



General Council
22-23 November 2021

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD AND IN VIRTUAL FORMAT ON 22-23 NOVEMBER 2021

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

The Chair bade farewell to H.E. Dr. David Walker (New Zealand), the 26th Chair of the WTO General Council and expressed appreciation for his valuable contribution during his time as Permanent Representative. The Chair also welcomed H.E. Mr. Timur Suleimenov, Chair of the Twelfth Ministerial Conference, and invited him to address1 the General Council.

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

1.1. The Chair recalled that on 19 November, a Formal TNC and Informal Heads of Delegation meeting had been convened by the Director-General. At that meeting, oral and written reports had been received from the Negotiating Group Chairs on the status of work in their respective areas. The Director-General had provided her statement, and the Chair had also intervened. 48 delegations had taken the floor thereafter. The Director-General's report and the reports by the Chairs of the Negotiating Groups could be found in document JOB/TNC/101.

1.2. As indicated at that meeting, the Director-General's report at the Formal TNC as well as the reports of the Chairs of the Negotiating Bodies would be placed before Ministers at the Ministerial Conference through the General Council's own Report to the Conference. In addition, the reports of the regular bodies, which would be taken up under Item 20, would also be presented to Ministers – in accordance with the reporting obligations as adopted by the General Council and contained in document WT/L/105. The Chair would submit all of those reports at the Opening Session of the Ministerial Conference, to update Ministers on the work in the regular bodies of the WTO and in the negotiations.

1.3. The Director-General delivered the following statement³:

1.4. It is an honour to welcome our MC12 Chair, H.E. Mr. Timur Suleimenov. Your message of encouragement is timely and I look forward to working closely with you and our Ministers in ensuring a successful MC12. Let me also join the GC Chair in welcoming new Permanent Representatives and bidding farewell to departing ones. To the incoming ambassadors – I look forward to working with you. And to our departing Ambassador, Dr David Walker, whose second stint as New Zealand's Permanent Representative to the WTO will conclude at the end of December, I want to extend my heartfelt thanks and best wishes. Ambassador Walker embodies commitment to the multilateral trading system, and to making this institution deliver results. He served as Chair of the General Council in 2020, of the Dispute Settlement Body the year before, and previously of the Committee on Agriculture in Special Session. He has given generously of his time in roles that offer little thanks, leading difficult consultative processes, including now on the WTO's response to the pandemic. I hope we will successfully give Ambassador Walker and his Minister something to take back to Wellington from MC12.

1.5. Turning now to my report as TNC Chair, since the October meeting of the General Council, the TNC has held one formal meeting, on 19 November. In conjunction with you, GC Chair, we convened an informal Heads of Delegation meeting on 25 October to take stock of progress in several areas in our MC12 preparatory work. As you know, I convened a formal TNC and informal HoDs on Friday – which you also addressed.

1.6. As I noted on Friday, the TNC has reporting obligations to the General Council – and through the General Council to the Ministerial Conference. Therefore, written reports have been circulated by all Chairs of bodies established by the TNC, under their own responsibility. These have been circulated in the following official documents that I will read for the record and onward transmission by the General Council to Ministers, together with my report:

- a. Special Session of the Committee on Agriculture – TN/AG/50;
- b. Special Session of the Committee on Trade and Development – TN/CTD/35;
- c. Special Session of the Dispute Settlement Body – TN/DS/32;
- d. Special Session of the Council for TRIPS – TN/IP/30;
- e. Negotiating Group on Market Access – TN/MA/34;
- f. Negotiating Group on Rules – TN/RL/34;

³ The Director-General's statement was also circulated in JOB/GC/286.

- g. Special Session of the Council for Trade in Services – TN/S/42; and,
- h. Special Session of the Committee on Trade and Environment – TN/TE/26.

1.7. Beyond the work reflected in these reports, delegations continue their negotiations for outcomes. Work has intensified on both fisheries and agriculture – and there were weekend meetings all day long on both these negotiations. While negotiations on agriculture remain tough with positions not much changing, there is considerable momentum on fisheries. But work will be continuing in both areas this week – with any new developments submitted to Ministers as an update particularly at our first HODs meeting on 30 November. I would like to express my thanks to all the Chairs for their dedication and hard work, to the Secretariat staff and the translators who worked all weekend, and of course to the Ambassadors and experts who spent long hours in this very room. Thank you so much for what you are doing.

1.8. The days ahead will busy. As Ambassador Manley said on Friday, Geneva has to become the city that never sleeps. And I think we are getting there. The negotiating process will include the work of the Chairs, and through my work as Chair of the TNC, we will try to help find as much convergence as possible before Ministers arrive. And, of course, we have the Chair here to assist us. My experience right now is that Ministers are calling from all over the world and wanting to meet to assess the status of where we are. There is a very keen interest to know where we are making progress and where work will be needed. I am trying to keep updating them as they inquire.

1.9. So, in the days left, let us aim to present Ministers with documents as clean as we can possibly make them. We should try to avoid a Christmas Tree of alternatives because this will make it much more difficult for Ministers to come to a conclusion. By all means, we need to leave them with some work to do but let us make it as easy as we can so that we can get to yes whilst they are here. As I said on Friday, the world's eyes are on us. Let us constantly ask ourselves these questions: "What will Ministers take home from MC12?" and "What should Ministers bring to MC12 to help us succeed?" If we continue to ask ourselves these two questions, that will keep us focused on what we need to do. The answer to these two questions is actually in the hands of all of the people in this room. The success of MC12 is in your hands. I know you can and will make it happen.

1.10. The General Council took note of the Director-General's report and the reports of the Chairs of the Negotiating Bodies which would be forwarded to Ministers at MC12 through the General Council's report, to be submitted to Ministers in the General Council Chair's statement at the Conference. The General Council also took note that work on MC12 outcomes was continuing in the immediate next few days and that any results from that work would be in front of Ministers at MC12.

2 IMPLEMENTATION OF THE BALI, NAIROBI AND BUENOS AIRES OUTCOMES (G/RO/94) – STATEMENT BY THE CHAIR

2.1. The Chair recalled⁴ 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. For some issues, including the Work Programme on Small Economies, the Work Programme on Electronic Commerce, Moratorium on TRIPS Non-Violation and Situation Complaints, TRQ Administration, there would be separate items later in the agenda. Regarding the Work Programme on Electronic Commerce, the Chair's consultations would be reported under Item 8. With respect to the work in that area carried out by the respective bodies, the discussions were well reflected in the relevant Annual Reports under Item 20.

2.2. In the area of Agriculture, with respect to the implementation of the Nairobi Decision on Export Competition, since the Chair's last report in October, Brazil had submitted its draft modified schedule incorporating the Nairobi Decision. With this, out of the 16 Members with export subsidy reduction commitments at the time of the Nairobi Decision, 15 Members had circulated their draft schedules and 12 were already certified.

⁴ The Chair's statement was circulated in document JOB/GC/283.

2.3. Regarding the Services Waiver for LDCs, at the October meeting of the Services Council, the LDC Group had referred to the Declaration adopted by the LDC Trade Ministers outlining their priorities for MC12. Amongst the areas of special interest were a number of elements related to the LDC Services Waiver, which were aimed at improving the implementation of relevant Decisions and the preferences in favour of LDC services and service suppliers notified by Members to date.

2.4. On Preferential Rules of Origin for LDCs, the Chair drew attention to the annual report of the Committee on Rules of Origin to the General Council in G/RO/94, which contained details about recent developments in preferential rules of origin and the work of the Committee on Rules of Origin in that area. In addition, he noted that the LDC Group had also proposed that Members negotiated and adopted language to be inserted in the MC12 outcome document concerning the work of the Committee on Rules of Origin in that area reflected in G/RO/W/210. Relevant developments on the status of those discussions would be covered under Item 10.

2.5. Regarding Duty-Free Quota-Free Market Access for LDCs, at its meeting that had been held earlier that month, the Committee on Trade and Development had undertaken its annual review of the steps taken to provide DFQF market access to LDCs – as had been mandated by the relevant Bali Decision. The annual review had provided the opportunity for some Members to share information on their DFQF schemes for LDCs.

2.6. The situation in the Monitoring Mechanism on Special and Differential Treatment remained the same. At the meeting of the Monitoring Mechanism held earlier that month, the CTD Chair had once again urged Members to come to a common understanding on how to move forward with the Mechanism. The Chair would continue to work with Members in informal settings to explore what could be done to make the Mechanism operational.

2.7. Regarding Aid-for-Trade, at the October CTD Aid for Trade session, Members had reviewed the implementation of the Aid-for-Trade Work Programme. They had also agreed to launch the 2022 Monitoring and Evaluation exercise. The self-assessment monitoring questionnaires were ready for online completion on the WTO website, and the deadline for submission of the completed formats was 31 December. Responses to the monitoring exercise were key inputs for the following year's Global Review that would focus on "Empowering Connected Sustainable Trade".

2.8. And finally, on Trade Facilitation, the Committee continued its work on the four-year review of the Agreement. The rate of implementation commitments to date stood at just over 70% for the entire Membership – and the rate of ratification remained at 94%, with 9 Members still to ratify.

2.9. The Director-General delivered the following statement:

2.10. To use trade to better meet the needs of their people, developing countries need supply-side support, in terms of infrastructure but equally at the enterprise level. This is critical for our endeavours to ensure that the benefits of the multilateral trading system flow to all members, especially the weakest and most vulnerable. The Stocktaking Event on Aid for Trade this past March was one of my first high-level events after taking over as Director-General.

2.11. The event was very useful in gauging the depth of the pandemic's impact on Members' trade and development prospects. It also gave impetus to our actions to support the increased production and equitable roll-out of COVID-19 vaccines, diagnostics, and therapeutics. Unequal access to these COVID-19 countermeasures continues to weigh on the pace of economic recovery, particularly amongst our lowest income Members.

2.12. The pandemic has sharply accelerated the shift towards digital trade and e-commerce. The Global Review of Aid for Trade planned for July 2022 reflects this, with its theme of "Empowering connected sustainable trade." We have to help developing countries prepare for new ways of working and trading. And we have to ensure that women-owned businesses and MSMEs can take advantage of new commercial opportunities, both online and offline, because this is critical for making the gains from trade more socially inclusive.

2.13. Aid for Trade must increasingly reflect the green transition which is gathering in momentum. The Glasgow Climate Summit has clearly signalled the direction of travel for the global economy. The ongoing Aid-for-Trade Monitoring and Evaluation exercise forms an essential component of the

Global Review. I strongly urge you to participate in this survey; your replies to the monitoring exercise will form an essential input for next year's Global Review.

2.14. The representative of Chad, on behalf of the LDCs, delivered the following statement:

2.15. Regarding the LDCs, some progress has been seen, however we still have a long way to go. The Ministers of the LDCs agreed in their Ministerial Declaration of 19 October on a number of elements for all of these decisions that have been made, and we have to absorb them and see to it that they can be enforced and implemented. We submitted a text to your process for a final document to reflect the ten elements. We also submitted a compromise paragraph as an answer to those who have raised some concerns in order to reflect the request of our Ministers. Furthermore, we declared at the beginning of the TNC that we were concerned and worried by some efforts seeking to dilute or even suppress our elements. This paragraph has still been kept in the section of the final document as supplemental elements, but there has not been any consensus to place it in the first part of the document. It is our sincere hope that we will be able to solve this matter in a way which addresses the strong expectations of the LDCs. Our working method remains as usual based on realism and flexibility.

2.16. The representative of Pakistan delivered the following statement:

2.17. As we enter the last stretch towards yet another Ministerial Conference, and aim for ambitious outcomes, Pakistan wishes to invite attention to the severely lacking implementation record of previous Ministerial outcomes. As we have been highlighting in several of our statements, development remains the cornerstone of any effort at the WTO, and the end we seek to achieve by enhancing trade. Unfortunately, our track record of implementing our various Ministerial decisions and their mandated work programmes has been severely lacking, allowing questions to be raised on the WTO's credibility and relevance. The so-called Doha Development Round, which holds a promise that the concerns of developing countries would be addressed and corrections of imbalances in the WTO agreements, still lingers and lurks in the background whenever we move on substantive work.

2.18. With this baggage of unfulfilled past promises, a good signal for the world would lie in delivering meaningful outcomes on longstanding unimplemented mandates from past Ministerial Conferences. In this regard, correcting imbalances in Agriculture, and delivering on the G90 proposals on S&DT, delivering on an agreement on fisheries subsidies that is meaningful and sympathetic to the needs of developing and LDC Members, are of crucial importance. At the same time, an outcome on a TRIPS waiver, which forms the most crucial part of response to the pandemic and that would provide safe, equitable, and affordable access to COVID-19 vaccines, therapeutics, and equipment to the poorest in the world is mandated. A reiteration of existing trade policy measures from the rulebook does not constitute a response the world demands from the WTO at this time. Pakistan has been happy to contribute in all processes and at all levels on the response to the pandemic and looks forward to continue that engagement to make the COVID response meaningful and credible.

2.19. We at the WTO have suffered from many missed deadlines and unfulfilled mandates particularly developmental issues linked with livelihoods and developmental prospects of people in developing countries. We should not continue to fail those people. In this regard, I would urge you again to build a mechanism where the unfulfilled mandates and unimplemented decisions are regularly highlighted in this Council and at the Ministerial Conference as a reminder for us to act in the right direction.

2.20. The representative of India delivered the following statement:

2.21. We had stated in all preceding General Council meetings through the year that PSH has a clear ministerial mandate: that PSH negotiations have to be on an accelerated, separate track and any effort to link these discussions with other pillars is undermining the ministerial mandate. Unfortunately, the progress on finding the PSH solution as per the mandate has not progressed much. It has not progressed despite two large WTO negotiating groups, the G33 and the African Group making submissions; despite the G33 Ministers Joint Statement of September 2021 reiterating the need for expeditious resolution of Permanent Solution on the PSH at MC12, and reaffirming the G33 Members commitment and readiness to work with the rest of the WTO Members based on the elements contained in the proposals submitted by the G33 Members.

