submissions which could help in keeping the supply chains open in the transportation of raw materials and distribution of final goods were welcome, those were just one part of the solution. In its discussions with the co-sponsors, India had highlighted some of the priorities which could have been part of those submissions. India would have appreciated the co-sponsors' support on the waiver proposal which would have matched their words in letter and spirit to contribute to a successful fight against COVID-19 – India's submission – through concrete action. Addressing IP challenges was a pre-requisite if Members were to meet the objective of vaccinating the global population in the shortest possible timeframe.

9.15. While highlighting preventing further disruptions in the supply chains of essential medical goods, the submission missed out a very significant element of COVID-19 response. It talked about facilitating movements of goods including medical products, but it was silent on facilitating movement of healthcare and other professionals and liberalising measures on that front. Negotiations on new WTO commitments in terms of movement of healthcare professionals including doctors, nurses, paramedics, radiologists, surgeons, dentists and physiotherapists, among others, by lowering the barriers, eliminating the restrictions in qualification requirements and procedures, cross-border recognition of professional qualifications, harmonization of entry requirements and easing the entry procedures, among others, should also be simultaneously explored with the aim of concluding such negotiations as part of this initiative.

9.16. On export restrictions, it was a dual use policy tool. During the pandemic where Members were not working in a perfect market condition, India had used this tool for ensuring equitable distribution of critical supplies, medicines, diagnostic kits, ventilators, PPEs and vaccines to more than 150 countries based on mutually assessed needs. In the absence of this tool, the entire supply could have been cornered by the rich and privileged with deep pockets. On cooperation of the WTO with other organizations, India was willing to discuss it further with the proponents. Any binding measures on additional transparency proposed in the paper would only come in the way of successful

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integration of trade and health, particularly during the pandemic. Members needed to be mindful that lives and livelihoods were being lost while they continued to debate the WTO's response to the pandemic. They should take a realistic and pragmatic action to protect the credibility of the WTO.

9.17. The representative of Chinese Taipei thanked Canada and other sponsors for the Trade and Health proposal and for their earnest outreach after the last General Council meeting. Chinese Taipei shared the aims of the proposal and believed the proposed actions or policy recommendations were valuable in guiding Members to collectively tackle trade issues arising from the crisis. Chinese Taipei was pleased to co-sponsor the proposal and looked forward to contributing to future discussions.

9.18. On a related issue, as mentioned at the TNC meeting on 3 May, Members should comprehensively address various trade-related aspects arising from COVID-19 to show the world that the WTO was relevant and able to deliver concrete actions to respond to the most urgent challenge facing the whole of humanity today. In this context, Chinese Taipei had circulated a proposal on a "Ministerial Declaration on Combating, Mitigating and Recovering from the Impacts of COVID-19 and Beyond" in document JOB/GC/256. Chinese Taipei hoped that not only the most urgent aspect of combating COVID-19 was tackled but also that the mitigating and recovering aspects were also considered and addressed at the same time.

9.19. On the combating aspect, Chinese Taipei had suggested in document JOB/GC/256 that Members needed to decide either improving the 2001 TRIPS Declaration or adopting certain additional decisions, such as having certain additional waivers, to cope with the current pandemic. Combating COVID-19 was about saving lives and was of extreme urgency. In this regard, Chinese Taipei was pleased to see development recently on the TRIPS waiver discussion and looked forward to reading the new text to be submitted by India, South Africa and other proponents for further discussion. In addition to combating COVID-19 to save lives, the mitigating and recovering efforts were saving and restoring the livelihood of the most vulnerable people and sectors. Those were of no less importance than combating the coronavirus. Chinese Taipei would work with Members on how to address those three aspects of combating, mitigating and recovering from the impacts of COVID-19 at the same time. Chinese Taipei also urged Members to work together to deliver a meaningful outcome on COVID-19 issues even as early as in the July Ministerial Meeting.

9.20. The representative of the Republic of Korea noted that it was difficult to think of an issue that was more critical to ensuring the relevance of the WTO to the everyday lives of ordinary people than that. Korea welcomed the new co-sponsors to that initiative and reiterated how critical it was for vital medical supplies to flow unimpeded and for global supply chains to be protected as Members tackled COVID-19. Disruptions in supply chains for essential medical goods had a direct impact on people's lives. The WTO should do its part to help fight the pandemic by facilitating trade in and protecting supply chains for essential medical goods. That should be among its top priority. As the co-sponsor of the Trade and Health Initiative, Korea called on others who had yet to join to support the Trade and Health Initiative and the Declaration. In addition to that initiative, more needed to be done. Every effort should be made to scale up vaccine production to ensure that they were promptly delivered to where they were needed. Korea also thanked Dr Ngozi for her leadership on that issue including at the vaccine equity event in April.

9.21. The representative of Mexico said that, in the context of the biggest health crisis in recent times and the most severe economic and trade crisis since the Great Depression, MC12 gave Members an excellent opportunity for the WTO to demonstrate its relevance and its responsibility to the international community. Canada's submission provided them, in a first phase, with an opportunity to act immediately and responsibly to increase the efficiency of the trade flow of goods that were essential for combatting the current pandemic. In a second phase, it gave them the possibility, based on its effectiveness, to discuss possible new permanent commitments for those who were in a position to undertake them. Mexico therefore welcomed the new co-sponsors and urged Members to give positive consideration to the communication.

9.22. The representative of the United States appreciated the efforts of the Ottawa Group to highlight some of the challenges affecting trade in medical products and welcomed the opportunity for Members to focus on how trade could contribute to solutions. That work had fostered additional ideas, and the United States was also reviewing the recent proposal from Chinese Taipei. The United States recognized that several WTO Committees were also focused on efforts to facilitate the free flow of medical products and supported those efforts. For example, in the Trade Facilitation Committee, Members were discussing a proposal with 15 co-sponsors to accelerate implementation

of key provisions of the Trade Facilitation Agreement. Implementation of those provisions would rapidly facilitate the timely and efficient release of health and medical supplies needed to combat COVID-19. The provisions most likely to produce results involved pre-arrival processing, expedited shipments, reduction of formalities and documentation requirements and publication.

9.23. There were more trade facilitating ideas to discuss that went beyond what was contained in the TFA. The United States welcomed a discussion on how to improve transparency. It should start with a conversation about how Members' transparency had fallen short during the pandemic. A recent Secretariat report in G/MA/W/168 had noted that as of April, 29 Members had notified a total of 48 export restrictive measures during the pandemic. The Secretariat had added that ten more Members had introduced export restrictive measures but had not notified them. As Members, they could examine those ten cases and determine how Members could improve in the future. The United States supported Member-driven efforts to increase transparency and continued to support the G20 pledge that export restrictions should be "targeted, proportionate, transparent, and temporary".

9.24. That said, with the apparent exception of the ten examples cited by the Secretariat, the United States had not been able to identify export restrictions that would run afoul of that pledge. Back at home, analytic work continued under President Biden's Executive Order on a Sustainable Public Health Supply Chain as well as the Executive Order on America's Supply Chains. The United States would look for opportunities to incorporate what it could learn in the work at the WTO. In summary, the United States looked forward to working with other Members to understand specific challenges currently affecting supply chains in essential goods, and to take action to address those challenges at the WTO, where appropriate.

9.25. The representative of Uruguay noted that the draft declaration addressed some of the essential elements which sought to improve equitable access to COVID-19 vaccines and therapeutics. Uruguay would continue to follow the initiative with interest and was in favour of continuing discussions on the draft declaration.

9.26. The representative of Chile welcomed Members that had recently joined the initiative and was certain that they would contribute positively to the discussions. Some of the conclusions reached in the initiative concerned the relevance of trade and health in terms of confronting some of the challenges faced in improving production and distribution of COVID-19 vaccines and therapeutics as well as essential goods, facilitating their transit, ensuring that supply chains could fully operate, facilitating customs procedures and addressing export restrictions, among others. The WTO should be able to address such issues because they were well within its competency. Members could not evade their responsibility. In December, Members should address that initiative in the short-term and provide a work programme with mid to long-term actions to confront future pandemics.

9.27. The representative of Turkey said that the discussions Members had been having since the start of the pandemic demonstrated how critical trade could be for public health objectives. When the objectives they aimed for were at global level, so should be their methods to reach them. As Members went through those critical times, the WTO should continue to guide them in keeping international trade open. In that respect, Turkey along with some Members had sponsored a communication to support the engagement of the Director-General with vaccine developers and vaccine manufacturers to facilitate and promote mutually beneficial solutions which could include transfer of expertise, know-how and technology. Turkey was pleased that Dr Ngozi Okonjo-Iweala had been leading those efforts for some time. Turkey welcomed recent supportive announcements with regard to the waiver of intellectual property rights on vaccines. As highlighted the previous day, Turkey was looking forward to working on the revised text which would be presented soon by the co-sponsors of the waiver proposal. The communication on Trade and Health suggested certain possible actions in the field of export restrictions, trade facilitation, technical regulations, tariffs and transparency. Turkey was ready to engage in the discussions on those elements. Going through the communication, it was clear that trade restrictive measures in critical supplies should always be avoided. That kind of action would only result in a domino effect of protectionism which would eventually benefit no one.

9.28. The representative of Norway welcomed China; Hong Kong, China; Iceland; the Republic of Moldova; Montenegro; North Macedonia and the United Kingdom as co-sponsors. Norway encouraged other Members to join the initiative and to engage constructively in taking the initiative forward with the aim to have a robust outcome on trade and health at MC12.

9.29. The representative of the Republic of Moldova joined as a co-sponsor and supported the declaration. Moldova thanked Canada and the European Union along with other proponents for their leadership on the initiative, which consolidated important elements and set a good basis for Members' collaborative, non-prescriptive actions, intended to facilitate trade in essential medical goods and improve the capacity of the trading system in response to the fight against COVID-19 and beyond. Moldova supported the declaration which contained elements on export restrictions, customs practices on trade facilitation, enhancing transparency particularly on COVID-19 related measures undertaken by Members, and cooperation with other organizations. All of those were in line with Moldova's activities within the relevant WTO bodies and with its current national policy priorities. Moldova stood ready to contribute in the future with constructive engagement on the implementation of the elements of the declaration along with other co-sponsors.

9.30. The representative of Indonesia reiterated that the WTO needed a holistic approach in addressing the global public health crisis stemming from the COVID-19 pandemic. Many of the actions were important tools to address trade barriers for health products. Indonesia also noted that any targeted, proportionate, transparent and temporary measures taken due to extreme urgency could be undertaken by any Member to preserve their immediate needs in times of public health crisis. Such actions in the proposal had their own limitations and could not address the immediate global problem on access to COVID-19 vaccines, diagnostics and other medical products. Key action impacting the COVID-19 pandemic should be concentrated in addressing the issue of artificial scarcity and inequality of access in particular vaccines. Indonesia looked forward to the co-sponsors ensuring that the proposal could also incorporate actions to address the inequality of access and artificial scarcity emanating from trade rules.

9.31. The representative of the United Kingdom noted that it would be unimaginable that Ministers would wish to come to MC12 in the midst of that awful pandemic and not make a substantive statement on health issues. Members needed to show that the WTO could deliver results people expected on those sorts of issues. The United Kingdom had joined the proposal because it sought to tackle the severe disruption to global trade that had arisen from the use of export restrictions and other barriers to COVID-19 critical products. In that critical moment in the fight against COVID-19, Members could help ensure vital supplies including vaccines get to those who most needed them by keeping those medical supply chains open. The United Kingdom encouraged other Members to join the proposal and send a powerful political signal that together they were all playing their part in the fight against COVID-19 by keeping trade flowing. In line with the principles of the initiative, the United Kingdom had for its own part already taken steps to implement the commitments regarding tariff liberalization and its approach to export restrictions on COVID-19 critical goods – something it had done since January. The United Kingdom looked forward to working with colleagues, both co-sponsors and others, on the proposal in the lead up to MC12 to seek more resilient supply chains – not just as a defence against the COVID-19 pandemic but also as an insurance policy against future pandemics and to show that working together, they could and would build back better and stronger.