2.22. If the WTO Membership cannot deliver on the mandated issues of the past Ministerial meeting, then first, its competency comes under question. In a nutshell, credibility of the WTO hinges on the outcomes of the Bali and Nairobi Ministerial Mandates, especially when the food security issues have become pronounced due to the ongoing pandemic. The scale and its continuous resurgence over different parts of the world indicate that the pandemic may not be easing anytime soon. In these unprecedented times, the WTO should get out of the self-imposed impasse and redeem itself by delivering a permanent solution on PSH.

2.23. Pursuant to the Bali Ministerial Decision on Public Stockholding for Food Security Purposes and the General Council Decision of 2014 as contained in document WT/L/939, India notified the Committee on Agriculture that it has exceeded the de minimis level of market price support for rice for the marketing year 2018-2019 and 2019-20. Market price support for rice, a traditional staple food crop, is 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 for food security purposes, covering rice and several other commodities, have been consistently reported in its Table DS: 1 notification since 1995. The programme is consistent with the criteria mentioned in paragraph 3, footnote 5, and footnote 5 and 6 of Annex 2 to the Agreement on Agriculture. Further, the stocks under the programme are acquired and released to meet the domestic food security needs of India's poor and vulnerable population and not impede commercial trade or food security of others. For these reasons, the notified level of market price support for rice is covered by the peace clause set out in the Bali Ministerial Decision on Public Stockholding for Food Security Purposes (WT/MIN (13)/38) and the General Council Decision (WT/L/939). India has been constructively engaging on this issue with other Members in the meetings of the Committee on Agriculture Special Session. A simple, efficient, and permanent solution on extending PSH for food security purposes to new programmes and new products is, therefore, a key deliverable.

2.24. The proponents calling for transparency should lead by example. One flag bearer of transparency submitted DS1 Notification for the marketing year 2018-19 in May 2021, many months past the deadline of 30 September 2019. (Table DS:1 for the Marketing Year 2018/2019 was notified on 17 May 2021 vide G/AG/N/EU/69, status as of 18/11/2021.) This Member gave its reasons in the past to explain the delay. While it feels it can have reasons not to notify in time, it is ironic it does not see that others can also have genuine reasons for not notifying in time. As a responsible Member of the WTO, India is conscious of its notification obligations and has consistently complied with them, including the notification obligations prescribed in the document G/AG/2. Our domestic support and market access notifications are up to date. Our track record with meeting our transparency obligations has been much better than that of several Members pressing for enhanced transparency at the WTO.

2.25. The representative of South Africa delivered the following statement:

2.26. The inability of the WTO to implement agreed decisions and mandates contributes to the inequity we see in benefits from the multilateral trading system. In order for the system to function, it has to address and respond to issues of concern especially to the majority of its Members. In Bali, Ministers instructed the Trade Negotiations Committee to work on the remaining Doha Development Agenda issues, particularly on agriculture, development, S&DT and LDC issues. This work remains outstanding and is even more important in the context of the COVID-19 pandemic that continues to have a disproportionate impact on developing countries. The MC10 decision calling for Members to engage constructively to negotiate and make all concerted efforts to agree and adopt a permanent solution on the issue of public stockholding for food security purposes is very urgent. We hope that Members can identify what can be done to make meaningful progress on this important objective. Delivering on the development mandate is critical both as a response to the COVID-19 pandemic, as well as a means towards a more equitable and sustainable growth trajectory and global economic recovery. We stress the need for constructive engagements by all Members to arrive at outcomes acceptable to all. In our view, the dysfunction of the WTO is not limited to the Appellate Body, but in the inability of the WTO to deliver on multilaterally agreed mandated issues.

2.27. The representative of Indonesia delivered the following statement:

2.28. Indonesia continues to reiterate its priority and need to deliver on mandated issues in agriculture and fisheries subsidies for MC12 outcomes, as we have been trying to implement the mandate from Bali. On agriculture, we continue to maintain our position and priority that outcomes at MC12 should lead to achieve to the establishment of a permanent solution on public stockholding

for food security and comprehensive and balanced outcomes in special safeguard mechanism. Moreover, Indonesia and G33 cosponsoring Members have been constructively engaged and provided inputs for PSH discussions and, therefore, we urge that the text to be issued by the Chair of the CoA SS would reflect and accommodate our inputs and concerns, particularly on PSH and SSM. On the fisheries subsidies negotiation, Indonesia places great importance on the conclusion of the fisheries subsidies negotiation at MC12. We would like to convey our two concerns on the current fisheries negotiations. First, the discipline is not only about trade and fish sustainability but also about the livelihood of people, especially for small scale and artisanal fishermen. In this regard, the idea of limiting S&DT flexibilities to small scale fishermen only to 12 nautical miles, and not within our jurisdiction, undermines the rights of Members. Also, we believe that the de minimis base global marine catch criteria lacks the proportionality principle. We encourage all Members to kindly reconsider these issues.

2.29. The General Council took note of the Chair's statement as circulated in document JOB/GC/283 and of the statements.

3 WORK PROGRAMME ON SMALL ECONOMIES – REPORT BY THE CHAIR OF THE DEDICATED SESSION OF THE COMMITTEE ON TRADE AND DEVELOPMENT (WT/COMTD/SE/11)

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

3.2. Ambassador Muhammad Mujtaba Piracha (Pakistan), Chair of the Dedicated Session of the CTD, provided the following report:

3.3. I am pleased to introduce the report of the CTD's Dedicated Session on Small Economies to the General Council, which is contained in document WT/COMTD/SE/11. It has been prepared in line with the established practice for the Dedicated Session to submit a written report to the General Council in the year of a WTO Ministerial Conference. In addition to an introductory part, the report has two main sections. The first of these sections, titled "Submissions and Proceedings", provides an overview of the work undertaken in the Dedicated Session since the last Ministerial Conference – MC11 – held in Buenos Aires in December 2017. To briefly summarize the content of this section, let me say that seven formal meetings of the CTD in Dedicated Session have been held since MC11. Over this period, discussions took place, inter alia, on the challenges and opportunities experienced by small economies in their efforts to reduce trade costs, particularly in the area of trade facilitation; on the opportunities and challenges for small economies in attracting investments; and on the economic and trade impact of natural disasters on small economies.

3.4. At the most recent meeting of the Dedicated Session on 19 October 2021, Members considered a proposed text for a Ministerial Decision at MC12 on the Work Programme on Small Economies, which was submitted by the Group of Small, Vulnerable Economies in document WT/COMTD/SE/W/42. I am pleased to inform you that the Dedicated Session agreed to the text contained in this document. This is, in fact, the first text of a Ministerial Decision for MC12 agreed by all Members. The Dedicated Session also agreed to reflect this text in the other main section of the report – the section titled "Future Work" – in the form of recommendations or proposals to the General Council. These include, inter alia, the proposal that the General Council recommend to the Twelfth Ministerial Conference that Ministers reaffirm their commitment to the Work Programme on Small Economies and take note of all the work conducted to date; that the CTD be instructed to continue its work in the Dedicated Session on Small Economies under the overall responsibility of the General Council; and that work be undertaken specifically on integrating small economies into the post COVID-19 economy – in terms of the effects of the pandemic, as well as in terms of the challenges and opportunities.

3.5. The CTD in Dedicated Session would continue monitoring the progress of the small economy proposals in WTO bodies and in negotiating groups with the aim of providing responses, as soon as possible, to the trade-related issues identified for the fuller integration of small, vulnerable economies in the multilateral trading system. In short, the recommendation of the CTD's Dedicated

Session on Small Economies to the General Council is that the proposed text for a Ministerial Decision on the Work Programme on Small Economies, as contained in document WT/COMTD/W/SE/42, be transmitted to Ministers for adoption at MC12.

3.6. The representative of Guatemala, on behalf of the SVEs, delivered the following statement:

3.7. Guatemala would like to express its appreciation for the positive engagement of Members in delineating the recommendations of the Dedicated Session on Small Economies of the CTD to the General Council, to be further submitted to the Twelfth Ministerial Conference. Guatemala would like to thank the continued support of the WTO Secretariat, particularly, for providing relevant information and factual analysis for discussion among Members in the CTD's Dedicated Session on Small Economies. Guatemala looks forward to engaging with Members in monitoring the progress of the small economy proposals in WTO bodies and in negotiating groups with the aim of providing responses, as soon as possible, to the trade-related issues identified for the fuller integration of SVEs in the multilateral trading system.

3.8. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

3.9. We believe that the WTO can do more to address the specific difficulties of small economies which are rarely taken on-board in regular committees. As you well know, small economies are very susceptible to external shocks such as global crises, climate change or natural disasters. We therefore request that, post MC12, the CTD should take a very targeted approach towards addressing the issues of small economies in view of coming up with practical recommendations that can be adopted by WTO committees.

3.10. The representative of Antigua and Barbuda, on behalf of the OECS, delivered the following statement:

3.11. This statement is delivered on behalf of the WTO Members of the Organisation of Eastern Caribbean States (OECS). We also align ourselves with the statement to be delivered by Barbados on behalf of the CARICOM Group. We thank the Chair of the Committee on Trade and Development (CTD), Ambassador Dr. Muhammad Piracha of Pakistan for his report. Given our historic and current vulnerabilities, the OECS assigns great importance to the work of the CTD, including the Work Programme on Small Economies. We are also grateful to Guatemala for its continued leadership in the context of the Work Programme. Indeed, one of our Members, Saint Lucia, had the opportunity to make a presentation at the 40th Dedicated Session on 2 November 2020 on the opportunities and challenges for small economies in attracting investments. At the 41st Dedicated Session on 6 July 2021, another of our Members, Saint Vincent and the Grenadines, had the opportunity to present on the economic and trade impact of natural disasters on small economies. This came a mere two months after this island was devastated by a violent volcanic eruption and as a sign of the daily lived reality of many SVEs, the presentation was made in the immediate aftermath of the passage of Hurricane Elsa. The OECS is firmly in support of the proposal by the SVE Group for a Ministerial Decision at MC12 on the Work Programme on Small Economies. It contains the elements which we find important, notably advancing work on legacy issues of importance to us, such as economic and trade impact of natural disasters on small economies, and now, integrating small economies into the post COVID-19 economy.

3.12. The representative of Barbados, on behalf of CARICOM, delivered the following statement:

3.13. Like others before us, the CARICOM Group welcomes the Minister of Kazakhstan who will serve as the Chair of MC12 and assure him of our support during the upcoming conference. The CARICOM Group wishes to thank the Chair of the Committee for Trade and Development for his report and his work in bringing us to this stage of our work. We are pleased to see the progress that has been made under the auspices of the Work Programme on Small Economies overtime and particularly since the last Ministerial. This work has centred on ensuring the fuller integration of small vulnerable economies into the multilateral trading system and has highlighted the unique challenges faced by our countries including those in the CARICOM region. Since MC11, we have engaged with interest on the challenges small economies experience in their efforts to reduce trade costs particularly in the trade facilitation area, opportunities and challenges for small economies in attracting investments and economic and trade impact of natural disasters. The COVID-19 pandemic

has challenged the economies of the WTO in unprecedented ways the small and vulnerable amongst us have been particularly hard hit by the economic crisis that emanated as a result of the pandemic. As we seek to rebuild our economies and recover in a post-pandemic era, significant focus will need to be placed on examining the effects of the crisis, overcoming the challenges and taking advantage of the opportunities that have emerged as a result of the pandemic. We therefore look forward to our work in the WTO after the MC12 which will focus on integrating small economies into the post COVID-19 economy, effects of the pandemic, challenges and opportunities. We are pleased that the decision on the Small Economies Work Programme has been advanced to the Ministerial Conference. It not only gives us hope and comfort in realizing that our effort in the WTO is not in vain, but it also assures us that if we continue to work collectively and with the spirit of flexibility and pragmatism, we can surely add to the list of items for approval by our ministers in a few days. The Work Programme on Small Economies continues to be a critical aspect of the WTO's work. The CARICOM Group therefore looks forward to our continued work aimed at framing policy responses to the trade related issues identified for the fuller integration of the small economies into the multilateral trading system. The CARICOM Group reaffirms its commitment to the work of the CTD and its dedicated session on small economies and is ready and willing to continue its active participation in this regard.

3.14. The Chair noted that, as per the CTD Chair's report, the Dedicated Session had agreed to forward the draft decision contained in document WT/COMTD/SE/W/42⁵ to the General Council for transmission to the Ministerial Conference – the first text of a Ministerial Decision for MC12 that had been agreed by Members. This was reflected in the report before the General Council contained in WT/COMTD/SE/11, and the Chair welcomed this positive result. He therefore proposed that the General Council agree to forward the draft decision to the Twelfth Ministerial Conference for adoption by Ministers.

3.15. The General Council so agreed and took note of the report in WT/COMTD/SE/11, and of the statements.

4 REVIEW OF THE OPERATION OF THE BALI DECISION ON TRQ ADMINISTRATION – REPORT TO THE GENERAL COUNCIL (G/AG/32)

4.1. The Chair recalled that, at MC9, Ministers had instructed the Committee on Agriculture to review and monitor the implementation of Members' obligations established under the Bali Decision on Tariff Rate Quota Administration to promote a continuing process of improvement in the utilization of TRQs, commencing no later than 2017, taking into account experience gained up until then. The Review discussions had started at the October 2017 meeting of the Committee on Agriculture, and updates regarding the Review had been regularly reported to the General Council since then. The Review had been concluded in December 2019 when the General Council had approved the recommendations by the Committee on Agriculture contained in Annex 2 to G/AG/29. However, there had been no substantive agreement on the issue of the future operation of paragraph 4 of the Underfill Mechanism during the 2017-19 review exercise. In that regard, Members had agreed to defer the timeline for a decision on paragraph 4 of the Underfill Mechanism by two years to the end of 2021.