9.32. The representative of Chad, on behalf of the LDCs, supported all calls to limit restrictions on access to medical equipment, supplies and medicines needed to combat COVID-19, in particular access to those products in LDCs. The whole world had suffered and continued to suffer. The pandemic had wreaked havoc around the globe. Developed and developing countries were not producing sufficient amounts of those supplies. As for LDCs, they were hoping to increase their capacity and their technological progress. The LDCs had recently made a commitment with the Technology Bank for Least Developed Countries to support their countries in enhancing their own skills and technologies to develop masks, for example. In that regard, the LDC Group commended the Executive Director of the Technology Bank for Least Developed Countries for his recent actions on their behalf. Despite those efforts, LDCs were the most seriously affected and they were far from being able to address those gaps and respond to the capacity needs of their countries. It should be noted that the LDC Group had supported the proposals on access to vaccines, including on TRIPS.

9.33. The representative of Nigeria said that COVID-19 had a negative impact on lives and livelihood globally. Targeted trade policies and international trade rules could support COVID-19 containment efforts, build resilient health sectors and contribute to economic recovery. Nigeria had implemented unilateral temporal suspension of tariffs on essential medical products needed to combat COVID-19 and had streamlined customs procedures related to the importation of those products. Export restrictions placed on diagnostics, therapeutics and vaccines needed to combat COVID-19 by some developed countries had undermined access to those products to developing countries. The proposal however only presented a piecemeal approach to addressing the challenges posed by COVID-19 to

lives and livelihood. While the proposal was geared towards a possible MC12 decision on adopting market opening commitments regarding trade in essential medical goods, the WTO should explore ways of addressing supply gap which was the core problem – since tariff was not a barrier to trade in essential medical goods in times of pandemic, as countries unilaterally dismantled tariffs to safeguard the lives of their citizens. The difficulties rested with the huge and ever-increasing therapeutics and vaccines supply-demand gap and the solution had to do with Members' ability to ramp up production of those products in developing countries. It was in view of this that Nigeria had co-sponsored the proposal for a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19 in document IP/C/W/669. The adoption of the waiver would enable Members to holistically address the difficulties that the draft declaration on Trade and Health sought to partially address and underpin the building of a pandemic resilient health sector in developing countries.

9.34. The representative of China noted that COVID-19 cases and deaths around the world were continuing to increase rapidly. The worrying figures showed that there was still a long way to go to end the COVID-19 pandemic and the WTO should play a more important role in fighting against the current pandemic and get prepared for any future pandemic. In that regard, China saw great value in the Trade and Health Initiative, which provided a good basis for Members to discuss and work out possible outcomes before or at MC12. It also covered the important areas that Dr Ngozi had highlighted at the COVID-19 and Vaccine Equity meeting, such as reducing export restrictions and facilitating logistics and customs procedures. China encouraged all Members to actively participate in the discussion on the initiative and welcomed any new areas to be included in the initiative. China stood ready to work together with all Members to come up with a concrete outcome at MC12.

9.35. The representative of Fiji recognized the initiative as an avenue to address specific trade concerns related to the public health measures posed by the COVID-19 pandemic. Fiji thanked the proponents for the bilateral consultations with the Pacific Group and was carefully assessing the utility of the proposal at that stage. Fiji would be happy to come back for further clarifications and for any specific observation.

9.36. The representative of Bangladesh associated with the statement of the LDC Group. The communication highlighted the urgency to help each other during a global crisis. LDCs suffered the most in the face of any disaster whether global, regional or local. The ongoing pandemic had multiplied their sufferings. The most urgent issue was to stop the virus by ensuring easy and affordable access to vaccines and essential medical and pharmaceuticals products for everyone everywhere in the world. Bangladesh thanked the proponents for recognising that human urgency, both for the present and future, beyond the existing pandemic. Bangladesh however hoped that such proposals would not be tied up with any conditionality in the future. Members needed more clarity on several expressions contained in the document, such as emerging best practices, new WTO commitments and the period of validity for export restriction, to name a few. Bangladesh looked forward to engaging constructively on the issue.

9.37. The representative of Barbados said that, in the spirit of the current moment of the global reality, the initiative was timely. That was one in a series of complementary proposals on COVID-19, which was currently under discussion in various WTO Bodies including the General Council and the TRIPS Council. While some of the measures taken by Members in the name of COVID-19 had been trade restrictive and Barbados had urged Members to reverse those temporary measures as soon as possible, many of the measures imposed had also been trade facilitating. There was nothing deterring Members from converting their trade facilitating measures into permanent measures if those individual Members so decided. Barbados would however be concerned if Members had then been mandated to agree to enhance commitment in the areas that had been proposed by the co-sponsors in their draft. Members should examine the draft decision carefully. Their individual ability to effectively recover from the pandemic would depend on their collective ability overall. That was not meant to be a soundbite for the records of the meeting but a factual and principled representation of the current reality. It was only through international effort that they would ensure equitable access to vaccines. Such noble and humane causes did not allow for vaccine nationalism but created the impetus for them as global citizens to be their brothers' and sisters' keeper.

9.38. In the WTO, it created the opportunity for Members to exercise political leadership. As Dr Ngozi had been saying for quite some time, once they could sit down with an actual text in front of them, they should find a pragmatic way forward, acceptable to all sides, that allowed the kind of answers that developing Members were looking at with respect to vaccines, while at the same time

looking at the issue of research and innovation and how to protect them. Members had a moral imperative to do that. In the past 24 hours, Members had gotten a signal that more of them were willing to come to the WTO to be able to find a durable solution to vaccine equity. Barbados commended the United States for showing the moral leadership to enter into text-based negotiations on the revised text of the TRIPS Waiver proposal. Such a commitment and leadership in that direction augured well for discussion on the reversal of trade restrictions that blocked equitable access to COVID-19 vaccines. The onus was on Members to drive the organization to play its part in the COVID-19 fight. Barbados, as always, stood ready to engage in any and all ways necessary.

9.39. The representative of Vanuatu, on behalf of the Pacific Group, noted that COVID-19 was unprecedented, and its effects had been felt in all countries and in all regions. A declaration on Trade and Health would be an important response to that and future pandemics. The draft General Council Declaration outlined five measures which Members could take to combat the ongoing pandemic and to respond to future pandemics. Most of those elements were not new and stemmed from existing WTO Agreements. The prompt notification would ensure transparency of trade measures imposed by Members and should be encouraged. Trade facilitation was an important response to the pandemic to facilitate the efficient distribution of essential goods as the Pacific Group had experienced through its region's facilitation mechanism, which had enabled a smooth and efficient distribution of essential medical supplies and equipment to Pacific Members. On export restrictions, the situation of import dependent Members such as those in the Pacific Group should be taken into account in the draft decision to ensure they were not denied the supply of essential products during times of health crisis. The Pacific Group was open to engage in the discussions on the draft decision.

9.40. The representative of South Africa referred to its statement on the matter at the General Council meetings in December and in March. Past experiences had shown that critical success factors while in the middle of a health crisis were speed, sharing of knowledge and know-how and supporting global solutions that were equitable, inclusive and timely. South Africa thanked the United States for its announcement to support the TRIPS waiver and text-based negotiations. South Africa also thanked New Zealand for its support and looked forward to more Members coming on board on that important initiative that aimed to boost supply and ensure equitable access. Members agreed that the biggest challenge they faced in the fight against the COVID-19 pandemic was limited supply and that there was need to ramp up production. The meeting convened by Dr Ngozi had been helpful in confirming the existence of underutilized manufacturing capacity available in developing countries that could contribute to the solution – which was again confirmed by Dr Ngozi during the meeting. All Members seemed to recognize the role of the transfer of IP, technology and know-how to boost and diversify global production, including in developing countries. That opened scope for Members to come together and engage in good faith and solution-oriented discussions towards a balanced outcome that addressed the interests of all. That sent the right message that the WTO was capable of delivering in the interest of humanity. A global challenge required a global solution.

9.41. On the Trade and Health Initiative, there were some useful elements such as cooperation among international organizations that South Africa could consider in looking at a WTO response to COVID-19. It was certainly problematic that some countries were hoarding doses and critical vaccine supplies for their own domestic population. A commitment to release those doses and end vaccine nationalism was critical to an effective response. Importantly, a focus on export restrictions while important, was not sufficient. The more sustainable solution was global cooperation to boost supply and get the jabs on peoples' arms to reach global immunity, and that required sharing of IP, technology, know-how as proposed in the TRIPS Waiver. The Trade and Health Initiative focused on trade-related aspects which were not sufficient when the core problem was production. Some of the proposals ventured into trade liberalization which South Africa found problematic in the context of a crisis. Africa, according to the CDC, had imported 99% of its vaccines. A continent of 1.2 billion people should not have to import 99% of its vaccines. Africa would need all the policy tools to address that serious strategic vulnerability. South Africa would also be concerned with a proposal that unilateral trade facilitative measures implemented in the context of the crisis should be converted into permanent commitments. On transparency, the biggest challenge was transparency of contracts and price stability undertakings. The secrecy in voluntary license agreements implied information asymmetry, which worked to the detriment of developing countries that ended up paying higher prices with terms and conditions that worked to the disadvantage of public health.

9.42. The representative of Japan said that, under the COVID-19 crisis, it was critical to maintain and reinforce relevant supply chains. That was key to enabling every country, including developing ones, to have access to vaccines and other essential medical goods. The initiative not only set out

to address the current crisis but also to ensure that Members were prepared for potential future pandemics. It was extremely important to ensure that the WTO could function effectively as an organization in response to the demands of the times. An important part of the initiative would be work such as clarifying the export restrictions discipline. As Dr Ngozi had emphasized, it was imperative that the WTO produce a deliverable in the area of trade and health at MC12 and the initiative could constitute a key part of it. Japan welcomed the seven new co-sponsors and hoped that more Members would join by becoming co-sponsors of the draft General Council Declaration.

9.43. The representative of Pakistan recalled its statements under the agenda item in previous meetings of the General Council and would like to develop a better understanding of the fundamental thrust of the proposal on several counts. As a whole, the proposed measures did not address the core problems particularly faced by developing countries at present. The proposal carried measures that catered generally to trade liberalization, policy and regulatory restriction, and transparency objectives. Those elements were already covered in several places in WTO agreements and principles in various forms such as transparency, trade facilitation and tariff reduction, among others. The paper therefore added little value. Moreover, new obligations for reporting, transparency, monitoring and review hardly did anything to fight the current health crisis the world was confronted with. It rather added more burden on developing countries with poor capacities and infrastructure. It was therefore difficult to fathom how those proposals were actually meant to combat the pandemic.

9.44. Pakistan agreed with co-sponsors in their desire for cooperation to "meet the unprecedented challenges of ensuring availability of essential medical goods, including vaccines, in these turbulent times". It was extremely ironic that this came at a time when the monopolistic and profiteering tendencies of large pharmaceutical companies, and vaccine hoarding in countries that had developed vaccines, had caused vaccine famine in poorer developing countries. It was even more ironic that some countries asking for no export restrictions, technical cooperation and collaboration between international organizations in the proposal were also the ones imposing export restrictions on vaccines, unwilling to share technology and technical know-how and paying no heed to the calls of the most relevant international organization on health matters – the WHO. Pakistan invited the proponents, as they were rightly motivated by the need for the WTO to do something on health and the pandemic, to join text-based negotiations on the TRIPS waiver and welcomed the statement of the USTR and as informed by Ambassador Walker, by New Zealand, to join text-based negotiations.

9.45. The representative of Kazakhstan welcomed the proposal made by Canada and co-sponsors that highlighted the importance of ensuring the steady flow of essential goods through eliminating unnecessary barriers to trade including export restrictions and sharing good practices on trade facilitation, technical requirements and enhancing transparency on measures adopted in the context of the pandemic. The WTO had a valuable role to play in ensuring supply chains for critical medical supplies and equitable access to vaccines as they created conditions for a stable, predictable and transparent trade environment for critical goods. In that regard, Kazakhstan supported the constructive dialogue led by Dr Ngozi with Members and companies that were producing vaccines, and Members that were in need of affordable vaccines. Members should learn from their experiences in dealing with the COVID-19 crisis and take proactive steps to ensure that the multilateral trading system was better equipped to deal with future health emergencies. Kazakhstan stood ready to take part in the discussion of the initiative and strongly supported a meaningful multilateral outcome on trade and health at MC12.

9.46. The representative of Singapore noted that the Trade and Health Declaration represented a concrete initiative that would enable the WTO to make a meaningful contribution to the global fight against the COVID-19 pandemic. It was not meant to be the panacea to solve all current challenges in addressing the COVID-19 pandemic. The declaration was pragmatic and set out practical actions that Members could take to facilitate trade in diagnostics, vaccines and therapeutics. It focused on the real-life problems that had been identified by the key stakeholders including vaccine developers and manufacturers. If Members were serious in ramping up vaccine production, it was important for them to consider what they could contribute rather than focus on what they could take from the system. The declaration took a long-term perspective. While it sought to address the immediate problem of blockages in the flow of essential medical supplies during the COVID-19 pandemic, the Trade and Health Initiative was also intended to ensure that the WTO was able to respond to future pandemics. Hence, Singapore encouraged all Members to support the declaration and refrain from attempting to inject narrow priorities into that important initiative.

9.47. The representative of the European Union thanked Canada for presenting the proposal which the European Union co-sponsored. The challenges that Members were facing were multiple and complex. The proposal addressed many of the issues that a number of the participants including those involved in producing or delivering vaccines had identified at the event on vaccine equity of 14 April. There was high value in considering the different elements of the proposal. The pandemic was unprecedented and would not be solved by addressing only one single issue. That was why the European Union also supported the third way that Dr Ngozi was proposing, whose object was to work with companies to ramp up the production and distribution of vaccines. The European Union took note of the position that the United States had expressed on a TRIPS waiver. The European Union would be ready to assess how the US proposal could support ramping up the production of vaccines and their distribution. That was the biggest challenge that Members needed to address together. They needed a holistic and collective approach.

9.48. The representative of Canada thanked all those who had intervened that day in the discussion of the important initiative. In particular, Canada thanked Chinese Taipei for indicating its intention to join in that work. Canada was also informed that Brunei Darussalam had expressed its desire to co-sponsor the initiative and welcomed them as well. The co-sponsors would continue engaging with Members and stood ready to refine their thinking. In the end, it was the co-sponsors' collective view that the initiative provided a realistic and reasonable means to contribute to the fight against the current pandemic and created conditions for better addressing future ones.

9.49. The Chairman said that, as delegations had noted, and as he had also said earlier under a different item, issues related to the recovery from the health crisis were of the utmost importance, in particular as Members looked ahead at MC12. Several delegations had stressed that MC12 should provide a solid response to the pandemic. For that to be possible, Members should be ready to discuss, listen and engage constructively with each other.

9.50. The General Council took note of the statements.

## **10 PROCEDURAL GUIDELINES FOR WTO COUNCILS AND COMMITTEES ADDRESSING TRADE CONCERNS (WT/GC/W/777/REV.5) – UPDATE FROM CO-SPONSORS**

10.1. The Chairman recalled that the European Union had requested the Secretariat to add the item in the agenda of that day's meeting together with the proposal in WT/GC/W/777/Rev.5.

10.2. The representative of the European Union, on behalf of the co-sponsors of WT/GC/W/777/Rev.5, provided an update on Members' work on the proposal for "Procedural Guidelines for WTO Councils and Committees Addressing Trade Concerns". When addressing the General Council immediately after taking office as WTO Director-General on 1 March, Dr Ngozi Okonjo-Iweala had stressed the need to do things differently. While the spotlight was understandably on negotiations, the WTO's monitoring and deliberative function was in need of change too – and that was maybe where Members should start to do things differently. The co-sponsors of the proposal shared a joint and continued interest in improving how Members addressed each other's trade concerns in regular WTO bodies. In fact, the composition of co-sponsors – big and small traders, at different levels of development – told something about the proposal itself. Almost all co-sponsors found themselves both at the raising and the responding side of conversations on trade concerns, and often with each other. That illustrated Members' genuine intention to make exchanges on trade concerns more effective and fruitful. Because that should happen sooner rather than later, the co-sponsors had kept engaging with Members on the ideas in the proposal over the past months.

10.3. Today, the co-sponsors did not intend to discuss possible revisions but expressed their appreciation for the constructive comments received in their informal conversations with Members. Some ideas in the proposal, particularly those on meeting arrangements in Part 1, had already been taken up and put into practice. Examples included an indicative yearly schedule of meetings for the Goods Council and its subsidiary bodies or more collaborative and advance preparation of agendas in some WTO bodies. They also witnessed an increased interest for bilateral engagement on the margins of formal meetings of some Committees where such engagement had so far not been regular practice. Those steps were welcome and encouraging. But there was also demand for some other improvements they proposed. Written questions, for example, were a very useful tool for structuring and focussing Members' conversations on trade concerns. But there was currently no guidance on how to handle written questions, and more importantly, how to reply to them.

Guidelines, namely voluntary best practices, would facilitate Members' engagement, for example on when replies to written questions could be expected. In those as well as other areas, co-sponsors were mindful of the constraints some Members were facing. The objective was to improve Members' discussions, not to create undue burdens.

10.4. Similarly, a user-friendly repository, or database, of relevant documents on a particular trade concern could significantly facilitate Members' understanding of and engagement in a conversation on a trade concern. Further, they all agreed that informal engagement between the Member raising and the Member responding to a trade concern could contribute to resolving the issue, in addition to raising it in official meetings. The proposal contained various suggestions on how to stimulate such informal engagement. During the co-sponsors' conversations with Members, they had understood that some considered that the proposed guidelines could, in certain cases, lead to unintended consequences, or that the guidelines could occasionally be burdensome for some Members. Assuming that they had a shared interest in making the exchanges on trade concerns more effective, the co-sponsors called on Members to come forward with concrete suggestions. They were open to both alternative ideas and textual suggestions to mitigate the risk of unintended consequences. The co-sponsors confirmed that they were committed to advancing the proposal towards a concrete outcome by MC12 and looked forward to stepping up outreach and informal exchanges with Members in the coming months.

10.5. The representative of China recalled that the number of trade concerns raised in various WTO bodies had increased significantly in the past few years. How to effectively and timely address increasing number of concerns with constrained capacity, such as limited human resources, had become a common concern. The proposal could help address the above concern. Some recommendations in the proposal such as meeting arrangements had already been practiced in some meetings and delivered good results. The proposal therefore had merits in facilitating Members tackling their trade concerns more effectively and efficiently by improving the procedures of regular bodies' meetings. China stood ready to continue their discussions on the proposal.

10.6. The representative of Mexico said that it was in the WTO regular bodies that Members' respective private sectors paid greater attention to and showed greater interest in ensuring that their concerns were addressed expeditiously. A more efficient functioning would result in a lower saturation at a subsequent stage such as the DSB. It was for that reason that Mexico was ready to continue the discussions and find alternatives to ensure that the Committees operated in the most efficient manner and fulfilled the functions that had been given to them – to monitor commitments and effectively address the trade concerns arising in the implementation of agreements.

10.7. The representative of the Republic of Korea supported efforts to move forward with the proposal. Making sure trade concerns were effectively addressed in WTO Councils and Committees was essential to overseeing the implementation of WTO Agreements. The organization needed to be more systemically attuned and responsive to trade concerns raised by Members. The proposal would help shoulder the WTO's deliberative and monitoring functions, which was no less important than its negotiating and dispute settlement functions.

10.8. The representative of India supported the idea of improving the meeting arrangements of WTO Bodies with a view to making them more efficient. India therefore supported proposals for preparation of advanced indicative yearly schedule of meetings, circulation of all documents to be discussed at a meeting at least fifteen days prior to the meeting and timely circulation of the minutes of meetings of various WTO bodies. It was in the interest of all Members to make full use of the WTO Councils and Committees to seek satisfactory outcomes of their trade concerns. In making any changes in procedures to be followed by various WTO bodies, Members should ensure that such proposals did not end up adding to or diminishing Members' rights and obligations under the concerned WTO Agreements. The appropriate forum for discussing procedural guidelines for trade concerns was the relevant Council or Committee dealing with a specific trade concern, as per the scope of the relevant agreement. While India was open to discussing all possible suggestions aimed at improving existing processes, it would not like to take away the role of various WTO bodies in finalising such procedural guidelines.

10.9. The representative of Chinese Taipei agreed with the European Union and other co-sponsors that improving the WTO's monitoring and deliberative function was critical to support the future reform of the WTO. Horizontal procedural guidelines could facilitate Members dealing with daily works and responding more effectively to the booming but often recurring specific trade concerns.

The proposal was not only practically useful but also achievable and could serve as the first step toward WTO reform. Chinese Taipei looked forward to working with Members to advance the proposal and make it a concrete outcome for MC12.

10.10. The representative of Bangladesh associated with the statement of the LDC Group and thanked the proponents for the proposed procedural guidelines with the fifth revision which aimed to bring positive changes to the work of the Committees and Councils. Bangladesh welcomed the constructive ideas in the draft proposal. There remained room for improvement. Bangladesh had previously made some suggestions including changes in the existing format of the convening notice and the necessity of uploading the meeting summary on the same day at the WTO website to help smaller delegations unable to attend all meetings update their information repository. Bangladesh had also pointed out the concerns on the proposed provision in Paragraph 13 of the draft, regarding the participation of capital-based experts in person or through video conferencing, while noting that internet facility was still a serious challenge in many countries. Without further repetition, Bangladesh referred to its statement delivered in the October 2019 General Council meeting and looked forward to engaging constructively with the proponents and other Members on that issue.

10.11. The representative of Chad, on behalf of the LDCs, took note of the update of the procedural guidelines proposed by the co-sponsors. The LDC Group was carefully examining the proposal and could have further comments. The Group's preliminary observation was for Members to keep in mind the constraints of LDCs and the small size of their delegations. The LDC Group reaffirmed that, in its view, any proposal for new procedures and processes should bear that in mind.

10.12. The representative of Mongolia supported the proposal. Since Members were talking about procedural matters, he shared their observations on the selection of officers to WTO bodies. He was personally involved in the selection process over the past three years as the Coordinator of the Asian Group of Developing Countries. 2021 was an important year with MC12. Members should find a way to quickly finalize the selection process to ensure the smooth operation of WTO bodies in preparation for MC12. That was not the first time such a case was taking place. There had been similar cases in the past. On every occasion, Members referred to "unwritten rules" and regional balance. What could be found in the Guidelines for Appointment of Officers to WTO Bodies was the rotation principle as the general rule – Article 6.1 of the Guidelines – which in practice was observed with respect to those in Group 1 and to a certain extent to Group 2. For other bodies, Members faced uncertainties and made reference to "unwritten rules". He therefore suggested that the General Council take up the issue and refine the Guidelines to ensure a clearer functioning of the organization with regards to the selection of officers to WTO bodies. Mongolia, as one of the co-sponsors of the waiver proposal at the TRIPS Council, commended the decision of the United States to support and engage in the negotiations for waiving IP protections for COVID-19 vaccines. It was truly an important moment.

10.13. The representative of South Africa took note of the update by co-sponsors and recalled its previous statements in that regard. South Africa remained concerned with the horizontal application of the proposal. Addressing specific trade concerns was provided for under certain agreements. Mainstreaming of STCs across all Committees and Councils would negatively impact developing countries who already had capacity constraints. Members already had the instruments needed to address trade concerns. The proposal was enlarging the mandates of regular bodies in ways South Africa had concerns with. South Africa did find helpful the suggestions under the section "meeting arrangements" relating to the documents and minutes of meetings.