4.2. Mr. Marcos Da Rosa Uranga (Uruguay), Chair of the Committee on Agriculture, introduced the report on the matter in G/AG/32:

4.3. As regards the follow up to the Bali decision on tariff rate quota administration, it must be noted that as mentioned by the Chair, this decision required a review of its operation with a view to improving the utilization of tariff rate quotas. In December 2019, the General Council approved the recommendations by the Committee on Agriculture contained in Annex II G/AG/29 thereby concluding the review except with regard to the future operation of paragraph 4 of the Underfill Mechanism, an issue on which, as it was mentioned by the Chair, this whole agreement was to defer the time length for decision by two years, which means to the end of this year. Those recommendations from 2019 allude to a potential fragmentation of the decision by reaffirming the right to select Members listed in Annex B of the decision to discontinue the application of paragraph 4 should there be no agreement among Members on its future operation. Avoidance of a carve out for certain Members, which the lack of an agreement on the future operation of paragraph 4 within the agreed deadline could potentially trigger, remains an important motivation for Members to find an agreeable solution on this issue since then. Members have engaged in intense discussions in the

⁵ The draft decision was subsequently circulated as WT/MIN(21)/W/3.

Committee on Agriculture this year both in formal and informal settings to find a common agreement on this matter within the agreed deadline. Efforts focused mainly on finding a way to address the main sticking points identified in relation to the future operation of paragraph 4, a situation where a developing importing Member does not achieve the required increase in the fill rates while either retaining the current TRQ administration method or using an alternative administration method. One additional issue that was taken up more recently in the discussions concerns the relationship between the obligations arising from the Underfill Mechanism and specific revisions on TRQ administration an importing Member may have in its schedule of concessions.

4.4. As a result of those discussions, the proposed draft decision on the future operation of paragraph 4 of the Underfill Mechanism contains the following elements: first, splitting up the current paragraph 4 of the Underfill Mechanism into two subparagraphs, so for clarity, with regard to the standard requirement as in the proposed subparagraph 4 (a) and special and differential treatment in subparagraph 4 (b). Second, in order to address the main outstanding situation mentioned before, the draft decision proposes to add an additional option in order to reach the closure of the matter. This would require the concerned developing importing Member that fails to meet the required fill rate standard after two years in the final stage of the Underfill Mechanism having used an alternative administration method or maintained the current method in place to implement the standard requirements in the first part of the current paragraph 4 if so requested by interested exporting Members.

4.5. Third, in line with paragraph 14 of the Bali decision, which requires that the General Council recommendations in relation to paragraph 4 of the Underfill Mechanism shall provide for S&DT, the content of the S&DT element in current paragraph 4 is reproduced without any alteration in the proposed subparagraph 4 (b). Indeed, a developing importing Member in the final stage of the Underfill Mechanism may maintain the current TRQ administration method or use an alternative method and achieve a resolution of the matter by showing the required increase in the fill rate. It is only if the importing developing Member that benefits from this S&DT provision does not achieve the required increase in the fill rate in the next two years that the proposed decision may require that Member to apply the standard requirement and change its administration method to first come first serve at customs for automatic licensing and maintain it for a minimum of two years. It should be noted that the requirement to apply that provision is not automatic even after those two years, instead the proposed obligation would apply only based on request by the concerned exporting Members. In case no request is made, despite the importing developing Member not meeting the required fill rate standard the underfill matter would be marked as closed.

4.6. Fourth, a new footnote 6 is proposed to address the potential concerns that a few Members expressed on the relationship between the obligations arising from the Underfill Mechanism and those contained in importing Members' schedules of concessions. This is to be read in conjunction with paragraph 5 of the Underfill Mechanism, which already establishes a hierarchy between the obligations under the covered agreements which includes Members' goods schedules and the provisions of the Underfill Mechanism by stating that, and I quote "in the event of any conflict the provisions of the governed agreement shall prevail". Fifth and final, as an agreement on the future operation of paragraph 4 of the Underfill Mechanism would also lead to the conclusion of the review of the operation of the Bali decision pursuant to paragraph 13 to 15 of the decision. The draft decision accordingly proposes that these three paragraphs along with Annex B of the decision are rendered non-operational.

4.7. The Committee on Agriculture reconvened its 99th regular meeting on 9 November to take up the suspended agenda item on the implementation of the Bali decision on TRQ administration. At that meeting, the Committee discussed and agreed to forward the draft decision contained in Annex 2 of G/AG/W/214 to the General Council for consideration and for its subsequent submission to MC12 for a decision by Ministers with the understanding that some Members still required some additional time for consultations with their capitals on the draft decision. My report, along with the draft decision, as contained in document G/AG/32, was sent to the General Council on 11 November as agreed. I have since been in constant touch with delegations including those that requested some additional time on 9 November in order to receive their definitive response on this matter. My understanding is that some of these delegations may still require some extra time to finalize their consultations even after today's meeting. I have heard no opposition so far, however, to the idea of submitting this draft decision for the consideration of Ministers at MC12 as discussed in our last meeting of the CoA.

4.8. As per the revised decision, in principle, it is the Ministerial Conference which should take a decision on the recommendations of the future operation of paragraph 4 of the Underfilled Mechanism. The General Council could also do that under certain conditions, in particular, in case the Ministerial Conference does not take place by the agreed deadline for a decision. Taking this into account and bearing in mind the end-2021 deadline and the way forward agreed in the Committee on Agriculture, I will recommend Members to consider the draft decision today with a view to its submission to MC12 for a decision by Ministers. I will also urge, one more time, all the concerned delegations to redouble their efforts in order to finalize this matter in time for a decision by MC12.

4.9. The representative of India delivered the following statement:

4.10. My delegation is not in a position to support the proposal of Costa Rica on TRQ. India wishes to seek an extension for another two years of the Bali TRQ Declaration.

4.11. The representative of the United States delivered the following statement:

4.12. The United States supports the revised language in paragraph 4 of Annex A of the Bali Decision on TRQ Administration. We appreciate efforts, particularly by Costa Rica, to attempt to finally resolve this issue in a balanced and pragmatic way that allows for sufficient special and differential treatment for developing country Members. As stated before, the United States is ready to give up its rights under Annex B, if the Membership can find agreement on this language. However, we remind Members that in the event that an extension or modification of this language cannot be agreed by the 31 December deadline, the United States reserves its right, as a Member of Annex B, to no longer apply the underfill mechanism. We reserve this right because we need to see a mechanism with appropriate special and differential treatment. We believe that it is finally time to resolve this issue and we do not favour any extension.

4.13. The representative of Ukraine delivered the following statement:

4.14. Ukraine welcomes the report to the General Council and appreciates efforts undertaken by the Chair of the Committee on Agriculture in seeking an agreement on the issue of the operation of paragraph 4 of the TRQ Underfill Mechanism. We also acknowledge the hard work and valuable contributions by Members, especially Costa Rica, for providing specific textual proposal regarding the Bali Decision on TRQ Administration in the draft Ministerial Decision attached to the Report to the General Council (G/AG/32). We consider that proposed draft Ministerial Decision containing recommendations for the future operation of paragraph 4 retains the current S&DT provision under the proposed sub paragraph 4(b) in terms of methods and timing. We would like to reiterate our support to the proposal. We believe it strikes the right balance while providing the necessary solution as per paragraph 14 of the Bali TRQ Decision. Ukraine would like to appeal to Members to give due consideration to the effects of the lack of consensus to reach the decision on application of paragraph 4 of the TRQ Underfill Mechanism and would welcome the closure of the matter as soon as possible.

4.15. The representative of Paraguay delivered the following statement:

4.16. Paraguay has been making efforts in the Committee on Agriculture to achieve a solution on this matter. We express our deep concern in the face of the possibility of not reaching an agreement on this matter for various reasons. We maintain our view of the need for special and differential treatment for developing countries in connection with paragraph 4 (b) before making any changes to the administration methods. The solution has been worked on by a group of Members headed by Costa Rica on paragraph 4 (b) and consultations have been taking place for a number of months. Those countries who are still involved in consultations should complete these as soon as possible in order not to undermine Members' positions. In terms of the application of the decision, we hope that this decision can be adopted soon at MC12.

4.17. The representative of Canada delivered the following statement:

4.18. Canada welcomes the introduction of the report on the review and operation of the Bali TRQ Underfill Mechanism. The General Council is tacitly agreeing to recommendations on how to improve the operation of the Bali TRQ Underfill Mechanism as regards paragraph 4 on special and differential treatment. In our view, the proposed changes to paragraph 4 strikes the appropriate balance that will provide effective special and differential treatment for developing country Members and at the

same time ensuring that all Members will be subject to the underfill mechanism. The proposed changes in the report would also mean that Annex B could be removed from the decision as its original intention was to ensure that paragraph 4 would allow for effective special and differential treatment. Canada fully supports the adoption of this report and the recommended changes to paragraph 4 of Annex A of the Bali decision. We call on all Members to join consensus and adopt the report and changes to paragraph 4 of the Bali TRQ Underfill Mechanism.

4.19. The representative of Australia delivered the following statement:

4.20. Uruguay, in its role as Chair of the Committee on Agriculture, has made good faith efforts to find a compromise on this longstanding issue. We support the report that Uruguay has submitted. We support the comments made by Brazil and Canada on this issue. We do not support an extension and do not consider it required. We hope that this can be resolved before MC12. As Brazil has already noted, this is the only outcome on agricultural market access that has been before us and we have had substantial discussion over several weeks and months. We hope that consensus can be achieved.

4.21. The representative of the European Union delivered the following statement:

4.22. The European Union would like to thank the CoA Chair and all those who contributed to the agreement reached in document G/AG/32. The European Union hopes that consensus can be reached and the text as elaborated in document G/AG/32 can be sent for the approval of our Ministers at MC12. The European Union hopes that Ministers can reach agreement at MC12. In case no agreement could be reached, we are in favour of extending the review of the Bali TRQ decision so that we can come back to this in the future.

4.23. The representative of South Africa delivered the following statement:

4.24. South Africa welcomes the report of the CoA Chair contained in G/AG/32. In our experience, there are many factors that result in low fill rates, including the tariff differential between MFN duties and in-quota tariff duties, preferential trade agreements and availability of supplies at competitive prices from neighbouring countries. All these factors make TRQs less attractive for economic operators and low fill rates cannot thus be ascribed to TRQ administration and a changed administration method will not remedy this. As indicated in the report of the CoA Chair, we would like to inform Members that our national consultations with regard to the proposed Ministerial Decision accompanying the CoA Chair's report have not been concluded and we shall express our position as soon as possible.

4.25. The representative of Japan delivered the following statement:

4.26. Japan appreciates the hard work by the Members to find a solution to the issue of the Bali TRQ Review. We echo the expressions of support from previous speakers for the draft text because it certainly strikes a balance between appropriate S&DT and ensuring participation in this mechanism by all Members. I hope we can reach consensus based on the draft text.

4.27. The Chair said that, as Members had heard in the CoA Chair's report, as a result of intensive consultations and efforts by the Chair and the delegations, the CoA at its meeting on 9 November had agreed to forward the draft decision contained in the annex of document G/AG/32 for the consideration of the General Council and for its subsequent transmission to the Ministerial Conference. He proposed that Members proceeded on this issue accordingly to transmit the draft decision for the consideration of the Ministerial Conference. Members had also heard from the report of the Chair of the Committee on Agriculture that some of them were still consulting their capitals on this matter, and would continue to do so after the General Council meeting. He encouraged all delegations to redouble their efforts so that a result could be finalized in time for a decision by the Ministerial Conference. He also stressed that, as approved by the General Council in December 2019, the deadline for a decision on paragraph 4 of the Underfill Mechanism was the end of 2021. A decision in this respect was therefore urgent. Considering the end of the year deadline for a decision, they could be required to revisit the matter should Members not reach an agreement at MC12.

4.28. The General Council took note of the report by the Committee on Agriculture and of the statements.

5 THE DEVELOPMENT ASSISTANCE ASPECTS OF COTTON - PERIODIC REPORT BY THE DIRECTOR-GENERAL (WT/GC/238 – WT/CFMC/DG/9 – WT/MIN(21)/5)

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

5.2. The Director-General provided the following report:

5.3. I am pleased to introduce the Ninth Periodic Report on the Development Assistance aspects of Cotton, which was circulated on 15 November 2021 in document WT/GC/238. Cotton is an important issue to me personally, and I am pleased to observe that, since the last Periodic Report in November 2017, we have continued to make progress. But there is room for improvement. This is reflected in the Evolving Table (ET) circulated twice a year by the Secretariat, which plays an important role in monitoring and tracing global development assistance programmes on cotton. The latest version of the table (WT/CFMC/6/Rev.31), circulated on 27 October 2021, shows scope to increase the ratio of disbursements to commitments both for cotton-specific programmes and for more general agriculture and infrastructure programmes that also impact cotton. I would thus encourage both assistance providers and partners to consider how this can best be achieved.

5.4. Pursuant to a request by beneficiaries of cotton development assistance, the Evolving Table now includes a compilation of cotton-related development assistance requests. This should help to give visibility to developing countries' cotton-related needs and project-oriented requests. Currently, ten projects have been submitted by Benin, Burundi, Burkina Faso, Cameroon, Mali, and one regional project from the C-4, the "Cotton Road Map Project". These projects can be found in Part IV of the Evolving Table. On the donor side, I would like to praise all the Members who have provided updates for the latest revisions of the table, namely: Australia, Brazil, Canada, Colombia, the European Union, France, Germany, India, Italy, Japan, the Netherlands, New Zealand, Switzerland, Turkey, and the United States.

5.5. I would also like to highlight the important role played by multilateral and regional organizations that actively collaborate with the WTO with regards to our cotton development assistance mandate, including: the United Nations Food and Agriculture Organization (FAO), the International Cotton Advisory Committee (ICAC), the International Trade Centre (ITC), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), the Common Fund for Commodities (CFC), the Enhanced Integrated Framework (EIF), the Organisation of African, Caribbean and Pacific States (OACPS) and the World Bank. Furthermore, I would like to report that since 2018, the WTO, UNCTAD, and ITC have been collaborating on a Joint Initiative on Cotton By-Products. The initiative seeks to help LDCs exploit the untapped value of cotton by-products and to generate additional revenue streams from cotton production, processing, and trade.