10.14. The representative of the United Kingdom supported efforts to improve the functioning of the organization's regular Committees and Councils. The United Kingdom continued to broadly support those proposals which provided a good balance between creating quality minimum standards while offering scope for individual Committees to take tailored approaches for the way they operated. It was true that the proposed procedural improvements would not alone solve the problems in the Councils and Committees. Members themselves needed to continue to engage as constructively as possible in resolving the substantive concerns that were raised. That meant more listening and more working to find convergence as had been discussed earlier that week at the TNC.

10.15. The representative of the United States was reviewing the proposal with an eye out for practical and modest steps that would rebuild norms for Members to adequately respond to and address trade concerns raised by other Members. Those norms had eroded. The key culprit appeared to be some Members' lack of interest and political will to address such concerns. Fundamentally, the problem was substantive not procedural. But the United States did not rule out that pragmatic

procedural norms could help. That said, Committees were diverse, and solutions that could be applied horizontally could be few. In addition, it should be remembered that those trade concerns were between Members. It was up to the Member raising the concern – not the Secretariat or the Chair – to determine how best to pursue the issue, when and where.

10.16. The General Council took note of the statements.

## **11 STATEMENT BY COLOMBIA, COSTA RICA, ECUADOR, PANAMA AND PARAGUAY ON TRADE RESTRICTIONS THAT BLOCK EQUAL ACCESS TO COVID-19 VACCINES**

11.1. The Chairman noted that the item was included in the agenda by the delegations of Colombia, Costa Rica, Ecuador, Panama and Paraguay.

11.2. The representative of Paraguay, on behalf of Panama, Ecuador, Costa Rica, Colombia and Paraguay, recalled that in March, their delegations had made a new call to prevent export restrictions on vaccines. To date, no solution had been found to the world vaccine trade situation. On the contrary, it had worsened, hampering equitable access to vaccines against COVID-19. The region of Latin America and the Caribbean was home to 8.4% of the global population but accounted for 30% of the world's total deaths from COVID-19. The COVID-19 reproduction rate was higher than 1 in most of the region. Moreover, most Latin American and the Caribbean countries had already recorded cases of one or more of the three new variants of COVID-19.

11.3. The economic recession in Latin American and the Caribbean was the worst in 120 years, with a drop in growth of 7.7% in 2020. Exports had fallen by about 13% and over 2.7 million enterprises, mostly small and medium sized enterprises, had closed their doors. While their countries had invested 4.3% of GDP in fiscal measures, Latin America and the Caribbean was to date the most heavily indebted region in the developing world – 79% of GDP – with the largest external debt service in relation to exports of goods and services, amounting to 57%. However, despite the fact that Latin America and the Caribbean had been the region most affected by COVID-19, it was worrying that the vaccinated population in the majority of countries in the region was less than 2.5% of the total population. That needed to be assessed in context. Over 1 billion doses administered worldwide was sufficient to vaccinate 6.7% of the global population. However, the hardest hit region was well below the average. As of 3 May 2021, only 26,005,871 of citizens in Latin America and the Caribbean, less than 5%, had completed their vaccination. Of the doses received, only 5% - 2.8 million – had been delivered by the COVAX mechanism. The Director-General of the World Health Organization had noted that "many of the wealthy countries that expressed support for COVAX were in parallel pre ordering the same vaccines on which COVAX was relying". Similarly, when it came to distributing the scarce doses, the current epidemiological characteristics and the relative emergencies of countries that required vaccines were not taken into account.

11.4. Several Members of their region had started to pre-order and purchase vaccines at the same time or even before some developed countries, despite their tight fiscal space, in order to address the looming health and economic crisis. The authors of this statement had all reacted in time and they all had contracts that had sought to cover all of their adult population and other vulnerable demographic groups. Unfortunately, all those actions had proved insufficient because of the lack of a collective response to the challenges and difficulties arising from the pandemic. In that context, the functioning of global, predictable and rules-based trade was essential. Since their last "call" at the General Council meeting on 1 March, they noted with great concern:

"That a significant number of Members are putting restrictions on exports of vaccines and their components.

That measures restricting the trade in vaccines are being upheld and increased, many of which are not visible, as they are embedded in contractual arrangements, crosscutting purchase orders or government orders, including verbal orders. In addition to hindering exports of these goods, these measures are neither transparent nor have they been notified.

That some countries have a significant excess of vaccines, that some call hoarding of vaccines. Members that have acquired more than twice the amount of vaccines needed to immunize the entire population and continue to announce new purchases, thereby undermining the ability of others to participate in a functional market.

That there are instances of vaccines not being used, or even wasted, because of export restrictions. This in particular is simply unacceptable.

That there are multiple instances where, in the face of the impossibility or difficulty of exporting such surpluses, the authorities are reacting by promoting and increasing vaccine tourism, which may be useful for some in particular, but does not contribute to equitable access and distribution at the global level.

That, for the same reason, contract terms have been breached with respect to the agreed quantities and delivery dates of vaccinations and medical implements.

That, lastly, there is a great deal of opacity around what is happening. Lack of transparency regarding contracts for the procurement of vaccines and medical products weakens the signals of a functional market."

11.5. The foregoing showed clearly and conclusively that the various practices restricting trade and the market had worked against Members that depended on the import of vaccines. Those were not eminently public health issues, the province of forums such as the World Health Organization: they were trade restrictive practices, a wide range of barriers to exports. Those obstacles, coupled with a very slow and insufficient increase in global vaccine production, created market distortions through unilateral actions, resulting in a possible hike in prices. They also affected the predictability of their respective vaccination processes: between the restrictions and the overall low levels of production, and despite the fact that Members had procurement contracts like those of any other Member from other regions, their countries lacked the certainty required to plan their public health responses and by extension their socioeconomic responses.

11.6. The fact that the producer countries had gained access to vaccines first, not only eroded, in the medium and long term, the international trade values that they all appreciated and the confidence they had in the multilateral trading system, but also put everyone at risk and had been behind the worsening of the health crisis: the emergence of new variants, overwhelmed health systems and the absence of a global economic recovery plan. As a result, they were confronted not only with a global public health crisis, but also with concerns about the multilateral trading system and its principles to which they were all committed.

11.7. The representative of Colombia on behalf of Panama, Ecuador, Costa Rica, Paraguay and Colombia, considered that the WTO could and should play a proactive role in the recovery of international trade during this crisis and in the post-pandemic era. That should be done by, first of all, looking to remove as soon as possible, if not immediately, any trade barrier that prevented access to vaccines against COVID-19. In that regard, they considered it essential that discussions on trade and health at the WTO should address:

"The immediate or prompt removal of all export restrictions and obstacles related to the supply chain of COVID-19 vaccines and their components.

A total commitment to prohibit any future export restrictions on COVID-19 vaccines and their components.

The need for Members to urgently lift the export restrictions that prevent them from promptly disposing of vaccines that are beginning to accumulate and far exceed the number required to vaccinate their populations, or worse still, that they already know will not be used because of their populations' preferences.

The role of trade facilitation measures in timely access to vaccines and their components, including customs and logistics procedures, as well as transparency with regard to, due notification of and information on those procedures.

How to facilitate the movement of health personnel. There is not just a scarcity of goods. There are critical situations around the world because of the lack of skilled staff to participate in this huge health campaign. This is something we can review at the WTO, to support hot spots, as not all crises in territories take place at the same time.

Possible harmonization of standards and transparency in procedures for approving and sanctioning vaccines, diagnostics and tests, in the framework of the Committee on Technical Barriers to Trade, in order to avoid the emergence of multiple incompatible standards that undermine vaccination and economic recovery efforts, as well as the quality of vaccines.

A commitment to transparency. All measures affecting exports of vaccines and their components and other associated goods must be duly notified and there should be appropriate areas in which to discuss them.

An inclusive dialogue with multiple actors in order to have a comprehensive view of the problem. This will enable Members to move forward in constructive discussions with the pharmaceutical industry in order to promote more effective licensing schemes, avoid an uptick in prices and ensure equitable access to vaccines.

The strengthening of multilateral cooperation and the promotion and effective use of innovative mechanisms such as C-TAP, the Access to COVID-19 Tools (ACT) Accelerator and COVAX."

11.8. Given that there were innumerable trade aspects, those ideas complemented and reinforced other discussions on health and trade in the WTO, such as the Trade and Health Initiative proposed by the Ottawa Group and other Members, or on the waiver proposed by India, South Africa and other Members. They also complemented and built on the Director-General's efforts and the series of multi-stakeholder dialogues launched in April 2021 which were an important step towards seeking a better understanding of the challenges faced by different sectors in the search for effective responses, and ensuring an increase in the production and equitable distribution of vaccines. But the discussion was even broader. It was essential that the countries importing vaccines and components participated in those discussions in a manner that was representative of and consistent with the global dimension of the problem and the differentiated impact it had had in the different regions. Colombia was making a new statement to the General Council with its Latin American partners since there was much more that could be done by the WTO. Health and trade were multidimensional issues that concerned all. Global crises, such as the COVID-19 pandemic, required them to abandon mercantilist interests and favour collective action. No one would be safe until everyone was safe.

11.9. The representative of the Dominican Republic associated with the statement on better vaccine distribution, since export restrictions and other practices identified in the statement were largely responsible for the severe global shortage of COVID-19 vaccines and other medical supplies, particularly in developing and least developed countries. The COVID-19 pandemic was constantly evolving, and available data showed that Latin America and the Caribbean had been one of the most affected regions, both in terms of the number of cases and the number of deaths. While the region had been home to only 8.4% of the world's population, by December 2020 it had accounted for 18.6% of all infections and 27.8% of COVID-19-related deaths. Latin American and Caribbean countries faced challenges on several fronts to control the pandemic. At the end of 2020, the Economic Commission for Latin America and the Caribbean had estimated that the GDP of the economies of Latin America and the Caribbean as a whole would fall by 7.7% and that the unemployment rate would increase by 2.6 percentage points. That severe economic recession implied a worsening of living conditions, with substantial increases in unemployment, poverty and inequalities. The hopes of their populations for a possible recovery and return to normality were essentially based on vaccination, against that great evil afflicting the whole of humanity. The involvement of all global players, and particularly the WTO, was therefore necessary to remove all trade barriers that hindered the distribution of that common good, the COVID-19 vaccine, in an equitable manner. It was time to put solidarity above trade and nationalist interests to save thousands of endangered lives and vulnerable populations around the world, particularly in Latin America and the Caribbean, by means of humane, fair, transparent and equitable trade.

11.10. The representative of Ecuador associated with the joint statement which reflected the situation faced by the Latin America and the Caribbean region, and the concerns of Colombia, Costa Rica, Panama, Paraguay and Ecuador on the trade barriers that were impeding equitable access to COVID-19 vaccines. The statement sought to contribute to the discussions on trade and health that were currently taking place at the WTO, by focusing their attention on a trade issue that was key to the exercise of the right to health, the provision of care for the millions of people affected by the pandemic, and the return to social and economic normality for countries. The crisis had undoubtedly

had an impact on development levels and poverty reduction in the context of the 2030 Agenda and the Sustainable Development Goals. That was the case for Latin America and the Caribbean which was experiencing the worst economic recession in 120 years, as indicated in the communication. That was a global crisis with consequences for all. It was therefore necessary to design a global, effective and urgent strategy.

11.11. As regards trade issues, it was clear that the organization had a key role to play. Ecuador was concerned that the impact of COVID-19 on developing and least developed countries had been more severe, and that their response had been hampered not only by limited resources to purchase vaccines and medical inputs, but also by the threat of trade barriers imposed by Members and the unjustified breach of contracts by private firms. Ecuador had been pleased that some countries had attained national vaccination goals and had agreed to procure millions of vaccine doses for their populations. However, at the same time, Ecuador had been discouraged by the fact that several dozen nations, despite seeking vaccines on the market or participating in mechanisms such as the COVAX Facility, had not yet managed to vaccinate even the most vulnerable groups of their populations or the workers on the frontline of the fight against the pandemic. Global crises required joint action by all stakeholders in the international community, governments and international agencies, but also by pharmaceutical firms, financial institutions and academic research centres.

11.12. In the spirit of supporting and developing that approach, Ecuador congratulated and thanked Dr. Ngozi for her initiative to initiate a dialogue with multiple stakeholders. Ecuador was confident that the dialogue would continue to be comprehensive and inclusive so that the needs of all, especially those dependent on vaccine imports, could be met. Ecuador considered that an operational health and trade framework would contribute to the fight against that and future health crises. It was a matter of urgency to eliminate any trade barriers preventing equitable access to COVID-19 vaccines and their components, as well as medical equipment and services essential for the current health response. Ecuador was confident that they would still be able to provide an effective response to the challenges they were facing. The statement therefore promoted the spirit of international cooperation and solidarity, to ensure that access to vaccines was universal and guaranteed through the collective work of States, requested immediate or prompt elimination of all export restrictions and barriers related to the COVID-19 vaccine supply chain and identified areas in which trade policy solutions were required to contribute to enable the sustained global immunization process.

11.13. The representative of Panama said that the pandemic had led Members to take dramatic measures to contain the spread of the virus that had affected the economies and development of all countries. Certain vulnerabilities existed and it had shed light on challenges that nobody had foreseen. A large number of Members had expressed their solidarity in response to the COVID-19 pandemic. Those statements had mentioned the principle according to which any trade-related measure that was deemed appropriate in response to the crisis should be transparent, proportionate, temporary, clearly related to dealing with the pandemic and consistent with WTO commitments. In light of those statements, Panama was surprised and concerned to see systematic actions being taken over the past few weeks that had been nationalistic in nature. Those were done by Members in relation to vaccine purchasing and distribution. That went against what had been said in the past and the WTO's foundation. Panama was particularly concerned with the implementation of measures that restricted vaccine exports. Members should work together globally to fight COVID-19.

11.14. Along with Colombia, Costa Rica, Ecuador and Paraguay, and now the Dominican Republic, Panama had asked for that item to be included on the agenda so they could call upon all Members to abstain from those kinds of behaviours. They had wanted to raise some ideas that could feed into other discussions on trade and health and the role that the WTO could play in economic recovery once the COVID-19 pandemic was over. COVID-19 did not respect borders nor levels of development. That was a global problem. The global solution could only be one that Members achieved together. Panama commended Dr Ngozi for her efforts to identify places where vaccine production capacity could exist particularly in developing countries and to facilitate as broad an approach to production as possible, to reduce the divide in access to vaccines. Her efforts however would only be successful if all Members worked in a spirit of solidarity to avoid interruptions and breakages in global supply chains. If they failed to do that, they ran the risk of suffering an even slower economic and social recovery for all. The solution to the pandemic involved fair distribution of essential goods, medicines and vaccines that would help fight COVID-19, and global cooperation.

11.15. The representative of Australia noted that, with the COVID-19 pandemic surging in many parts of the world, Australia recognized the immense loss and severe public health challenge facing

many Members. It was in the interests of all Members to ensure the timely, equitable and global immunization against COVID-19 which would form one important component of their collective efforts to bring the pandemic under control. It had become evident over the course of the COVID-19 pandemic that export restrictions utilized by some Members could lead to negative impacts on global markets, food security and health. It was paramount that Members avoided making the health crisis worse, through unnecessary export restrictions and other trade barriers. COVID-19 was a global health crisis that needed a global solution and international cooperation was essential to keep trade flowing. Australia's longstanding position was that COVID-19 vaccines should not be subject to restrictive trade measures, and that there was a global and moral responsibility on all countries to share COVID-19 vaccines far and wide. While Australia understood the political and humane impulse that could lead to the imposition of trade restrictive measures, such measures and the retaliation that they could trigger were ultimately likely to lead to fewer total vaccines being produced, and so it would ultimately be counter-productive.

11.16. At the 14 April vaccine equity event hosted by Dr Ngozi, Australia had heard from a wide variety of stakeholders involved in the global vaccine effort that export restrictions and other trade barriers were making the health crisis worse. Australia remained concerned on the imposition by some Members of trade barriers, including both formal and informal export restrictions, on COVID-19 vaccines and their inputs. Australia urged all Members maintaining unnecessary trade barriers on COVID-19 vaccines to consider removing those measures as soon as possible and called on all Members to work together to find ways to keep supply chains open to ensure the maximum possible production of vaccines. As had been discussed in agenda item nine, the Trade and Health Initiative offered a practical solution to address COVID-19 and any future health crises, and aimed to deliver short-term action on trade in health products and had the potential to establish longer term disciplines and trade liberalization in that sector with the broader WTO Membership. Australia invited all Members to engage in the Trade and Health Initiative and to take immediate steps to address the crisis, minimising disruptions to supply chains, sharing best practices on trade facilitation, promoting transparency and fostering greater collaboration with international organizations.

11.17. The representative of Argentina said that the joint statement of Paraguay, Colombia and other Members presented the stark reality, with irrefutable data, of the health, economic and social situation in Latin America as a whole, caused by a pandemic that had dramatically exposed the vulnerabilities and inequities of social, political, economic and health systems throughout the world. Latin America was facing one of the most critical periods of the pandemic, with a second wave which was hitting their countries very hard, and which was posing unprecedented challenges that required innovative solutions based on coordinated, transparent and cooperative global action. Argentina echoed the concerns expressed by those delegations regarding the deep inequality which had characterized the administration and distribution of vaccines at the global level, and which had severely affected Latin America and the Caribbean. That inequality did not only challenge them from a moral point of view, but also posed the health risk of the virus becoming endemic and creating reservoirs with the ability to mutate into more aggressive and contagious variants.

11.18. For that reason, Argentina had reaffirmed in various fora that it considered COVID-19 vaccines as global public goods that all persons should be able to access equitably, and had supported global initiatives such as the ACT Accelerator, the Solidarity Call to Action, C-TAP and the COVAX Facility, as it was convinced that they constituted concrete commitments with a fair and equitable distribution of vaccines. Those initiatives had however been affected by bilateral negotiations, a lack of unified bargaining power with regard to procurement processes, intellectual property rights, and the lack of effective technological transfer, which had not made it possible to increase the production capacity for medicines, but had instead concentrated production in a few countries and had critically delayed the distribution of vaccines across the world. The meeting convened by Dr. Ngozi on 14 April had revealed that there was a significant overlap between the role of international trade and that of the WTO in terms of production, distribution and access to vaccines, medicines and other health technologies for the containment of COVID-19. However, Members had not yet been able to achieve the stated common objective of providing timely and safe access to quality, safe, effective and affordable vaccines.

11.19. The actions that Members should promote were unavoidable from an economic perspective, as the recovery that they were beginning to observe would continue to be asymmetric as long as access to vaccination remained concentrated in only a few countries. In the short term, Members' biggest challenge was to achieve immunity for at risk populations in all countries as soon as possible, without differentiation. They could not rest easy in the knowledge that there were countries where

immunity would be achieved by mid-2021, while others would not attain immunity until the end of 2022 or even 2023. Given the magnitude of the current health crisis, all initiatives aimed at ensuring fair access, promoting the effective transfer of technology, increasing local production capacities and the timely distribution of vaccines at the global level, were welcome and deserved immediate and additional consideration. Members could not afford to delay their response any longer. The time to act was now. Members should be able to take concrete, consensual and coordinated action that placed the WTO at the centre of the economic and health recovery.

11.20. The representative of Peru expressed its concern on the situation of many Latin American countries, and the developing world generally, given the lack of supply of vaccines exacerbated by the current restrictions put in place. The COVAX Facility, a multilateral response to address such issue, had been affected by that. Peru underscored the importance of ensuring a smooth, rules based international trading system, that should work effectively without barriers to the benefit of all Members. The role of international trade was important in helping to combat the pandemic and its health and economic consequences. The communication from those delegations merited consideration. They could be particularly useful in helping their discussions on what the WTO could and should do to contribute to efforts to combat COVID-19. Peru also thanked Dr. Ngozi for her tireless efforts to identify possibilities to extend production and distribution of vaccines around the world. Peru also thanked the positive contribution made by the Trade and Health Initiative which had led to urgent and important discussions on the matter.

11.21. The representative of Jamaica, on behalf of the ACP Group, sympathized with the concerns raised. There was no doubt that the COVID-19 pandemic was the most significant crisis of their lifetime. The unprecedented negative impact of the crisis on their health care systems, the health and welfare of their populations, and the fall out in their economies required international cooperation, sympathy for the situation of Members with less financial capacity, and importantly, global efforts to bring about affordable access to vaccines, therapeutics and other items necessary to prevent, treat and contain the virus. Millions of lives had been lost and shortages of drugs to treat the virus had put the lives of their people, health care workers and other essential workers at risk.

11.22. Vaccination was the most durable solution. As developing countries and LDCs, they should have equitable access to vaccines and other items required to prevent, treat and contain COVID-19. There was absolutely no place for vaccine nationalism in the crisis. Neither was there a place for vaccine politics. No Member was spared the impact of the virus until all Members were able to contain its spread. The ACP Group therefore expressed deep concerns over the implementation of measures by some Members that prohibited or restricted export of vaccines, therapeutics and other items necessary to prevent, treat and contain the virus. The ACP Group called on Members to reverse those measures as they would diminish the ability of developing countries and LDCs to contain the virus, thereby prolonging the pandemic.

11.23. The representative of Uruguay noted that, in the long history of the GATT since 1947 and the WTO since 1995, Members had learned over and over again that protectionism had only led to less trade, less development and more poverty for their people. There had not been a single economic or trade crisis that had been resolved by isolation and trade disruptive measures in the context of international trade in goods and services. No health crisis could be resolved through those mechanisms either. Uruguay therefore fully agreed with the concerns raised by the co-sponsors of the declaration. Restrictive or protectionist measures relating to vaccines constituted a serious barrier to the success of the international campaign to combat the pandemic which was in the general interest of the international community. Uruguay welcomed the efforts made by the Director-General to ensure better access to vaccines and invited Members to ensure that they did not impose export restrictions or measures that disrupted vaccine and medicine supply chains or indeed any technical or administrative measure, that could prevent other Members from getting access to tools to enable them to combat COVID-19 effectively.

11.24. The representative of Chad, on behalf of the LDC Group, shared the concern expressed by Colombia, Costa Rica, Ecuador, Panama and Paraguay regarding export restrictions on medical products, including vaccines. In its communication of 4 May 2020 on the LDCs' emergency access to essential medical and food products to combat the COVID-19 pandemic in document WT/GC/211, the LDC Group had already expressed its concern about those measures and the impact that they could have on LDCs dependent on imports to combat the COVID-19 pandemic. For those reasons, the Group called on the European Union to exercise the utmost restraint in the adoption and implementation of such measures.

11.25. The representative of South Africa associated with the statement of the ACP Group. COVID-19 was a global pandemic that knew no boundaries. Members could only defeat the pandemic through multilateral cooperation as no one was safe until everyone was safe. Vaccine nationalism was therefore incredibly short-sighted, whereas the more sustainable solution was that sharing of technologies, know-how and data that would enable production of vaccines across the world and ensure timely, affordable and equitable access to vaccines and therapeutics for all. Over one billion doses had been administered so far, 87% of those had gone to developed countries. South Africa had heard from the Director-General of the WHO on 14 April that 1 in 4 people in developed countries had got a jab but 1 in 500 in poor countries had received the shot. Only 0.2% of vaccines dispensed so far were in low-income countries. That demonstrated the inequity in vaccine access.

11.26. The TRIPS Waiver was the most viable policy instrument that would halt the rapid transmission of COVID-19, reduce the risks of variants and promote economic recovery. An effective response to the pandemic was only achievable when Members addressed the supply-side constraints and removed IP barriers and boosted local production of vaccines, therapeutics and diagnostics. That was the only way to ensure that everyone, everywhere could access the health technologies they needed for COVID-19 detection, prevention, treatment and not through hoarding of vaccines. South Africa encouraged the countries that were concerned with lack of equity in vaccine access to join the TRIPS Waiver. An effective way to deal with vaccine nationalism was to ramp up production. Without guarantees and coordination on boosting supply, individual governments would revert to self-defeating vaccine nationalism and impose export restrictions on vaccines.