5.6. In addition, the WTO in October 2019 hosted the launch of World Cotton Day (WCD) to showcase the contributions which cotton makes to economies worldwide. This event helped the C-4's successful campaign to get the United Nations General Assembly to adopt a resolution recognizing 7 October as World Cotton Day. The UN resolution acknowledges the role of trade and development assistance for cotton, particularly in terms of the sector's economic and social impacts. You will remember the World Cotton Day last month, which included high-level interventions to the General Council.

5.7. Finally, I wish to draw your attention to a WTO Secretariat study on the impact of the COVID-19 pandemic on the cotton sector of a group of African LDCs. The study, entitled "Impact of the COVID-19 pandemic on cotton and its value chains: the case of the C-4 and other LDCs" found that the pandemic has caused significant losses in cotton export revenues for the ten reference LDCs to fall by 34%, though some countries were able to maintain or even expand export levels. Declining revenues, affecting the livelihoods of millions of people, including the millions of women who work across the cotton production and textile value chains. The study stresses that beneficiaries and

donors should work hand in hand to situate cotton within the context of broader COVID-19 recovery plans in African LDCs aimed at boosting economy-wide competitiveness and productivity. The findings from the study will inform an upcoming WTO partners' conference on 30 November to support development assistance for cotton production, processing, transformation, and trade in LDCs.

5.8. The sustained engagement and cooperation of providers of development assistance for cotton, beneficiaries, and partner organizations in the WTO Consultative Framework Mechanism on Cotton is very encouraging. It stands as a positive example as we work to consolidate the development dimension of the multilateral trading system.

5.9. The representative of Burkina Faso, on behalf of the C-4 and the 36 African Country Cotton and Cotton Product Producers and/or Exporters, delivered the following statement:

5.10. I would like to make this statement on behalf of the C-4 for the sectoral initiative in favour of cotton, on behalf the C-4, Cote D'Ivoire and all of the African cotton exporting countries. We would like to express our thanks to the Chair of the consultative framework mechanism on cotton for the report on the exchanges in trade for the development of cotton. Initiatives have multiplied in order to promote the development of cotton, for example, the regular work of the consultative framework mechanism of the Director-General in favour of cotton and the various sessions of the C-4 that have been organized. The C-4 would like to thank the Director-General for her dynamism and also thank the Permanent Representatives and the Deputy Director-General who have been helping us in this work. We would also like to express our appreciation to Ambassador Abraham (Costa Rica), the CoA SS Chair, who has made every effort possible in order to move forward in the negotiations in agriculture in general and particularly on cotton.

5.11. In terms of the development-assistance aspect of cotton, the C-4 takes note of the United Nations document dated 30 August 2021 on the Global Summit on Cotton. The adoption of this document represented the end of a road that we started along in 2009 with all actors on cotton. Allow me to thank the WTO and all development partners for their support to the C-4 Members. Despite the difficult situation currently faced with COVID-19, the C-4 along with all Members of the WTO have celebrated the World Cotton Day which reminded us of the importance of cotton to our countries and to LDCs in particular. We call on the attention of the international community on the multiple challenges this sector is facing – which necessitates an expression of solidarity from the world with the C-4 in order to overcome these challenges. Equally, the C-4 would like to express a special thanks to the WTO Secretariat for the study on the impact of COVID-19 on cotton and its value chains. On the C-4 and the LDCs, the study showed to what degree the cotton sector has been hard hit by the COVID-19 pandemic and how we need greater efforts in order to overcome these challenges.

5.12. MC12 starts next week. The C-4 hopes that the negotiations would be conducted in a manner that would facilitate in finding solutions to the multiple challenges that the cotton sector is facing. For many LDCs, this sector is a key pillar of the economy and provide revenue for millions of people. We are however still struggling to find an outcome despite having the Hong Kong mandate. The C-4 would therefore invite all Members to be more committed and flexible in order to find a multilateral solution which would fully address the issues concerning trade-distorting measures that continue to pose detrimental effects to small producers who struggle to live from the fruits of their labour. The C-4 is open and flexible to continue negotiations with all Members and aims to reach an outcome on cotton at MC12. The C-4 invites all Members to join us in this effort. Finally, the C-4 would like to express its profound gratitude to all Members and partners supporting us and we would like to reiterate our request for them to show the same support for the negotiations on cotton in order to achieve an outcome at MC12. In echoing the Director-General, we would like to invite all Members to actively take part in the cotton meeting to be held on the fringes of MC12.

5.13. The representative of China delivered the following statement:

5.14. We fully share the view in the DG's report that cotton is of undeniable systemic importance for the African countries that produce and trade cotton. COVID-19 has impacted millions of cotton farmers in Africa and decreased their export revenues by 34% last year. Assistance to developing members, the C-4 in particular, is essential to enhance the productivity and competitiveness of their cotton industry and to combat COVID-19 through local capacity building. China has always been a strong supporter to the C-4 and other LDCs for agricultural cooperation, particularly on cotton

development assistance. Under the framework of South-South China-FAO Initiative, three programmes were launched in 2019 and 2020 in Africa for improving cotton production and capacity development. Eight training programmes were conducted, with 230 African cotton technicians trained and two technology demonstration projects established. Furthermore, over the last few years, China has invested around 500 million USD in nine African countries including C-4 countries Mali and Benin, benefiting 200,000 households. China also supported the C-4 for its participation and organization of the World Cotton Day at the WTO and the cotton planning conference at home in 2019 and 2020. China will continue to play a constructive role in this regard. China likewise endorses the Ninth Periodic Report by the Director-General.

5.15. The representative of the United States delivered the following statement:

5.16. We thank the Director-General and Members for their statements today. We can foresee further discussions, post-MC12, to brainstorm on an effective approach to technical assistance for C-4 countries aimed at enhancing investments and further developing viable cotton by-product industries in LDCs. We welcome the cotton and COVID-19 assessment study by the Secretariat entitled "Impact of the COVID-19 pandemic on cotton and its value chains: the case of the C-4 and other LDCs", which is timely and might serve as a starting point for a dialogue to share Members' experiences of resiliency, adaptation, and post-pandemic recovery in the cotton sector. Perhaps the DGCFMC could build on this study and invite beneficiary countries of cotton assistance to make presentations and share experiences on how they are mainstreaming cotton productivity and competitiveness in their COVID-19 recovery plans.

5.17. The representative of Cameroon delivered the following statement:

5.18. Cameroon welcomes the report of the Director-General which looks in detail at our organization's work on cotton. We support the C-4 statement in this regard which explicitly and profoundly mentions the expectations of the African cotton producing countries. We would like to thank the WTO for its impressive work particularly the DDG and the Agriculture Division which, under the auspices of the Director-General, made efforts each day to respond in a detailed manner as best as possible to the expectations of the Members in this regard. Although it is certain that progress has been slow in terms of negotiations on reducing domestic support, it should be said and recalled on a positive note that great efforts have been made in terms of development. These efforts however should not overshadow the rest of the mandate. More than two million people depend on the cotton sector in Cameroon and so it has a social impact. That is why we need to continue our efforts to meet the expectations of developing countries in both facets of our work. The COVID-19 pandemic has exacerbated the crisis already seen in this sector which is extremely fragile and which requires urgent responses. That is why the donor conference on 30 November in the fringes of the Ministerial Conference requires all parties and all donors to pay particular attention to the projects which are on the agenda of this conference. We have every hope that the various parties will help us address the issues we face in this sector. We thank all of them for their support and for rising to the occasion.

5.19. The representative of Nigeria delivered the following statement:

5.20. We have been a strong supporter of these efforts since 2003 when the cotton initiative was launched in the Fifth WTO Ministerial Conference. We urge Members to really consider the critical situation of the C-4 with the view to addressing their request on the elimination of subsidies on cotton as well as providing the necessary technical assistance. We support that the C-4's request be tabled at MC12 for Ministers' consideration.

5.21. The representative of Australia delivered the following statement:

5.22. Many Cairns Group colleagues have often talked about the cause of the C-4. We have let them down for too long. Burkina Faso, Cameroon and others have spoken today eloquently about this cause. We do need to take a step forward on this important issue at MC12.

5.23. The representative of the European Union delivered the following statement:

5.24. The European Union congratulates Burkina Faso on behalf of the C-4 and Côte d'Ivoire for the recognition of 7 October as World Cotton Day. The European Union also thanks the C-4 countries for presenting last year the draft declaration on an action plan to enhance support for cotton by-product

development. Following the Nairobi Decision on cotton, the European Union has continued to support efforts and contributions to enhance the production, productivity and competitiveness of the cotton sector in developing country Member producers, especially the LDCs. The European Union has been an engaged partner at WTO level, at regional level and at national level in partner countries where cotton has been identified as a priority sector. We continue to support cotton projects through a number of our aid for trade interventions, including through our support to the EIF. The European Union has also recognized the importance of cotton by-products specifically in our programming. For example, the European Union's 2020-2023 programme in West Africa on competitiveness specifically includes a focus on the cottonseed oil sector. The European Union will also engage in the Partners Conference on "Development Assistance for Cotton Production, Processing and Trade in Least-Developed Countries (LDCs)" that will take place at the WTO on 30 November. The European Union's objectives in supporting sustainable and inclusive cotton by-product value chains are to ensure an income to smallholder farmers but also a decent life and improved resilience for thousands of small producers in developing countries and especially LDCs. The European Union has comments to propose on the draft and looks forward to continuing the discussion on the text.

5.25. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

5.26. The African Group vigorously supports the statements made by Burkina Faso, Chad, Cameroon and Nigeria. We regret the fact that there has not been any concrete solution in this area. We thank all of those who spoke this morning about technical assistance contributions to the C-4 in favour of cotton and the technical improvement as well for producers. It goes without saying that this assistance is very important, but this has not been enough. It is not sufficient. What we have to understand is that there has to be a response in the agriculture negotiations for cotton and the Ministers will be dealing with this matter. It is very sensitive for our countries and it is our hope that we can find a response on cotton that is not only adequate but also lasting.

5.27. The General Council took note of the Director-General's report in document WT/GC/238 – WT/CFMC/DG/9 – WT/MIN(21)/5 and, and of the statements.

6 TRIPS COUNCIL MATTERS

6.1 Annual Review of the Special Compulsory Licensing System – Paragraph 7 of the Annex to the Amended TRIPS Agreement and Paragraph 8 of the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540 and WT/L/540/Corr.1) – Report of the Council for TRIPS (IP/C/90)

6.2 Proposal for a Decision on an Extension of the Period for the Acceptance by Members of the Protocol Amending the TRIPS Agreement (IP/C/89)

6.1. The Chair proposed to open the floor once after taking up all four sub-items. On the first two sub-items, he recalled that, in August 2003, the General Council had adopted a Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. In addition, the General Council had adopted, in December 2005, a Protocol amending the TRIPS Agreement. In accordance with Article X.3 of the WTO Agreement, the Protocol had entered into force on 23 January 2017, upon acceptance by two-thirds of the WTO Members. Both the amended TRIPS Agreement and the 2003 Decision provided that the TRIPS Council should review annually the functioning of the system and should also report on its operation to the General Council. He also recalled that those Members that were yet to accept the Protocol amending the TRIPS Agreement currently had until 31 December to do so.

6.2. Ambassador Sørli (Norway), Chair of the Council for TRIPS, provided the following report:

6.3. The amendment to the TRIPS Agreement entered into force in January 2017. The amendment provides a special compulsory licensing system for the benefit of countries which rely on imports of medical technologies because of insufficient or no domestic pharmaceutical manufacturing capacities. It makes permanent the related rules already contained in the earlier waiver decision. At its meeting 13-14 October, the TRIPS Council completed its Annual Review of the Functioning of the System pursuant to Paragraph 7 of the Amended of TRIPS Agreement and Paragraph 8 of the

Decision on 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. The TRIPS Council's report on this review to the General Council has been circulated in document IP/C/90. It includes information about implementation and use of the system, the status of acceptances of the protocol amending the TRIPS Agreement as well as activities undertaken to make the system work effectively. The record of the discussion that took place during the Council's review of the system is also attached to the report. Pursuant to the General Council's Decision taken in 2019, the Protocol is open for acceptance by the remaining Members until 31 December 2021 or such later date as maybe decided by the Ministerial Conference. Despite indications that a number of Members are making domestic efforts in this regard, there are still 31 WTO Members that are yet to accept the protocol. The TRIPS Council therefore agreed to propose to the General Council a decision to extend the period for acceptance by two more years – until 31 December 2023. This proposal is set in document IP/C/89. On behalf of the TRIPS Council, I am submitting this to the General Council for a decision today. I would like to call upon those Members who have yet to accept the protocol to expedite action. A practical guide on how to do so is available on the WTO's webpage on TRIPS and Public Health. The Secretariat will, as always, be happy to provide further assistance in this regard, if necessary.

6.4. The Chair noted that this draft decision was before Members for action by the General Council. In light of this report, and unless any delegation wished to comment, he proposed that the General Council took note of the report of the TRIPS Council in document IP/C/90 and adopted the draft decision in document IP/C/89 extending the time period for acceptance by Members of the Protocol amending the TRIPS Agreement until 31 December 2023.

6.5. The General Council so agreed.⁶

6.3 TRIPS Non-Violation and Situation Complaints (IP/C/91)

6.6. The Chair drew attention to the draft decision on the Moratorium on TRIPS Non-Violation and Situation Complaints, which had been submitted to the General Council by the TRIPS Council. The texts of the draft decision could be found in IP/C/91. This was the result of the intensive discussions that had taken place in the TRIPS Council, and he welcomed the agreement that had been reached. The draft decision was before the General Council for onward transmission to the Ministerial Conference. So, unless any delegation wished to comment, he proposed that the General Council agreed to forward this draft decision to the Twelfth Ministerial Conference for Ministers' adoption.