11.27. The representative of the European Union was sensitive to the dire situation that Latin American countries and others in other parts of the world were facing in combating the pandemic. The European Union hoped that Members had, since the last meeting, seen the practical confirmation of its recent statements in that the European Union continued to be one of the world's largest exporters of vaccines both in absolute terms and relative to its overall production. That included significant deliveries to the COVAX facility. The European Union had extended its authorization measure until the end of June, and it had been adjusted to take into account whether a destination country was equally open to sending vaccines to the European Union and to take account of the epidemiological situation in that country. That had been done in the spirit of ensuring fairness and equity in vaccine distribution. The mechanism had been in operation already for three months. Until now, during the lifetime of the mechanism, the European Union had exported more than 170 million doses of vaccines to the world. However, in total, since the introduction of the vaccines to the market in December, and counting also exports exempted from the mechanism, the European Union had exported more than 210 million doses. That meant that the European Union was exporting half of its production. No other OECD member and vaccine producer had done that.

11.28. The European Union assured Members that vulnerable, low and middle-income countries continued to be exempted from the scope of the mechanism, as were any exports to the COVAX facility. In the meantime, like others, the European Union continued to struggle with a speedy delivery of vaccines to its own citizens. All Members were under enormous pressure to deliver. A question arose on how to increase access to vaccines for those countries that were not vaccine producers and that did not have sufficient resources to set up production on their own. The WTO event on equity of vaccine distribution of 14 April had showed Members very clearly that that the equitable access required very close cooperation between governments, regulators, financial institutions, and companies themselves to scale up production. To do that, a scale-up should take place across the whole value chain. There was a need to have more information about markets and government measures.

11.29. The European Union had taken a good note of Dr Ngozi's call to reduce the number of export restrictions. Members should however distinguish measures which operated as an effective ban on exports from measures which were intended to ensure some degree of fairness in distribution of scarce goods and which did not restrict exports more than absolutely necessary. As the European Union had reiterated on numerous occasions in the past, its measure was not an exports ban. The European Union had also already explained that it had promptly and diligently reported all versions of the mechanism to the WTO's monitoring of trade measures related to COVID-19 and had notified them under relevant requirements, such as the CTG Decision on Notification Procedures for Quantitative Restrictions. The European Union remained committed to ensuring the greatest degree of transparency and called on other Members to do the same with respect to any measure that could have a trade-restricting effect. The European Union appreciated Dr. Ngozi's efforts in that respect

and looked forward to working with her on all the different strands of work relating to their joint fight against the pandemic.

11.30. The representative of the United Kingdom said that it was a very interesting debate and, as many had said, nobody would be safe until everybody was safe. As Australia had said, that was a global crisis and it needed a global solution. Free and fair trade had never been more important than in the fight against COVID-19. Open supply chains helped ensure people got the critical goods they needed, such as vaccines. The United Kingdom was proud to be fully engaged in the global response to the pandemic whether it was through the COVID-19 Tools (ACT) Accelerator or COVAX which, together, helped to ensure developing countries could access COVID-19 vaccines. Together, Members could and should meet the global demand by joining forces to ramp up their vaccine production. That was why barriers to trade in vaccines were in nobody's interest. The United Kingdom encouraged Members to review and roll-back those measures still in place as soon as possible. Members should also step up and work collectively towards removing trade restrictive measures on medical goods, including COVID-19 vaccines.

11.31. As well as continuing cooperation with fellow governments on measures to tackle the pandemic like those referred to by the United Kingdom's statement concerning the Trade and Health Initiative, the United Kingdom also called upon industry to engage at the WTO as Dr Ngozi had been doing in her meetings. Governments could not do that on their own. The United Kingdom remained interested in hearing their reflections on what could be done to help overcome those bottlenecks so that together they could get supply lines moving. Like others, the United Kingdom had also noted the announcement made by the USTR on the TRIPS Waiver. The United Kingdom was committed to continuing its discussions with both the United States and other Members to find the swiftest and most effective way to facilitate the increased production and supply of COVID-19 vaccines. The United Kingdom recognized the importance of vaccines to building back better and stronger. That was why the United Kingdom looked forward to continuing to work closely with all Members to keep their trade in vaccines flowing.

11.32. The representative of the Republic of Korea shared the concerns raised by Colombia and others that trade restrictive measures could disrupt supply chains and the global distribution of COVID-19 vaccines and impact clear access to essential medicines. Members were in the midst of searching for a solution to how best to ramp up vaccine production. However, scaling up vaccine production could only be truly meaningful when it was accessible to everyone everywhere. As had been made clear during the webinar hosted by Dr Ngozi on 14 April, export restrictive measures held one of the biggest challenges in the fight against the pandemic. Members should refrain from vaccine protectionism. If anything, Members should help strengthen multilateral efforts to contribute to equitable access to COVID-19 vaccines. Korea would continue to work in concert with other Members to ensure that essential medical supplies were accessible to all.

11.33. The representative of Canada had intervened at the recent meetings of the Council for Trade in Goods and the Committee on Market Access in relation to the agenda items on export restriction. In those statements, Canada had provided some thoughts on how it understood GATT Article XI.2(a) and how it had come into existence. Canada had also spoken about how little that provision had been used by Members prior to 2020. Canada wondered if recourse to Article XI.2(a) could really not be appropriate in the midst of global efforts to address a global crisis. Canada therefore elaborated further that discussion by reflecting a little more on the past, making some observations on the present and considering what Members could do to better support the future. Since the GATT, there had been at least four examinations by Members of the Article XI provisions and the use of the measures disciplined by them. An early effort in 1950 had resulted in an agreement on standard practices for the administration of import and export restrictions and exchange controls. While non-binding, the intent had been to improve the administrative practices of Members and reduce unpredictability in the implementation of trade controls. Further efforts in the 1950s had seen some improvements in the provisions around import controls in relation to balance of payments provisions. Work in the 1970s and the 1980s had not however resulted in improvements to the rules.

11.34. From the information exchanged during those past discussions, it appeared clear to Canada that when export restrictions had been imposed, it had been to address local conditions namely in relation to supplies of natural resources or to promote domestic value-added activities. However, while pandemics had devastating impacts on many economies and local communities, they were by definition global problems driven first and foremost by health concerns. From the experiences over the past year, there were clearly lessons to be learned on how Members had reacted to the challenge

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of the pandemic. For example, Members had shared in the Trade Facilitation Committee how early implementation of the agreement and innovative solutions at the border had helped them to positively facilitate trade including for medical supplies during the pandemic. Members had also begun to hear more about the negative effects of measures taken to restrict trade in medical supplies. In March 2021, the discussion document entitled "Landscape of Current COVID-19 Supply Chain Manufacturing Capacity: Potential Challenges, Initial Responses and Possible Solution Space" highlighted how export restrictions had reduced the global supply of certain inputs to vaccine production. Similar findings in respect of medical supplies had been reported to WHO Member States at the recent briefing on an evaluation of the COVID Supply Chain System. This COVID Supply Chain System was an effort by UN Agencies, public health partners, vendors and NGOs to improve access to essential medical supplies to address COVID-19 through coordinated and efficient pandemic supply chains. During that recent briefing session, the presentation by the WHO Chief of Operations Logistics had noted that in early 2020, trade restrictions had been a major obstacle to moving critical supplies to where they had been needed the most. He had also observed that export bans had further restricted global access to supplies.

11.35. In response to the proliferation of new export restrictions at the outset of the pandemic, G20 Leaders had affirmed that "emergency measures designed to tackle COVID-19, if deemed necessary, must be targeted, proportionate, transparent and temporary and that they do not create unnecessary barriers to trade or disruption to global supply chains and are consistent with WTO rules." But what if "consistent with WTO rules" was not good enough? What if the current rules actually did not support multilateral efforts to maintain the free movement of medical supplies and their inputs? When faced with a similar global health crisis, Canada asked whether Members would choose only as a last resort to impose restrictions on exports of essential medical goods. What if instead the multilateral trading system could be improved to provide guidance to Members in that regard – that was, to first seek out how to support multilateral efforts in harnessing all available global resources and maximising the production and distribution of the medical goods needed to face the next global health emergency – essentially, to not let the multilateral trading system get in the way of future versions of the COVID-19 supply chain system?

11.36. One of the recommendations from the system's aforementioned review was for the WHO to develop a playbook to guide the agency's response in the next crisis. Members should take stock of the lessons learned throughout the pandemic in relation to the use of GATT Article XI.2(a) on trade in medical supplies. New principles on the use of export restrictions for medical supplies could help guide the decisions Members made in the next health crisis especially in support of any WHO playbook. The Trade and Health Initiative provided a framework for Members to proceed. In particular, minimising or avoiding the use of export restrictions was more than a sufficient step, it was an essential step to achieving Members' collective objective. As had been heard often, the supply chains for medical products including vaccines were diverse and their inputs were produced and sourced around the world. Avoiding the imposition of export restrictions on those inputs and the finished products was a key building block to ensure the ability of manufacturers to ramp up their production and the subsequent distribution of those products. Canada would continue considering how Members could improve the use of Article XI.2(a) in support of collective efforts to address future health crisis and looked forward to working with Members on that important issue.

11.37. The representative of Saint Lucia, on behalf of CARICOM, associated with the statement of the ACP Group. CARICOM considered the matter of access to vaccines to be a moral one and Members had an interest in ensuring that all countries had equitable access to COVID-19 vaccines in a timely manner. As small island developing States, the COVID-19 pandemic had stretched their public health and fiscal capacity to their very limit. CARICOM was therefore very concerned about growing vaccine nationalism and trade restrictions on vaccines. While CARICOM understood that certain supply chain and manufacturing issues were diminishing access to vaccines, those problems were only compounded by vaccine nationalism and trade restrictions. The impact of that reality was severe. Prospects for a safe and sustainable economic recovery in the short to medium term were unlikely to materialize if the supply gap and inequitable access to vaccines continued to plague Members. CARICOM urged all Members to exercise due restraint with respect to the trade restrictions being imposed on the vaccines including vital inputs needed for the manufacturing process. CARICOM was also concerned that many of the restrictions currently in place lacked transparency. Transparency was one of the fundamental and enduring principles of the WTO. Members should also seek to gain a better understanding of how WTO rules could be deployed to remove friction in the supply of vaccines. It was therefore incumbent on them to explore how the rules could accommodate an increase in the speed of supply. CARICOM stood ready to work with all Members to ensure that

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all countries, particularly the most vulnerable, had equitable access to vaccines. History would judge them harshly if they failed in that endeavour.

11.38. The representative of Sri Lanka said that, as many had stated that day, the world could only defeat the pandemic through multilateral cooperation as no one was safe until everyone was safe. Vaccine nationalism was seen as incredibly short-sighted. The more sustainable solution would be the sharing of technologies, know-how and data that would enable production of vaccines across the world and ensure timely, affordable and equitable access to vaccines and therapeutics for all. In that regard, the proposed TRIPS Waiver provided that and was the most viable policy instrument that would halt the rapid transmission of COVID-19, reduce the risks of variants and promote economic recovery. An effective response to the pandemic was only achievable when everyone everywhere could access the health technologies, they needed for COVID-19 detection, prevention, treatment and not through hoarding of vaccines. Speaking of Sri Lanka's situation, which was currently experiencing the devastating effects of the third wave, it was facing a shortage of 600,000 doses of the Oxford-AstraZeneca COVID-19 vaccine. The shortage was not its government's fault. That situation had arisen due to the inability of the manufacturers to supply the required quantities. Under the first round, 925,242 persons had been vaccinated and, at present, there was a shortage of 600,000 doses, as the country had not gotten the vaccines ordered from India, which was currently battling its own COVID-19 resurgence. Sri Lanka had also approached the COVAX Secretariat with an urgent request to supply it with that quantity under the assured amount that would enable it to vaccinate those who had already received their first jab of the Oxford-AstraZeneca COVID-19 vaccine. So far, no affirmative response had been received due to the current acute shortage as a result of the situation in India.

11.39. The Government of Sri Lanka was working with other suppliers to import Russia's Sputnik V and Pfizer COVID-19 vaccines – though the former was yet to be approved by the WHO while the latter was exorbitantly expensive. Tests were being carried out in Sri Lanka to determine whether the first dose could be given from one vaccine and the second dose with another, and see if it would be possible to give a "cocktail" in the future based on the results of the tests. While making such efforts, Sri Lanka appealed to the international community, the patent holders and countries who were manufacturing and had manufacturing capacity to come forward and help countries such as Sri Lanka that did not have capacity to manufacture the vaccines by removing all those obstacles hindering the access to those most needed vaccines. Sri Lanka thanked the current government of the United States for demonstrating its solidarity and leadership at a time when it had mostly been sought when it had announced that it would be joining the discussions with the aim of finding a lasting solution to the scarcity of vaccines around the world. Sri Lanka also thanked those who had announced their willingness to join the negotiations on the waiver proposal.

11.40. The representative of India said that export restrictions were legitimate policy tools available to Members. They had a dual use and were useful for certain circumstances. For instance, during the pandemic, where Members were not working under perfect market conditions, India had used that tool for ensuring equitable distribution of critical medicines, vaccines, diagnostic kits, ventilators and PPEs to more than 150 countries based on mutually assessed needs. In the absence of which, the entire supply could have been cornered by a few privileged with deep pockets. India supported the need for ensuring smooth and open supply chains of raw materials and inputs required to manufacture vaccines, medicines and therapeutics related to COVID-19. Members' efforts should also not stop at making vaccines available. They should sincerely work together to provide timely and equitable access to affordable medicines and vaccines. Export restrictions should remain as a policy tool given their dual use nature. Their impact depended on how Members chose to use them.

11.41. The representative of Mexico noted that controlling the pandemic was the most important challenge that all Members faced. COVID-19 had wreaked havoc around the world, with thousands of sad losses of human life and very difficult economic conditions to be addressed in the short, medium and long term. As had already been pointed out by Paraguay and Colombia, the Latin American and Caribbean region had been particularly affected. So far, Mexico had confirmed 2.4 million cases of infection and 217,000 total deaths from COVID-19. Despite the fact that Mexico had had access to vaccines, uncertainty remained about the speed at which those would reach Mexico and be administered extensively to its population. Mexico therefore expressed its systemic concern about the decision of some Members to establish export restrictions on COVID-19 vaccines and to consider other measures with a similar objective – which other Members had already imposed. Mexico supported the call for all Members to exercise restraint in the imposition of measures that affected the export of vaccines and other essential medical products. If Members were to overcome

the crisis, it was vital that they all supported the smooth functioning of global supply chains and production and avoided measures that could have negative and restrictive effects on trade flows.

11.42. The representative of Chinese Taipei said that the inequality of vaccine distribution was of serious concern for the whole international community, not merely the concern of the Latin American and Caribbean countries. As the coronavirus and the more dangerous variants continued to spread, the problems on insufficient global production and supplies of vaccine should be constantly examined and the distribution failure should be corrected. Chinese Taipei thanked some Members, such as the European Union, India and the United Kingdom, among others, for their efforts to increase their vaccine production and exportation. Chinese Taipei still called on all Members to demonstrate solidarity to ensure an absolutely undisruptive movement of vaccines and medicines at that critical moment and to lift all trade restrictive measures on vaccines to address the unprecedented public health crisis. Chinese Taipei also thanked Canada for suggesting a systemic way of addressing that issue based on Article XI:2(a) of the GATT 1994, that deserved further discussion. Chinese Taipei looked forward to any systemic solution on that issue.

11.43. The representative of the Plurinational State of Bolivia noted that the pandemic had affected all developing countries around the world. Latin America and the Caribbean had been even more affected than other regions. Bolivia thanked the co-sponsors for their call and for having raised awareness of what was going on in their region and the problems being experienced with fair access to vaccines. Bolivia had, on a number of occasions, stressed that vaccines for COVID-19 should be seen as a global common good. Members should ensure that it could be effectively distributed among their people through cooperation. All the proposals that aimed to accelerate the process and ensure that all Members had fair access to medicines and vaccines should be considered and discussed by the WTO in good faith and with the necessary openness on the part of all Members, to ensure that they could achieve their common goal.

11.44. The representative of Costa Rica, on behalf of Panama, Ecuador, Paraguay, Colombia and Costa Rica, thanked all the delegations for their valuable comments and ideas. Without prejudice to the discussions on vaccine production, which had taken place the previous day, they were glad to see that there was also a lot of interest in discussing issues related to the vaccine trade. For those countries that were predominantly importers of vaccines, it was essential that their position be heard and that permanent steps were taken to restrict, now and in the future, measures that hampered equitable access to vaccines.

11.45. The General Council took note of the statements.

## **12 INTERNATIONAL TRADE CENTRE UNCTAD/WTO – REPORT OF THE JOINT ADVISORY GROUP ON ITS 54<sup>TH</sup> SESSION (ITC/AG(LIV)/280)**

12.1. The Chairman noted that, in relation to that agenda item, the Chairman of the CTD had 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.

12.2. Ambassador Muhammad Mujtaba Piracha (Pakistan), Chairman of the CTD, reported that the ITC's Joint Advisory Group had held its 54<sup>th</sup> Session on 25 November 2020. The report on that meeting was contained in document ITC/AG(LIV)/280. The report had been presented to the CTD at its 114<sup>th</sup> Session on 29 March by the Chairperson of the Joint Advisory Group, Ambassador Athaliah Lesiba Molokomme of Botswana. Ambassador Molokomme had informed the CTD that the Joint Advisory Group had reviewed the ITC's Annual Report for 2019. Some of the key results for 2019 had included: 129 million dollars' worth of delivery across all budgets, 302 million dollars extrabudgetary funds secured for 2020 and beyond, and a value of transacted business and mature international trade and investment deals facilitated by ITC amounting to 1 billion dollars.

12.3. Appreciation had been expressed by the Joint Advisory Group for several areas of the ITC's work. Some of the areas highlighted had included the strengthening of agricultural value chains with an emphasis on quality improvements and standards, women's economic empowerment, trade and investment facilitation, digital trade and e-commerce and regional economic integration – particularly in support of the African Continental Free Trade Area. The ITC's work in trade promotion and market linkages through virtual trade fairs and business meetings had been applauded, as had been the organization's investments in youth empowerment, export strategies and trade and market

intelligence. Delegations had indicated their concern with the disproportionate impact of the COVID-19 pandemic on micro, small and medium-sized enterprises, which they had noted made ITC's mandate more relevant. The organization had also been praised for its flexibility in adjusting its mode of delivery and working method by adapting contents and using digital tools.

12.4. Delegations had seen a need to increase action in specific COVID-19-affected industries and across affected value chains, such as tourism. Given the disproportionate impact of the pandemic on women, delegations had also seen an increased need for women's economic empowerment through initiatives such as "SheTrades", and had highlighted the digital economy as a particularly important avenue to rebuild post-crisis economies. Funders had urged the ITC to continue delivering with flexibility in the future and had encouraged the organization to enhance communication with current and future partners and other trade and development organizations.

12.5. The ITC's 2020 Annual Evaluation Synthesis Report had been presented. The report found that the ITC's Results Framework brought consistency and convergence to the results sought and achieved. Projects evaluated had been found to be aligned with countries' priorities and the needs of the different categories of ITC beneficiaries. The organization's "programmatic approach", launched in 2016, had been found to be bearing fruit, and ITC's intervention model had been found to be effective and reliable. As was the practice, the CTD had taken note of the report of the 54th Session of the Joint Advisory Group, and had agreed to forward it to the General Council for adoption.

12.6. The General Council adopted the report of the Joint Advisory Group in document ITC/AG(54)/280 and took note of the CTD Chairman's statement.

12.7. The representative of Chad, on behalf of the LDCs, welcomed the partnership with ITC and hoped to strengthen it moving forward. The LDC Group welcomed the ITC's commitment to support the LDCs in their quest for sustainable development and their efforts in the context of the COVID-19 pandemic. The pandemic had shown that multilateral problems required multilateral solutions and had underlined the increasing inequalities among countries. The current situation necessitated all Members to work together by drawing up roadmaps for building greater resilience and more balanced development. The LDCs would be working with the priorities pointed out by the United Nations, the recovery of their economies, sustainable development, gender equality and seizing opportunities offered by digital technologies to help them overcome inequalities and to foster their development. The LDC Group had organized an initiative in the Aid for Trade review focusing on their response to the pandemic, which was well appreciated. There had been interesting discussions which touched upon challenges in financing Aid for Trade and steps to encourage LDCs to build resilience through Aid for Trade. The LDCs hoped to continue that partnership and to collaborate with ITC in moving forward which would help trade become a tool for the development of all LDCs.

12.8. The representative of Mauritius, on behalf of the African Group, commended ITC for pursuing the implementation of its projects which were important for the upscaling of development in Africa, despite the difficult times due to the pandemic. The African Group welcomed particularly the partnership with UNCTAD regarding the "eTrade for all" initiative and looked forward to the implementation of the ITC's new "One Trade Africa" project in 2021 which would enhance access of MSMEs to regional markets. As a land of microenterprises which constituted 90% of the business ecosystem and accounting for 80% of employment, the African Group highly valued ITC's intervention in the continent, especially reaching out to the vulnerable populations, including women and the youth. In those trying times, the African Group encouraged ITC to look into means to help African countries rebuild their export competitiveness, address the participation of MSMEs in global trade, make the most of regional markets and value chains in light of the coming into force of the AfCFTA. The African Group was convinced that the WTO, ITC and UNCTAD had a crucial role to play in empowering women and youth so that they could further engage in trade and, in time, expand into regional and global trade.

12.9. The representative of the European Union noted that the ITC was a valued partner to the European Union. The European Union was very pleased with their 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 ITC on its work providing valuable support to global MSMEs hard hit by the impacts of COVID-19. MSMEs were at the core of not only the EU economy, but indeed the global economy, and as such they should be placed front and centre in the global recovery effort. Moreover, supporting MSMEs was not only about good jobs. The majority of female entrepreneurs around the world owned a small or medium-sized company. Supporting those companies meant

guaranteeing a more inclusive and gender-equal recovery, while also supporting the objectives of the Buenos Aires Declaration on Women and Trade. The European Union strongly supported the ITC's "Green to Compete" strategy to support MSMEs in building back better and greener. The European Union would continue supporting ITC work. ITC could continue counting on the European Union to advance the work in making global supply chains greener and more sustainable.

12.10. The representative of Norway appreciated the efforts of ITC to adjust its programmes to deliver technical assistance in times of crisis. The most vulnerable were hit the hardest. In the midst of the pandemic with its devastating social and economic consequences, that was more important than ever. Nothing drove poverty reduction as much as access to goods, steady jobs and living wages. Trade was essential for revenue generation and jobs, and a key part of the recovery. After the meeting of the Joint Advisory Group, Norway had signed a new multi-year agreement with ITC for EUR 4.5 million. Norway's contribution was not earmarked and was allocated in its entirety to Window 1.

12.11. The representative of Kenya said that ITC had made an invaluable contribution to international trade and development particularly in the context of the work of the WTO and UNCTAD in their endeavour to create an inclusive and sustainable multilateral trading system. ITC had been instrumental in supporting MSMEs in many developing countries and LDCs to integrate in the global value chains, supporting women's economic empowerment, trade facilitation, digital trade and regional economic integration. In Africa, ITC had been at the forefront in the negotiation, conclusion and unveiling of the agreement establishing the African Continental Free Trade Area. ITC had been cardinal in its implementation. ITC had also been active during the COVID-19 pandemic providing insight and guidance to small businesses as they found ways to cope with the operational stress generated by COVID-19. For instance, the 2020 Action Plan for supporting small businesses through the COVID-19 crisis and towards the future had been helpful in supporting MSMEs during the crisis and allowing them to be at the forefront in generating resilience, inclusiveness, sustainability and future growth.