6.7. The General Council so agreed.⁷

6.4 Status Report on the Considerations by the TRIPS Council on the Revised "Proposal for a Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19" (IP/C/W/669/Rev.1) – Statement by the Chair of the Council for TRIPS

6.8. The Chair recalled that the final sub-item related to a status report by the Chair of the Council for TRIPS on the revised "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/Rev.1. Since the October meeting, he understood that the TRIPS Council had considered this request again at its meetings in October and November.

6.9. Ambassador Dagfinn Sørli (Norway), Chair of the TRIPS Council, provided the following report:

6.10. At the meeting of the TRIPS Council on 15-16 October 2020, India and South Africa 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 has since been co-sponsored by the delegations of Kenya, Eswatini, Mozambique, Pakistan, Plurinational State of Bolivia, Bolivarian Republic of Venezuela, Mongolia, Zimbabwe, Egypt, the African Group, the LDC Group, the Maldives, Fiji, Namibia, Vanuatu, Indonesia and Jordan.

⁶ The decision was circulated in WT/L/1122.

⁷ The draft decision was subsequently circulated in WT/MIN(21)/W/4.

6.11. Since the introduction of the document, discussions took place in various formal and informal TRIPS Council meetings. Delegations exchanged views, asked questions, sought clarifications and 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. On 21 May 2021 the co-sponsors issued a revised proposal which was circulated in document IP/C/W/669/Rev.1. The revised waiver request was presented at an informal open-ended meeting of the Council on 31 May, and introduced at its formal meeting on 8-9 June 2021. It has since been co-sponsored by Malaysia. On 29 September 2021, the co-sponsors circulated a summary of their interventions in document IP/C/W/684.

6.12. Since the last oral status report delivered on 7 October 2021, discussions continued in small-group consultations, at a formal meeting of 13-14 October, at informal open-ended meetings on 5 and 15 November, and at an informal and resumed formal meeting on 18 November 2021. In the course of discussions on the revised waiver proposal, delegations held focused discussions on the topics of 'scope', both from the perspective of products and of IP rights, on 'duration', 'implementation' and on protection of undisclosed information. Delegations engaged positively and their detailed substantive exchanges helped clarify various aspects and nuances of positions. While delegations remain committed to the common goal of providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all, disagreement persists on the fundamental question of whether a waiver is the appropriate and most effective way to address the shortage and inequitable distribution of and access to vaccines and other COVID-related products.

6.13. In addition, a proposal for a draft General Council declaration on the TRIPS Agreement and Public Health in the circumstances of a pandemic, issued by the European Union and circulated in document IP/C/W/681, has also been discussed in meetings since its circulation on 21 June 2021. Delegations exchanged views, asked questions, sought clarifications and provided replies, clarifications, and information. Disagreement persists on the fundamental question of whether this proposal is the appropriate and most effective way to address the shortage and inequitable distribution of and access to vaccines and other COVID-related products.

6.14. This means that the TRIPS Council has not yet completed its consideration of the revised waiver request. The TRIPS Council will therefore continue its consideration of the revised waiver request, including through small-group consultations and informal open-ended meetings, and report back to the 12th Ministerial Conference as stipulated in Article IX:3 of the Marrakesh Agreement. In addition, the TRIPS Council will also continue in the same manner its consideration of the other related proposals by Members.

6.15. The Chair thanked Ambassador Sørli for his report on the discussions in the TRIPS Council. As Members had heard in the report, he noted that discussions on this very important issue continued in the TRIPS Council with a view to achieving results at MC12.

6.16. The representative of Barbados, on behalf of CARICOM, delivered the following statement:

6.17. The CARICOM Group aligns with the statement to be delivered by Jamaica on behalf of the ACP Group. The CARICOM Group takes note of the status report provided by the Chair of the TRIPS Council on the revised proposal for a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19. Whilst it would appear that some progress has been made in terms of exchanges between Members, the satisfactory solutions to the issue elaborated in the waiver continues to elude Members in the TRIPS Council. The CARICOM Group is concerned about the lack of progress to date, particularly given that some Members have tied success in the area to success in other areas, some of which are critical to MC12 outcomes. As COVID-19 vaccines, therapeutics and diagnostics are important, we are supportive of ramping up their production and of efforts to address the shortage and inequitable distribution of and access to vaccines and other COVID-related products. The CARICOM Group urges Members to redouble their efforts in the hope that we can reach consensus and an outcome which incorporates the interests of all Members including CARICOM Member States.

6.18. The representative of Brazil delivered the following statement:

6.19. Needless to say that this is a very important topic and we hope to achieve some results during the Ministerial. Brazil wants to express our support for the report just presented by the Chair of the

TRIPS Council and thank him for his efforts to facilitate a positive outcome for these discussions. Despite the efforts, we are not there yet. The report acknowledges the state of play and gives us more time for consultations. Brazil remains hopeful that we will be able to reach a decision on this file in the Ministerial. If we are really committed to a result, we must assist our Ministers, providing them with a minimum common ground, and let them decide on the remaining contentious aspects. We are convinced that this minimum common ground has already been mapped out. It is time we begin to work on a more concrete basis.

6.20. The representative of Cuba delivered the following statement:

6.21. We thank the Chair of the TRIPS Council for the report which reflects very clearly the debate that has unfolded within the TRIPS Council and is still unfolding. We appreciate the strong commitment that the Chair has demonstrated to arrive at an agreed solution, but we have not reached consensus. There is still strong commitment to continue working and these consultations will continue up until MC12. The objective must be to address the current issues. We want to have access to health as a fundamental right of all human beings. This must include the opportune and accessible use of proper high quality medical products. We encourage all Members to continue working in this spirit to guarantee that the WTO will fulfil its fundamental role when it comes to its response to the pandemic. In order to slow down the spread of this pandemic, it is urgent that we have international cooperation and the elimination of export restrictions and other unilateral measures that bring about coercion. We should ensure that the developing world could also produce essential products to ramp up global production including through effective technology transfer. We can only make progress if we work together.

6.22. The representative of Chad, on behalf of the LDCs, delivered the following statement:

6.23. The LDC Group is in favour of the draft decision of the TRIPS Council regarding the eighth extension of the acceptance by the Members of the protocol and amendment of the TRIPS Agreement. We also support the moratorium on TRIPS Non-Violation and Situation Complaints. We recognize the consensus taking shape in supporting the Ministerial draft decision on this moratorium in document IP/C/91. As co-sponsors of the TRIPS Waiver, we urge Members to accept the draft decision concerning products and health technology as well as tools for diagnosis and treatment, vaccines, medical equipment, personal protective equipment, and raw materials and components and methods and means of manufacturing used for the prevention, treatment and containment of COVID-19.

6.24. The representative of Argentina delivered the following statement:

6.25. Argentina attaches great importance to the discussions that are taking place in the TRIPS Council. After more than a year of discussions, it is regrettable that we have not yet been able to agree on how the TRIPS Council and intellectual property rights can contribute to improving equitable access to health-care resources to treat, combat and prevent COVID-19. We must be able to deliver tangible results that make an impact on the ground as part of the contributions made by the WTO to addressing the pandemic. For this reason, Argentina supports the proposal for a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19, on the understanding that extraordinary situations require responses that go beyond the current regulatory tools. We believe that this will help to scale up and diversify production by facilitating access to diagnostics, vaccines and treatments. We must therefore continue the discussion and text-based negotiations, with a commitment to finding common ground. We have already identified a common objective – providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all – and, on this understanding, we need to pursue the dialogue with a view to reaching an agreement at the Twelfth Ministerial Conference.

6.26. The representative of Nigeria delivered the following statement:

6.27. We refer to our statements on this issue at previous General Council meetings and reaffirm that our preferred outcome is a decision that prohibits Non-Violation Complaints under the TRIPS Agreement or a permanent moratorium. In any case, we welcome the decision of the TRIPS Council to extend the moratorium until MC13. Nigeria reiterates that the solution to the current COVID difficulties lies in the rapid access by every country to affordable diagnostics, therapeutics and vaccines to combat this menace. This can only be achieved by ramping up of production of these

products globally. It is for this reason that we consistently call for the adoption of this proposal. We believe that the adoption of this proposal will enhance trust within the Membership and boost the credibility of the WTO.

6.28. The representative of the Maldives delivered the following statement:

6.29. The extraordinary circumstances the world is facing related to the COVID-19 pandemic requires extraordinary measures to be put in place to meet the global vaccine shortage and the inequitable distribution. An exceptional waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19 will provide equitable and timely access to affordable medical products, including vaccines and medicines for all. The Maldives, as a cosponsor of this exceptional waiver, urges all Members to engage constructively and deepen the discussions to find the best solution for combating the pandemic. The TRIPS Waiver proposal should be an integral part of any successful MC12 outcome. It should be also an important contribution the WTO can make towards the health-related aspects of the current crisis. In this regard, we need to work together to find a comprehensive package that can be agreed at MC12 on trade-related IP aspects. It should be our common goal to provide universal access to COVID-19 vaccines, treatments, testing and other products to control the pandemic and to reach the sustainable development goals.

6.30. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

6.31. The African Group gives its unwavering support to the proposal for the implementation of a waiver on certain provisions of the TRIPS in view of helping developing countries recover from the pandemic. COVID-19 has taken over 5 million lives worldwide and it continues to take more every day. Our countries and economies are on their knees and it is becoming increasingly difficult to imagine a light at the end of this tunnel. Unless we address the health crisis now and allow the global economy to recover, I am afraid that this organization will continue to function in limbo and global trade will remain unstable as ever. We therefore urge Members to show respect to the lives lost and take the morally correct decision rather than one purely driven by profits. The rules of this organization are meant to support development and growth but they are clearly failing us during this crisis situation, and that too on several fronts. We thus reiterate our support for the temporary TRIPS Waiver and appeal to Members to lend us their support on this proposal at this particularly crucial time.

6.32. The representative of Malaysia delivered the following statement:

6.33. It is unfortunate that after more than a year of extensive discussions, Members are still grappling to find a landing zone on the TRIPS Waiver. While noting that the TRIPS Council will continue its consideration, we reiterate the importance of timely access and affordable diagnostics, therapeutics, vaccines, and other medical products to effectively contain the spread of COVID-19. We remain cognisant of the role of IP in research and development but the fact that only a small number of doses had reached low-income countries proves inequitable access remains a challenge. Therefore, we encourage Members to continue engagement on the TRIPS Waiver proposal with the aim of achieving a common landing zone towards a favourable outcome at the MC12.

6.34. The representative of Mongolia delivered the following statement:

6.35. Mongolia supports the draft decision on extending the period for the acceptance by Members of the protocol amending the TRIPS Agreement and encourage the remaining Members who are yet to accept the Protocol to take the necessary steps so that the domestic procedures could be completed at the earliest possibility. Considering the divergent views of the Members on matters pertaining to non-violation and situation complaints, Mongolia supports the postponement of discussions without affecting Members' positions. Mongolia is in favour of the draft decision under document IP/C/91. We appreciate the TRIPS Council Chair's dedication to find a landing zone on this proposal. The world population highly expects and looks upon WTO Ministers to act on facilitating the world population with equitable access to vaccines, therapeutics and health technology. Ramping up of production is one of the options that should be available in this regard. The waiver proposal has been widely supported by a substantive number of Members. It therefore needs to be seriously considered particularly at this critical time of the COVID-19 pandemic. Mongolia stands ready to engage further on this matter.

6.36. The representative of Bangladesh delivered the following statement:

6.37. Bangladesh has emphasized many times that Members should engage in text-based discussions as soon as possible. We are concerned that no tangible progress has been made yet up until now. We are all aware that the production of vaccines against COVID-19 is highly concentrated in a few countries and concentrated production leads to monopolistic control of productions, supply and price of vaccines. This situation contributes to inequitable and unaffordable access to much needed vaccines to fight the pandemic. We have been constantly saying that there is an urgent need to expand manufacturing globally and to diversify supply of vaccines and therapeutics and other medical products to effectively fight the pandemic. The TRIPS Council objective on this specific discussion in our view should be to overcome barriers to achieve equitable and timely access to all these tools to fight the virus. The time is running out and we must act now with all sincerity and my delegation looks forward to engaging constructively with all Members to speed up the negotiation process for an outcome at MC12.

6.38. The representative of India delivered the following statement:

6.39. India welcomes the decision by the TRIPS Council on the extension of the moratorium on TRIPS Non-violation Situation Complaints. India reiterates its commitment to remain constructively engaged on this issue and work with like-minded Members in making this moratorium permanent. Despite dedicating over a year in discussions and debates and having lost over five million people to the deadly virus, there has been no substantive engagement on the text of the proposal on TRIPS Waiver contained in IP/C/W/669 Rev.1. Opposition by few Members to engage on this issue of paramount importance to rest of the WTO Membership reflects on our ability to deliver in times that elicit an extraordinary response. The co-sponsors of the waiver have tirelessly engaged with the membership at large in discussing our proposal. We have shown flexibility and pragmatism in our bilateral engagements. The cosponsors have clearly delineated the parameters of a possible landing zone in our outreach with the naysayers. It is up to these Members now to show their flexibility and work with a spirit of compromise. It is disappointing that while the world is watching us with great expectations to deliver solutions to the exigencies of the pandemic, we have ensured that the solutions remain elusive. We constantly heard that IP is not a barrier to scaling up production and that the bottlenecks lie elsewhere and thus a multipronged approach to come out with a response would be needed. The co-sponsors have in good faith engaged on all elements of a possible response to the pandemic, in various formats, while a similar zeal to reach an outcome or even to start a negotiation has been lacking on the TRIPS Waiver proposal.

6.40. As per the UNCTAD trade and development report 2021, the damage from the COVID-19 crisis has exceeded that of the global financial crisis of 2008 in most parts of world economy but it has been particularly draining on the developing world, who will become, barring a few, as much as eight trillion dollars poorer by 2025. Even assuming no further shocks, a return to the pre-pandemic income trend could take until 2030, weakest growth rate since the end of World War II. It is imperative that we as an organization should be willing to deliver solutions that alleviate the problems of the most resource poor and vulnerable. In this regard, the waiver becomes central to an effective WTO response to COVID-19 and to achieving equitable access. Time for ideological debates on whether the waiver would work or be effective or whether existing flexibilities in the form of compulsory licensing are sufficient is over. And as we often say in the discussions at the WTO that let the perfect not be the enemy of the good. Thus, it is urgent that a decision on the waiver is achieved to have a successful WTO response to the pandemic during MC12 and let us all work towards that end. Without a decision on the proposal in IP/C/W/669/Rev.1, any WTO response to pandemic will not look credible.

6.41. The representative of Jamaica, on behalf of the ACP Group, delivered the following statement:

6.42. The ACP Group appreciates the efforts of the Chair and his overall commitment to this file. The report submitted provides a factual update of the discussions on this agenda item to date and the Group notes that there is the intention to continue the discussion amongst Members. The ACP Group has always maintained that the WTO has a role to play in providing an effective response to the pandemic. As a group of developing countries and LDCs, we can all attest to the devastating impacts of the pandemic on lives and livelihoods. It is for this reason that the Group has constantly repeated its support for the general objectives of the waiver and encourage Members to ensure that the organization is positioned to play a critical role in the global response to the pandemic. It remains unfortunate that the rate of vaccination for many of our members continue to be low which is quite

worrying as there is a growing call among the scientific community that a booster shot will be required to further contain the spread of the virus. There are also reports of some countries currently experiencing an increase in the number of COVID-19 cases. This is a clear indication that we must continue our engagement on how to increase the availability and accessibility of vaccines, diagnostics and therapeutics as the pandemic has not yet come to an end. The robust discussions on specific elements of the proposals such as scope, duration and implementation as well as the small group consultations held by the Chair have been useful. Members were given the opportunity to ventilate concerns, seek clarifications and better understand the various positions. While there has been no consensus, it is noted that Members committed to continue engaging in various configurations and have signalled that these consultations will continue leading up to the Ministerial Conference. As it relates to non-violation and situation complaints, the ACP Group welcomes the decision by Members to extend the moratorium until the next Ministerial Conference and looks forward to future discussions in the TRIPS Council with a view to making the moratorium permanent.

6.43. The representative of the European Union delivered the following statement:

6.44. The European Union is strongly committed to achieving our common goal: to continue ramping up production, to share COVID-19 vaccines and medicines more widely and faster, and to ensure equitable access to these products for low – and middle-income countries. We consider that only a comprehensive approach can be effective in the WTO's response to the pandemic. There is no single solution. That is why the discussions currently ongoing cover export restrictions, trade facilitating measures, transparency and monitoring, possible role of services, inter-organizational cooperation and the intellectual property dimension. The intellectual property system has played the key role in the development of COVID-19 vaccines and medicines and can play an enabling role in deploying existing capacity or creating new capacity for the production of COVID-19 vaccines and medicines. It is possible to enhance this role of the IP system while at the same time maintaining the protection required for incentivising technology transfer and investment in innovation.

6.45. Over the last couple of weeks, we have been engaging in a very active manner in discussions with various delegations aiming to identify areas of convergence that could become the basis for a meaningful and pragmatic solution on the IP component of the response. This effort is ongoing. In order to find a compromise, given the short time remaining until MC12, we all have to be clear on what parameters we find essential for a solution on the IP element of the broader trade response to the pandemic. Given the scope of divergences, we all need to be ready to adjust our initial positions and focus on the effect of the solution. Also, the solution we need must be a solution that makes a real difference on the ground that adds to the ongoing efforts to maximize production and supply, especially for the regions that have not had sufficient supplies of COVID-19 vaccines and therapeutics. It must be a solution that maintains the IP protection required for incentivizing technology transfer and investment in innovation. We will continue to work towards such a solution together and strongly believe that it is possible, taking all the elements of the comprehensive trade response into account, to find an outcome that will make a real difference on the ground.

6.46. The representative of Nepal delivered the following statement:

6.47. We associate with the statement delivered by Chad on behalf of the LDC Group and South Africa and India on behalf of the proponents. About four million lives were lost due to the COVID-19 pandemic since the submission of the proposal, but we have not been able to deliver any concrete result on this matter. Responding to the COVID-19 pandemic through appropriate means has become urgent. Nepal is in favour of the proposal since the beginning and now strongly supports it as a proponent to successfully conclude and deliver with a view to saving millions of lives across the globe especially in LDCs and LLDCs.

6.48. The representative of China delivered the following statement:

6.49. The pandemic is still ravaging, and the virus is now in its fifth round of attack. As an important negotiating issue, the negotiations on the waiver proposal have occupied a great deal of Members' time and energy this year. But convergence is yet to be achieved. We need to ask ourselves, are we really going to do something within the competence of the WTO to save lives and rebuild the world? As many Members mentioned, IPRs have brought the WTO and the world closer in terms of health and development. The contribution of IPRs is indispensable as a systematic response of the WTO. The waiver on vaccines will demonstrate effective prevention and control of the pandemic. We should also further facilitate the compulsory licensing system and address the inequity of the production

and distribution of other necessary products in a wider range so as to help the international community return to normal as soon as possible.

6.50. The representative of the Russian Federation delivered the following statement:

6.51. The Russian Federation supports any WTO effort, including that in the TRIPS Council, to find solutions in combating COVID-19. We are grateful to the proponents of the two initiatives for their readiness for dialogue and willingness to work towards consensus. We stand to assist countries in need. We support the dissemination of knowledge, the organization of local production in any country to increase its ability to combat the pandemic and create opportunities to help neighbouring countries. No doubt this kind of action can make a significant contribution to the development of global immunity. Any result of the TRIPS Council work must be adopted by consensus. This means that it must be agreed upon by all Members. To be meaningful and pragmatic, the result of discussions should have additional value to the existing TRIPS rules. Any decision modifying the existing scope of WTO commitments must be clear for implementation. We need to understand how realistic it is in the application and how safe it would be for the public. We have to convey this information to the Government before taking any decision. In such a situation, let me express my doubts about the possibility of agreeing on such a decision if we see it on 29 November for the first time. In this situation, only a declaration of political will on future work of the TRIPS Council could be a realistic outcome. Once again, the Russian Federation stands ready for dialogue and the decision of MC12 on combating the pandemic.

6.52. The representative of Tanzania delivered the following statement:

6.53. Tanzania associated with the statement of the African Group. We have fully participated in the discussions on the proposed waiver. The adoption of the waiver will be the right contribution of the WTO in the fight against COVID-19 to ramp up production of vaccines and related medical products. If the WTO will resort to any response to COVID-19, it must be comprehensive and that should include the waiver. The proposed waiver is temporary and focused only on addressing the current challenges of COVID-19. In the lead up to MC12, the waiver has gained tremendous traction across the globe from various groups of people, including members of parliaments, eminent people, scientists, trade unions and civil societies. The WTO should capitalize the goodwill being demonstrated for the adoption of the waiver. We therefore urge those few Members with reservation to the proposed waiver to seriously consider reviewing their position.

6.54. The representative of Norway delivered the following statement:

6.55. Norway supports further discussions in the TRIPS Council on the revised waiver proposal. We also support that the TRIPS Council reports directly to the upcoming Ministerial Conference. However, with MC12 only a week away, this increases the urgency to achieve progress. We need to strike the balance in ensuring that IPRs do not constitute a barrier to solving the current or future health crises and preserve the incentives for innovation on the other. With this in mind, we encourage all Members to revisit their positions with a view to narrowing down differences so that we can find a pragmatic compromise to achieve consensus.

6.56. The representative of Indonesia delivered the following statement:

6.57. Indonesia supports the TRIPS Council's recommendation to continue its work up to the Ministerial Conference. At this juncture, it is unfortunate that after a year since the co-sponsors of the TRIPS Waiver have submitted our proposal, no actual text-based negotiation has been conducted. It is regrettable that while other WTO Bodies are intensifying their text-based negotiations, the Council for TRIPS has failed to do so. We urge Members to show their flexibilities and engage in good faith in the discussion of the TRIPS Waiver. With more than 5.1 million lives lost, and some of us lost our loved ones too, failure to deliver a meaningful outcome on the TRIPS Waiver would not only undermine our credibility but also our relevance to the world.

6.58. The representative of Colombia delivered the following statement:

6.59. On the Moratorium on TRIPS Non-Violation and Situation Complaints, we thank the TRIPS Council Chair his leadership, and all the Members who showed flexibility and came together to recommend the approval of a new extension to the Ministerial Conference. However, we strongly

urge Members to take a similar decision on the moratorium on e-commerce, as the balance achieved by discussing and approving the two moratoria together is well-known and valuable, and has enabled both to continue to be renewed. We are concerned that the two have become separated and will be left weakened, one now and the other within two years. We also call on Members to approve an extension on the moratorium on e-commerce and maintain the balance between the two moratoria for the future. On the TRIPS Waiver proposal, we thank its co-sponsors for continuing to highlight the importance and urgency of achieving an outcome that will help to overcome the pandemic. We also thank the proponent of the flexibility document for their proposals, which we consider additional and complementary. Colombia reiterates the interest and importance it attaches to this discussion. As expressed in various fora by our President, "vaccines must be global public goods". In this regard, we call on Members to adopt a more constructive approach to help us to reach a coordinated, holistic and pragmatic solution for MC12, which, in terms of intellectual property, must include a vaccine waiver. We call for the political discussion to be expedited, by focusing on overcoming the differences between the proposals. This would provide a satisfactory resolution to this impasse within the WTO. Colombia reiterates its commitment to participating constructively in this discussion.

6.60. The representative of Peru delivered the following statement:

6.61. With the Twelfth Ministerial Conference just a few days away, Peru wishes to reiterate the urgent need for this Organization to provide a joint and solidarity-based response to the multidimensional crisis caused by the COVID-19 pandemic, which to date has claimed over 5 million lives and whose spread and impact are still far from over. Peru believes that access to COVID-19 vaccines will be crucial for this task, which is why it advocates in various forums that the vaccines be considered global public goods and thus universal, timely and equitable access to them is ensured. However, this is not possible while global vaccine production capacity is insufficient and their distribution among and within countries is unequal. In this regard, we need urgent and tangible measures that tackle this issue. I would therefore like to reiterate that Peru considers reaching an agreement on the temporary lifting of COVID-19 vaccine patent restrictions as a matter of urgency, as this measure would be a milestone in the fight against the pandemic. In addition, I wish to highlight that we are considering supporting the extension of this measure to other goods necessary to the prevention, containment and treatment of COVID-19. Unequal access to these goods affects the survival of our citizens and threatens the implementation of the 2030 Agenda for Sustainable Development. That is why Peru wishes to reiterate the necessity of arriving at a pragmatic and tangible agreement that would benefit all our peoples and send a strong and positive signal about this organization's contribution to the fight against this scourge.

6.62. The representative of the United States delivered the following statement:

6.63. We once again express our regret at the need to intervene since this is a procedural agenda item. Members have already agreed by consensus to the report. However, given the extensive discussion we would like to make the following points. The pandemic has placed tremendous strain on peoples' health and livelihoods around the world. We in the United States are doing all we can to ensure everyone, both at home and around the world, has access to safe and effective vaccines because by having more vaccinations is how we end this pandemic. We have committed to donate over 1.1 billion doses to date. We have already shipped nearly 250 million doses to 100 countries – donating more vaccines than all other countries combined – for free and with zero strings attached, with millions more shipping each day. The United States has stated its support for a waiver of intellectual property protection for COVID-19 vaccines. The TRIPS Council discussions have not been easy, and Members are still divided on this issue. Over the past several weeks, the United States has continued holding consultations in capital as well as meeting bilaterally with other Members to listen to views and to explore ways forward. This includes meetings when USTR Tai was in Geneva and multiple visits by officials from Washington. Our goal has been to encourage Members to weigh in with approaches to moving forward with steps that can contribute to the increase of production and equitable distribution of vaccines. With MC12 nearly upon us, the WTO can show that it is capable of effectively addressing a global challenge like COVID-19, and helping the world recover. We remain committed to engaging with Members to find a way forward that all of them can support.

6.64. The representative of Chile delivered the following statement:

6.65. Chile welcomes the adoption of a recommendation on the Moratorium on TRIPS Non-Violation and Situation Complaints in advance of MC12 and we are convinced that it will allow us to focus on the complex issues that lie ahead. It was with the same intention and in the same spirit that Chile

and the delegations of Canada, Colombia, Guatemala, New Zealand, Panama and Uruguay put forward a proposal along the same lines in document WT/GC/W/832. We hope that, during MC12, Ministers will be able to approve the recommendation, taking into consideration, where appropriate, its link with the E-commerce Moratorium. We also thank the TRIPS Council Chair for the status report and for his efforts to facilitate discussions aimed at achieving consensus on the TRIPS Waiver request. Chile's position on this issue has not changed. We once more call on Members to seek an outcome that will effectively contribute to the production and distribution of vaccines and medical supplies in response to the pandemic, and to use and implement the flexibilities in the TRIPS Agreement to support their public health policy objectives. Now more than ever, the political conditions are in place to allow Members to implement these flexibilities. Meanwhile, discussions and the bridging of differences between delegations on this topic are essential in order to arrive at a common understanding of the role played by intellectual property during the pandemic and, from there, find possible areas of common ground that will enable us to reach an outcome for MC12. For this to happen, channels of communication must remain open and, above all, efforts must be made to restore the basic trust that allows delegations to negotiate in good faith. Since the start of the pandemic, we have recognized that the WTO should contribute to efforts to combat the pandemic in all its areas of work. We have also been in favour of a holistic analysis and of working in every domain that can make an effective contribution to the production and distribution of vaccines and medical goods at the global level, and can prepare us for future pandemics. Lastly, we reiterate our support for and commitment to the work carried out by Ambassador Sørli and you can count on our delegation to seek out solutions during discussions on this subject.