12.12. The pandemic remained a real threat to the survival of many MSMEs in developing countries. More therefore needed to be done to support them to weather that protracted storm. In addition to the pandemic, climate change and the attendant natural calamities were also drawbacks to the economic and social development of many developing countries. Kenya therefore welcomed the timely inclusion of SDG 13 on climate change to ITC's portfolio of indicators and mainstreaming environmental sustainability across its interventions. Kenya also commended ITC's initiatives to promote circular economy as that had a positive impact on the environment, job creation and the attainment of SDGs. Kenya appreciated the role of ITC in trade policy, particularly the integration of MSMEs, youth and women in trade. The efforts towards environmental sustainability was in relation to trade and called for more support to ITC to enable it to further advance its programmes and make more enterprises internationally competitive.

12.13. The representative of the International Trade Centre, speaking as an Observer, thanked the Members particularly Chad (LDCs), Mauritius (African Group), the European Union, Norway and Kenya for taking the floor and for their statements of support and encouragement. ITC was very pleased. More than one year into the COVID-19 pandemic, Members' words reaffirmed that ITC's role was even more crucial than before as the whole world, particularly the developing countries and their MSMEs were working hard to overcome its socio-economic consequences and to recover in a sustainable manner. 2020 had been a year of adjustments and readjustments for ITC and their beneficiaries. ITC had to be flexible and adaptable and had invested significantly to deliver through remote, online and hybrid models while developing contingency plans with its beneficiaries and funders. That had indeed paid off. To its funders, ITC thanked them for sustaining their financial support and continued commitment even at those trying times.

12.14. In 2021, ITC would build on the lessons learned from 2020 as its focus would remain fully on recovery and building resilience of its beneficiary counterparts. ITC would go deeper on gender equality, environmental protection, youth empowerment, e-commerce and would bring new insights, innovation and methodologies to address climate change, strengthen circular economy, develop digital solutions and help rebuild the tourism and agri-business value chains that had particularly been affected. ITC would work more closely with the WTO under the leadership of Dr. Ngozi and contribute in many areas – from investment, trade facilitation, gender and trade, e-commerce particularly by bringing in the voice of MSMEs and translating WTO discussions and agreements into operational priorities on the ground. In 2021, ITC would be planning for its next Strategic Plan that

would run from 2022 to 2025. ITC would be holding consultations with all Members and looked forward to their feedback. ITC remained committed to serving its Members through both the WTO and the UN Development System.

12.15. The Director-General was pleased to hear the positive comments from Members on the work of ITC. She had been opportune to see very good work of ITC and the WTO together on the ground in Nigeria working with groups of women to upgrade the quality of their products so they could break into export markets where they had not had access to due to SPS issues. That was one of the best things she had ever seen since she had taken that job nine weeks ago of what could be done on the ground working together. She commended ITC and had been meeting Ms. Pamela Coke-Hamilton to talk about how to work together better – to help build back better from the crisis particularly for women and MSMEs. She saw a lot of good opportunities and hoped ITC and the WTO would be able to work on those and achieve results for the benefit of the people.

12.16. The General Council took note of the statements.

### **13 COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION – REPORT ON MEETING OF MARCH 2021 (WT/BFA/193)**

13.1. The Chairman drew attention to the report in WT/BFA/193 and invited Ambassador Bettina Waldmann (Germany), Chair of the Committee on Budget, Finance and Administration, to introduce them.

13.2. Ambassador Bettina Waldmann (Germany), Chair of the Committee on Budget, Finance and Administration, focused her remarks on the report of the CBFA meeting of 8 March bearing the reference WT/BFA/193 and gave some highlights of the carry-over of discussions from the meeting.

13.3. On the 2021 Work Plan, the Committee had discussed the draft work plan for the year. The WTO and ITC budget proposal for 2022-2023 would be presented in June. The goal was to ensure adequate time for in-depth deliberations and a recommendation made for approval in time before the end of the year. Other topics to be discussed that year included the management of WTO trust funds, and strategic planning and horizontal coordination within the Secretariat. On the 2021 Salary Scale, the Director-General had a mandate to approve the salary scales for each year. No adjustment had been made to the salary scale for 2021. Thus, it remained the same as that for 2020.

13.4. On the Status Update on the Implementation of External Audit Recommendations, the external auditors performed two audits every year: a financial audit and a performance audit. The update given at the CBFA had been that 12 out of 38 recommendations were still open. The implementation of the remaining 12 recommendations was in progress. An update would be provided in the Audit Report for the 2020 Annual Financial Statements.

13.5. On the Contributions from Members and Observers, the Secretariat had notified the Committee that contributions received from Members for 2020 had been significantly lower than in 2019, 84% in 2020 relative to 92% in 2019. There had been 11 Members subject to administrative measures as of 31 December 2020. For Observers, the amount of outstanding contributions had been slightly lower than for 2019. Five Observers had been under administrative measures as of 31 December 2019. The measures in place to follow up on arrears included sending reminder letters several times during the year and regular follow-up with Member focal points by phone and e-mail. Some delegations had called for further steps to ensure transparency with regard to the issue of arrears, including in the context of reporting to the General Council. The Committee on Budget, Finance and Administration made the following recommendation to the General Council:

"The Committee invites the General Council to urge Members and Observers under Administrative Measures to liquidate their arrears."

13.6. On Coherence in the Establishment and Management of WTO Trust Funds, the topic was of key interest and had come up during several Committee meetings in the previous year. Members had emphasized the importance of implementation plans based on consultations with both beneficiaries and contributors, transparent and regular reporting, avoiding unnecessary proliferation of trust funds and oversight of specific trust funds by Members. Further discussions were continuing

in a small group process open to all delegations. Alicia Goujon from Mexico was helping her lead that process. Updates would be provided at future meetings of the General Council.

13.7. On the Proposed Financial Regulation for the Continuation of Operations Pending the Approval of the Budget, discussions had taken place in 2020 regarding a proposal to modify Financial Regulation 10 to provide a transition rule for situations where approval of the budget was still pending at the end of the year. Those discussions were continuing in 2021. Key areas of focus were: (1) the kind of expenditure that could be incurred during any interim period, (2) reporting to Members, (3) the period of interim authority and (4) assessment of contributions. Following a constructive discussion of the topic at the meeting of the CBFA held on 19 April, she had invited interested Members to consult with her to gather further information and respond to any questions. She would use CBFA meetings to provide transparency for delegations who were not actively participating.

13.8. On the After-Service Health Insurance, the cost of the medical insurance plan was split 60% / 40% between the WTO budget and members of the plan. The so-called ASHI (After Service Health Insurance) liability was an estimate of the future costs. The overarching point conveyed by the Secretariat at the 8 March CBFA meeting had been that the liability was very significant and had no underlying assets to fund it. Due to an aging population and medical inflation that was higher than general inflation, the liability forecast was to grow steadily over the coming years. The long-term cost implications for the budget required an actuarial study which was not undertaken every year. The next such valuation would be done in 2021.

13.9. On Procedural Improvements for CBFA work, the Committee had discussed a proposal relating to procedural improvements in the operation of the CBFA. She reported that the CBFA had adopted the proposal at its meeting held on 19 April.

13.10. The General Council approved the Budget Committee's specific recommendation in paragraph 5.11 of WT/BFA/193 urging Members and Observers under Administrative Measures to liquidate their arrears, took note of the CBFA Chair's statement and adopted the report in WT/BFA/193.

## **14 OTHER BUSINESS**

### **14.1 Statement by the Chairman in connection with Administrative Measures for Members in arrears**

14.1. The Chairman, 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.

14.2. Ambassador Bettina Waldmann (Germany), Chair of the Committee on Budget, Finance and Administration, recalled 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, she should state all Members and Observers under all categories of administrative measures. As at 4 May 2021, there had been 21 Members and 9 Observers under Administrative Measures. The following 10 Members were currently in Category I: Argentina; Belize; Plurinational State of Bolivia; Djibouti; Gabon; Mauritania; Papua New Guinea; Suriname; Togo and Yemen. The following 2 Members were in Category II: Cuba and Guinea. The following 9 Members were in Category III: Antigua and Barbuda; Burundi; Central African Republic; Chad; Congo; Democratic Republic of the Congo; Guinea-Bissau; Senegal and Bolivarian State of Venezuela. The following 5 Observers were in Category I: Comoros (Observer); Iran (Observer); Iraq (Observer); Lebanese Republic (Observer) and Sudan (Observer). There was only one Observer in Category II: Syrian Arab Republic (Observer). The following 3 Observers were in Category III: Libya (Observer); São Tomé and Príncipe (Observer) and Somalia (Observer).

14.3. The Chairman said that he 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.

14.4. The General Council took note of the statements.

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**ANNEX 1****STATEMENTS BY COLOMBIA ON TRIPS COUNCIL MATTERS (AGENDA ITEM 4), ON THE WORK PROGRAMME ON ELECTRONIC COMMERCE AND MORATORIUM ON THE IMPOSING CUSTOMS DUTIES ON ELECTRONIC TRANSMISSIONS – REQUEST FROM INDIA (AGENDA ITEM 7) AND ON THE PAPER ENTITLED "THE LEGAL STATUS OF 'JOINT STATEMENT INITIATIVES' AND THEIR NEGOTIATED OUTCOMES" – REQUEST FROM INDIA AND SOUTH AFRICA (AGENDA ITEM 8)**

At its request, the statements of the delegation of Colombia on Agenda Items 4, 7 and 8 are included below as part of the Minutes of the General Council meeting.

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**4 TRIPS COUNCIL MATTERS**

- A. STATUS REPORT ON THE CONSIDERATIONS BY THE TRIPS COUNCIL ON THE "PROPOSAL FOR A WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19" (IP/C/W/669) - STATEMENT BY THE CHAIR OF THE COUNCIL FOR TRIPS

I am making this brief intervention to express our support for the report presented by Ambassador Dagfinn Sørli as Chair of the Council for TRIPS. The text reflects in a factual manner the discussions and outcomes that have taken place in the Council. I would also like to take this opportunity to reiterate Colombia's commitment to the search for a coordinated response to the global health crisis caused by COVID-19 and the economic effects arising from measures taken to contain it. We are convinced that the WTO will be instrumental in ensuring a concerted response, from the technical level, necessary for overcoming bottlenecks in global production and distribution chains for vaccines and medicines. As we have reiterated on various occasions, this concerted response should contain elements in the areas identified as priorities: intellectual property, export restrictions and direct dialogue with producers in the pharmaceutical industry. Colombia welcomes the developments of the past few weeks and is more than willing to participate in the negotiations based on the proposed text.

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**7 WORK PROGRAMME ON ELECTRONIC COMMERCE AND MORATORIUM ON THE IMPOSING CUSTOMS DUTIES ON ELECTRONIC TRANSMISSIONS – REQUEST FROM INDIA**

I would like to thank India for its interest in the topic, and join those Members who have already taken the floor in expressing our interest in ensuring a further extension of the moratorium on e-commerce, as well as in reinvigorating the Work Programme on Electronic Commerce, as agreed at MC11. We firmly believe in the positive effect that the moratorium has on enterprises' exports, especially for MSMEs, as well as on the development of a globally competitive software industry. We hope that the importance will continue to be given to ensuring the two moratoriums to be examined at the next Ministerial Conference are treated consistently.

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**8 PAPER ENTITLED "THE LEGAL STATUS OF 'JOINT STATEMENT INITIATIVES' AND THEIR NEGOTIATED OUTCOMES" – REQUEST FROM INDIA AND SOUTH AFRICA (WT/GC/W/819/REV.1)**

We would like to reiterate our support for and commitment to the discussions that are taking place in the various joint initiatives on e-commerce, investment facilitation for development, services domestic regulation and MSMEs. Our position on the discussion paper is well known, and we would simply like to reiterate our statement made under the same agenda item at the last informal session on 30 March.

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