6.66. The representative of the Plurinational State of Bolivia delivered the following statement:

6.67. We commend Ambassador Sørli for his efforts to arrive at a result on the TRIPS Waiver. Unfortunately, it has not been possible to arrive at a substantive result in this area. We see that there is lack of substantive will to arrive at the objective. We need a balanced, objective way forward on this matter. We have been discussing this for over a year already. The waiver is something that has become even more pertinent during the current circumstances as it would help increase the production of what we need to fight the pandemic. At the same time, we need to see to it that the WTO Response to the Pandemic can have a positive impact on the lives and livelihoods of our people. For this to happen, the TRIPS Waiver must form an integral part of such response.

6.68. The representative of Tunisia delivered the following statement:

6.69. We consider, justly so, that the TRIPS Waiver request, which has been widely supported for more than a year by many Members, a number of international organizations and civil society, serves as a reminder of the foundations of the Doha Declaration on the TRIPS Agreement and Public Health, prioritizing the protection of global health and the promotion of access to medicines for all. Members have a duty to demonstrate the flexibility and solidarity required in these exceptional circumstances. We stress the targeted time-bound framework for this initiative, and note that the TRIPS Council will continue its work on this item until MC12. We hope that Members will begin constructive, text-based negotiations to facilitate a prompt decision by Ministers on this very important matter.

6.70. The representative of South Africa delivered the following statement:

6.71. On the Moratorium on TRIPS Non-Violation and Situation Complaints, we support the consensus reached in the TRIPS Council for a Ministerial decision directing the TRIPS Council to continue the examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make a recommendation to MC13. And that in the meantime, Members will not initiate such complaints under the TRIPS Agreement. Regarding the "Proposal for a Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19" in IP/C/W/669/Rev.1, we thank the TRIPS Council Chair for his effort and we agree with the approach taken in his report – in particular, the pragmatism displayed in keeping the agenda item open right up to the Ministerial. We associate ourselves with the statement to be made by the African Group and the ACP. MC12 will be a defining moment for the WTO and its role in delivering in the interests of all. We urge that all Members engage in the remaining time to find a solution that will truly make a difference on the ground. Given the short time that remains before MC12, our efforts should be focused on achieving an outcome based on compromise and pragmatism. We strongly believe that a TRIPS Waiver is doable if we all think creatively to find a balanced outcome that addresses all our concerns.

6.72. We repeat that this is not an ideological debate. Our interest is in addressing the vaccine inequity that continues to put people's health and sustainable economic recovery at risk. In Africa, only 6% of the adult population is vaccinated. This should concern all of us as no one is safe until everyone is. Let us seize the moment and do what is right and what is just in the interest of humanity. Our intention is not to dismantle the current system of innovation incentives and the TRIPS Waiver does not do so. We have shared ideas with Members on a limited scope landing zone that aims to address all concerns and ensure that we can facilitate global production, diversification and access to COVID-19 related products. We reiterate that we are ready to discuss a compromise outcome around the Waiver proposal which includes elements of the Waiver, as well as the approach advanced by the European Union. As we have consistently stated, we need to move beyond the binary of the two proposals. We have always shown flexibility and we continue to do so. We all have to recognize that rights are not absolute and in the context of an unprecedented global pandemic, a targeted, time-limited TRIPS Waiver represents a proportionate, necessary and appropriate response to the pandemic. We reiterate that a TRIPS Waiver is integral to the WTO Response to the Pandemic and is critical to a credible and meaningful outcome at MC12.

6.73. The representative of Switzerland delivered the following statement:

6.74. We thank the TRIPS Council Chair for his status report which reflects the current state of discussions among Members in an objective and neutral fashion. Although Members share the common goal of ensuring global, equitable and timely access to COVID-19 vaccines and treatments, they continue to express diverging views as to the role and importance of intellectual property and the TRIPS Agreement in combating this pandemic. Switzerland believes that IP protection is crucial for stimulating innovation, investment, industrial partnerships and technology transfer – in other words, for increasing and diversifying production and achieving the Members' common goal. The IP protection system and the TRIPS Agreement help actors such as companies, research institutions and universities to form partnerships aimed at researching, developing and producing innovative new healthcare technologies to combat COVID-19. They also promote the sharing of technological know-how. IP thus plays a key role in the increase and diversification of healthcare technology.

6.75. The figures speak for themselves: with monthly production amounting to CHF 1.5 billion worth of COVID-19 vaccine doses, the WHO's global COVID-19 vaccination targets are within our reach. IP can in no way be held responsible for the current problems concerning the distribution of vaccine doses. Moreover, the recent voluntary licensing agreements for COVID-19 treatments signed by the Medicines Patent Pool show that the existing IP system is effective. Switzerland is open to discussing the practical difficulties, such as compulsory licensing, that Members face when they want to use TRIPS flexibilities. In our opinion, this should be the focus of our discussions. We are also willing to discuss pragmatic IP solutions that do not put these gains at risk, including the ideas put forward by the European Union. Switzerland is ready to discuss the simplified use of existing flexibilities in the TRIPS Agreement. The mechanism could be complemented by measures aimed at promoting technology transfer. We are convinced that the COVID-19 pandemic requires a holistic response. Disciplining the use of trade restrictions affecting access to technology, facilitating trade and enhancing transparency can all make a real difference in improving the affordability and availability of essential medical supplies. Switzerland will continue to engage actively and constructively in bilateral discussions, as well as in any other format that facilitates dialogue among Members.

6.76. The representative of the United Kingdom delivered the following statement:

6.77. I fear that we may repeat some of the things we said in the meeting on 19 November. We welcome the TRIPS Council Chair's report which is a factual, objective and accurate report of the development at the TRIPS Council. Like others, we have been meeting other delegations bilaterally on all sides of the debate. While we are not yet in a position to reach consensus on these issues, we are grateful for the discussions we had and the constructive tone struck by many delegations including that day. We do not have a lot of time left before MC12. We therefore think it is best to try and focus on areas of potential convergence rather than on the areas of disagreement. And I think what we all, I hope, agree on is the need for a substantive Trade and Health outcome at the Ministerial – an outcome which promotes production and supports the equitable distribution of affordable, safe and effective vaccines, diagnostics and therapeutics. We continue to believe that the IP system has played a positive role in enabling our response to this pandemic. We do not deny the lack of vaccines in many parts of the world. This further bolsters the need to find equitable ways to ensure that those vaccines can be delivered effectively. But we also need to reflect on the role of the IP system in the future in facing a pandemic – the virus of which continues to mutate. We need

to develop not only effective vaccines against these mutations but effective therapeutics as well and we welcome the recent innovations in the therapeutics that have come out of what is for sure a highly successful IP system. So, we look forward to find a way forward on these issues, to work with other delegations and indeed the Secretariat on them and to ensure that we can produce at the Ministerial next week a multifaceted outcome on Trade and Health that is worthy of the pandemic which we face and of the role this organization can play in tackling this issue like so many others.

6.78. The representative of Pakistan delivered the following statement:

6.79. We join the consensus and express our support for the extension of the Moratorium on TRIPS Non-violation and Situation Complaints. Pakistan likewise continues to recall all its previous statements in the General Council and the TRIPS Council at its formal, informal, and small group sessions on the TRIPS Waiver request. It is unfortunate that we are entering a Ministerial Conference, convened during the heart of a pandemic, with lockdowns and restrictions continuing in neighbouring areas. The biggest issue for this organization remains unresolved. To this end, we express our disappointment at the lack of engagement from a handful of Members that perpetuated the situation. As mentioned during the TNC, my government is resolute in its belief that the TRIPS Waiver is necessary to address the issue of equitable, safe and affordable access to vaccines and other COVID-19 products. Nevertheless, one should never shy away from a belief in the ability of human beings to put aside profit-maximizing, monopolistic tendencies, and work for the greater good of humanity to save lives. We look forward to our continued engagement with Members to identify landing zones that could be delivered in the coming days. To remind Members of our resolve and commitment to this issue, we must reiterate that without a meaningful TRIPS Waiver, the WTO risks having no tangible or credible response to the pandemic which would be disastrous for the organization.

6.80. The representative of Japan delivered the following statement:

6.81. Japan echoes our appreciation to the TRIPS Council Chair, Ambassador Sørli, for his tireless efforts. In order to move discussions forward swiftly towards finding common ground until one week ahead of MC12, narrowing down the scope of the targeted products and intellectual property would be the realistic option. To make the best use of our limited time before MC12, Japan will continue to listen carefully to the views of the Members and participate in discussions on how intellectual property can contribute to achieving our common goal of providing timely, fair and equitable access to high-quality, safe, efficacious and affordable vaccines for all, aiming to find convergence.

6.82. The representative of Singapore delivered the following statement:

6.83. I thank the TRIPS Council Chair, Ambassador Sørli, for his tireless efforts and support this factual and objective report. First, Singapore supports the continuous discussion of all proposals on the table. The global number of cases are trending up which gives greater importance for Members to reach agreement on a mutually agreeable and pragmatic approach. While the production of vaccines has increased significantly and is on track to reach 12 billion doses by the end of 2021, the challenge is to ensure a more equitable distribution of vaccines and delivering them into the arms of people. Hence, it is crucial that we continue to consider all possible pathways to address this pressing challenge. Second, on the discussion that the TRIPS Council cannot be detached from positive development on the ground, for example, we have witnessed several new vaccine manufacturing partnerships such as the one between BioNTech and Rwanda to develop vaccine production capacity in Africa. Last week, Pfizer also announced that it would allow generic manufacturers to produce its experimental antiviral COVID-19 pill to 95 low and middle-income countries through a licensing agreement with the medicines patent pool. Third, we have only a week left to MC12, it is incumbent upon all Members to focus our efforts and energy to find a pragmatic and practical way forward. Our common objective must be to identify concrete steps that will ramp up global production of vaccines and strengthen supply chain connectivity to ensure that the production and distribution of diagnostics, vaccines and therapeutics will not be disrupted.

6.84. The representative of Vanuatu delivered the following statement:

6.85. I thank the TRIPS Council Chair for his report and having listened to the statements this morning, it seems to me that from those of us who are co-sponsoring the proposals ahead of us, I hear that some have not moved from their own positions. We look forward for all Members to agree

on a vaccine waiver. We are very disappointed that there is lack of text-based negotiations so I call on all Members to redouble their efforts in building convergence in this area.

6.86. The Director-General delivered the following statement:

6.87. Like the Ambassador from Mauritius said, we all know I have been following this issue very closely from all sides. I just want to thank the TRIPS Council Chair for his report and his tireless efforts to try to move things on this issue. I also want to thank all those who have been making efforts to come together to a solution on this IP Waiver through more informal discussions including bilaterally and in groups. South Africa, India, Pakistan, Egypt, the European Union, the United Kingdom, Switzerland and the United States, among many others, have all been trying in various configurations to make things happen. I continue to believe that a comprehensive response to the pandemic will include all aspects – three aspects as I have always said and that none alone can serve us the response to the pandemic. So, we must look for where we can land with the Walker process plus a pragmatic outcome on the IP Waiver. Only when we have all these will we have a comprehensive response to this pandemic. It is also very good to hear delegations say they are willing to continue discussing even in the few days left because one must always hold out hope that we can come to some agreement that will signal to the world that we are ready to do something on the response. I want to repeat what I said at the TNC. Much of the language is polarized and when I hear them, I ask myself that, if this is supposed to be a negotiating forum yet we hear that it is simply one side or the other, then there is negotiation going on right? So, I think we should try to avoid the extremes of what we have been asking for since the pandemic started and try to see if we can come to a middle ground. I think Malaysia laid it out very succinctly that we must all try to come to a middle ground and be pragmatic. I want to, in very short terms, summarize what we need to do. All sides need to exhibit some flexibility – that means both proponents and non-proponents. If we continue to maintain this distance, it means that we are not really ready and all the rhetoric about how we are willing to engage will mean nothing. The world is really waiting for us. We have a K-shaped recovery and that recovery stands on two things. Some regions are doing well while others are not. There are those not doing well because of lack of access to vaccines and lack of fiscal space to implement stimulus for their population. So, on the issue of lack of access, we must act urgently. There has been some success at least in trying to get investments made in certain countries as the Ambassador of Singapore signalled. But we must couple that with looking at some sensible solution on IP. I remain convinced that it exists. As South Africa noted today, all sides should be willing to drop the binary approach. This will in turn allow us to come to a pragmatic middle ground. So, that is what I want to say to you. Please try to exercise this middle ground. No one here will walk out of this room and be seen as right if we do not deliver on this aspect. So, as you eat your lunch this afternoon and your dinner this evening, please plan on how we are going to solve this issue of reaching a pandemic response because the world urgently needs a meaningful outcome from us.

6.88. The Chair thanked the TRIPS Council Chair for his tireless efforts in what was clearly a crucial matter and encouraged all delegations to remain positively and constructively engaged as discussions continued with a view to finding a workable way forward for MC12.

6.89. The General Council took note of the report by the Chair of the Council for TRIPS, including the fact that work on the TRIPS Waiver was continuing in the immediate next few days and that any result from this work would be in front of Ministers at MC12, and of the statements.

7 PREPARATIONS FOR THE TWELFTH SESSION OF THE MINISTERIAL CONFERENCE⁸

7.1. The Chair noted that, in line with the reporting obligations, as contained in WT/L/105, the Ministerial Conference would undertake an Overview of WTO activities under Item 1 of its Agenda, on the basis of Annual Reports from the General Council and its subsidiary bodies. The annual reports, which would be taken up under Item 20, constituted the main vehicle through which WTO bodies reported to Ministers on progress of work in their respective areas. In line with past practice, he would present those reports to Ministers in his statement at the Opening Session of the Ministerial Conference – and would formally transmit, at that point, the results of the work that had taken place in that intense preparatory period for Ministers' consideration. As had already been indicated, the reports by the TNC Chair and the Chairs of Negotiating Groups would also be forwarded to the Ministerial Conference. At the outset of that day's meeting, Members already welcomed the

⁸ Due to the deterioration of the epidemiological situation and travel restrictions that ensued, MC12 was postponed on 26 November, on the understanding that it would be reconvened as soon as conditions allow.

Ministerial Conference Chair, H.E. Mr. Timur Suleimenov of Kazakhstan. He recalled that the Vice Chairs of the Conference would be The Hon. Dan Tehan, Minister for Trade, Tourism and Investment of Australia; The Hon. Jerome Xavier Walcott, Minister of Foreign Affairs and Foreign Trade of Barbados; and The Hon. Harriet Ntabazi, Minister of State for Trade of Uganda.

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

7.1 MC12 Outcome Document – Report by the Chair

7.3. The Chair noted that the draft MC12 Outcome Document was a product of Members' earnest efforts and constructive engagement. This work took account of, and built on, all his consultations with delegations since April. He referred Members to his earlier reports contained in JOB/GC/259, JOB/GC/262, JOB/GC/268, JOB/GC/274 and JOB/GC/279. His report that day should be read in conjunction with those earlier reports. Since the October General Council, the representative group had met ten times to consider all paragraphs, including new textual language. Several delegations had also come together to work on compromise texts amongst themselves. To complement those efforts, he had consulted delegations in smaller configurations to address specific issues. He recalled that he had reported on those discussions to all Members during three informal open-ended meetings and had circulated the entire draft as part of his report in JOB/GC/279 and then in the restricted room document RD/GC/17. He had likewise met the representative group the previous day.

7.4. He commended delegations' dedication and hard work in that process. Thanks to each of them, they had made it this far. As a result of Members' hard work, they currently had the paragraphs in front of them – also circulated in document RD/GC/17/Rev.1⁹. Several paragraphs were clean, others still had bracketed texts, and some were in the "additional" where more work needed to be done and which would form part of the main text once convergence to do so was achieved. As he had foreshadowed, the Secretariat had scrubbed the text by assigning numbers to paragraphs that had letters and those that had been moved up from the "additional" section to the main part; also had checked the document for consistency in the use of "We" and "Ministers" and had used the standard formulation of "developing country Members and LDCs".

7.5. Before providing Members with a run through of each paragraph, he reiterated that the entire document was in square brackets – from the beginning of Part 1 until the end of Part 2. As he had said before, Part 2 would depend on the various processes going on in the respective areas. His explanation that day would cover the paragraphs in Part 1.

- a. Paragraph 1 set the context of MC12 with Ministers gathering in the spirit of solidarity despite the pandemic.
- b. In Paragraph 2, Ministers would recognize that, since their last meeting: (i) the world and the multilateral trading system had been confronted with several challenges, (ii) despite these challenges, opportunities had also emerged although the capacity to avail of them differed, (iii) the WTO itself had faced significant challenges.
- c. Paragraph 3 pointed out that those challenges, including the difference in the capacity to avail opportunities, had, in turn, affected the global economy. During the same period, the global economy had experienced high levels of uncertainty and low levels of growth which had been further exacerbated by the pandemic. As a response: (i) Ministers would affirm their commitment to keep markets open and ensure a strengthened multilateral trading system that helps drive the global economic recovery. (ii) In this regard, Ministers would welcome the recent positive trajectory of global trade growth but would note that the recovery remained uneven across WTO Members, especially developing and least-developed country Members.
- d. Specifically, on the pandemic, Paragraph 4 referred to the trade-related measures taken by Members during the pandemic with several being trade facilitating while some resulting in negative effects. It went on to say that addressing the pandemic and ensuring an

⁹ A revision of this document was subsequently circulated in RD/GC/17/Rev.2.

inclusive global economic recovery would need global solidarity and the WTO could make tangible contributions in this regard.

- e. Paragraph 5 sent the message that making these tangible contributions was part of the ethos of the WTO. This was based on the organization's principles and objectives as set out in the Marrakesh Agreement. By reaffirming them, Ministers would underscore the WTO's role in global economic recovery, growth, prosperity, alleviation of poverty, welfare of all people, sustainable development, and protection of the environment in a manner consistent with respective needs and concerns at different levels of economic development.
- f. In discharging the WTO's role, Ministers would look at several aspects including: (i) addressing S&DT (Paragraph 6) where some phrases remain bracketed including on the forum for such discussions and on a possible reporting mandate, (ii) providing a smooth transition for graduated LDCs (Paragraph 10), (iii) facilitating accessions (Paragraph 11), (iv) recognizing the special situation of the Article XII Members (Paragraph 12) and, (v) recognizing the special situation of LDCs and reaffirming past Ministerial Decisions in their favour (Paragraph 13), (vi) recognizing the increased participation of Women in global markets and international trade and the contribution of MSMEs and the importance of promoting their participation in international markets – that was, paragraphs 14 and 15 respectively – and he wished to point out the reservations by India and South Africa to those paragraphs, and, (vii) ensuring the proper functioning of the WTO through its reform including in dispute settlement and negotiations as well as in its monitoring function (Paragraphs 7, 8 and 9).
- g. On a specific note, the commitment to work towards necessary reform of the WTO was evident among Members. The crux of the discussion on Paragraph 7 is how to go about it. In particular: whether, in putting this commitment into action under the auspices of the General Council, Minister should (i) establish at MC12 a Working Group open to all Members or (ii) agree on a review the mechanics of which would be discussed by the General Council; whether an illustrative list of issues should be included (i.e. monitoring and deliberating function, negotiating function and dispute settlement function, among others, as well as addressing development issues) and how to deal with them, and whether there should be a fixed deadline to take appropriate decisions. Reference to a timeline was also an unresolved matter in Paragraph 8 on dispute settlement and differences in Paragraph 9 on the WTO's negotiating function remained.
- h. As Paragraphs 7, 8 and 9 looked to the future through reform, Paragraph 16 took note of the reports from the General Council and its subsidiary bodies and that these demonstrated Members' continued commitment to the work of the WTO.
- i. Given that Members were living in a "once in a generation" period where the world was suffering from the COVID-19 pandemic amid a battered global economy, a climate crisis and the persistence of developmental challenges – during these exceptional times, Ministers, in Paragraph 17, would recognize the importance of strengthened collaboration and cooperation with other intergovernmental organizations and other relevant stakeholders that had responsibilities related to those of the WTO, in accordance with the rules and principles of the WTO, to restore trust, certainty and predictability in the world economy and effectively address current and future multidimensional challenges.
- j. There were also paragraphs under the "additional" which related to the Environment, Trade for Peace and LLDC Issues.

7.6. The current draft text was a delicate balance recognizing interests and addressing concerns of delegations. He appealed to all delegations to take this into account as upon reading this draft. Given that there were still bracketed texts, his suggestion was to continue work on this document with the representative group after the GC meeting. He noted that all delegations who had expressed a wish to participate in those discussions had been invited. As always, all delegations could consult with him at any time. He also counted on the support of all group coordinators to keep their constituencies fully abreast of their discussions and to feed-in any comments in a timely manner. Any progress on the outcome document would be reflected in the text that would be circulated to all Members and would be before Ministers for their consideration at MC12. He trusted that it was acceptable to all

Members. The importance Members attached to sending a strong, meaningful and responsive political message from Ministers was evident – particularly given the difficult period they were currently living in. Members should keep the positive momentum of the process and work together in a spirit of solidarity that they all wished to see as a central theme of MC12. Members should never forget what was at stake.

7.7. The representative of Chinese Taipei delivered the following statement:

7.8. My delegation thanks the Chair and some delegations for their tireless work on drafting the MC12 outcome document. I have seen that all essential elements have been incorporated in the draft. We support having a paragraph serving as the basis for Members to start the WTO Reform on the three pillars of the WTO immediately or as soon as practicable after MC12. On dispute settlement reform, we urge Members not to forget the existing tools in the DSU and ignore the possible useful functions of the good offices, mediation and conciliation as well the arbitration, which are already explicitly listed in the DSU and virtually being ignored and not being utilized in the past. I would propose to include exploring the possible usefulness of these two elements of the good offices, mediation and conciliation as well as the arbitration in paragraph 8 of the draft outcome document.

7.9. The representative of Chad, on behalf of the LDCs, delivered the following statement:

7.10. The LDC Group thanks the Chair for his efforts to find convergence on the opinions of the General Council with the aim of presenting an outcome document for MC12. The LDC Group would like to remind Members that we have already made a statement¹⁰ on this point at the last TNC meeting on 19 November. The Group this morning has learned that we are mentioned in the first part of the outcome document. However, this is within brackets. Therefore, we would urge Members to accept the LDC statements and the LDC-related texts in the document so that they are properly reflected. We would lastly request that Members bear in mind the LDC Ministers' expectations which have been expressed in the Ministerial Declaration¹¹ of 19 October 2021 so that we can show that the WTO is able to deliver for all Members regardless of their level of development.

7.11. The representative of Nigeria delivered the following statement:

7.12. Nigeria wishes to reiterate that it is of utmost importance that the outcome document development process remains open, transparent, and inclusive. The document should incorporate and balance the views and priorities of Members. This would foster the delivery of a balanced and equitable MC12 outcome.

7.13. The representative of Jamaica, on behalf of the ACP Group, delivered the following statement:

7.14. We look forward to wrapping up our negotiations on the MC12 outcome document. This is a priority of the ACP Group. We have not had a declaration since 2015 and so we believe the organization needs political guidance on the many issues that confront the WTO. This is especially so given the unprecedented environment in which the multilateral trading system currently operates. Hence, the outcome document should seek to direct the WTO's operations to focus on development and elevating the interests of developing countries and LDCs, especially in the context of building back better from the COVID-19 pandemic. We do hope that the document would be able to focus on the issues of relevance to the organization. We take note of the intention by Members to include language on digitalization in the document. We believe that if the issue of digitalization is to be addressed in an outcome document, we must take the opportunity to make reference to the digital divide in our Members, the lack of digital infrastructure and the role that the 1998 Work Programme can play in advancing the interest of developing countries and LDCs. The issue of trade and environment is an issue of interest to our Group. In particular, natural disasters and climate change-induced events often affect our trade infrastructure and our ability to integrate in the global economy. Additionally, we constantly experience trade barriers imposed under the guise of environmental measures. This is an issue that must be treated with delicately in the outcome document. The document must also make reference to S&DT and should treat it as a fundamental part of WTO rules. We anticipate that the document refers to Paragraph 44 of the Doha Development

¹⁰ The statement of the LDC Group at the 19 November Formal TNC Meeting are reflected in paragraphs 4.33 to 4.42, pages 18-19 of TN/C/M/42.

¹¹ The LDC Ministerial Declaration for the Twelfth WTO Ministerial Conference 2021 can be found in document WT/MIN(21)/2.

agenda and the central role of the CTD SS in this regard. LDCs' and LLDCs' issues must be properly represented in the document. We also call for concessions from acceding developing countries to be commensurate with their capacity and development needs. As the document seeks to address the issue of WTO Reform, this is a matter supported by the ACP Group but we are of the view that we should be minimalist in approach and should seek to avoid inclusion of sensitive issues. We have made a proposal on WTO Reform on screen, which we sanitized for political sensitivities and ensured that it accomplishes our objectives. We stand ready to engage constructively on this proposal.

7.15. On the COVID response document, we renew our support for the initiative and we will support the Facilitator. The outcome should not create rules nor alter Members' rights and obligations. It should include issues of interest to all Members. We therefore welcome the Facilitator's effort to take on the ideas of various Members through a drafting group. This is commendable. We urge patience from the Facilitator and from Members in this regard and call on the process to run its natural course without usurping the process. The process should be inclusive and transparent and all small group processes should be open to interested delegations. For us, the WTO has an important role to play in complementing the work of international organizations and other stakeholders in respect of responding to the impact of the pandemic from a health, stabilization, recovery and sustainable rebuilding perspective. We anticipate that Ministers will be able to use MC12 to effectively guide the organization on how we carry out this task. For this to happen, however, the onus is on us, Ambassadors in Geneva, to make the necessary preparation so that solid, relevant and appropriate recommendations can be put to our Ministers to facilitate a decision. We expect that the Facilitator process will not only stabilize, recover and rebuild, but will also leave us with a blueprint as it relates to how we respond to future international crises. We agree that any outcome from the process must address the health dimension of the crisis, especially from a TRIPS and COVID perspective, taking into account work in the TRIPS Council.

7.16. The representative of India delivered the following statement:

7.17. At the outset, I sincerely commend the Chair's efforts in leading a very transparent process for finalization of the MC12 outcome document. We have supported the Chair's efforts throughout the process. We were in agreement with his general approach that the MC12 declaration should reflect on the points of convergence of Members than their divergences. In that spirit, we have avoided bringing in language or paragraphs that others may find uncomfortable. Our interest, like many others in this room, was to achieve consensus on the document. However, some delegations still continue to treat the outcome document as a Christmas tree and are always trying to bring in elements that cross clear redlines. At the beginning of the process, the Chair had pleaded with Members to not to resort to those tactics, but they seem to care less about achieving consensus, and seem to care more about pushing forward their own lopsided agenda. If those delegations do not change their approach, they will be responsible for deadlocks and repeat the situation of the past Ministerial Conferences. I hope they will listen to the Chair's wise advice and help him in producing an agreed outcome document. My delegation will help the Chair's efforts to that end.

7.18. The representative of Barbados, on behalf of CARICOM, delivered the following statement:

7.19. At the outset, we associate with the statement made by Jamaica on behalf of the ACP Group. The CARICOM Group thanks the Chair for his tireless efforts on the MC12 outcome document. The Group has been actively involved in this process and looks forward to having a critical outcome. We have taken good note of the report regarding the MC12 outcome document and the level of progress that has been made. We are fully cognizant that a consensual Ministerial Declaration has been viewed as one of the indicators of a successful Ministerial Conference. We are fully supportive of such an outcome document as it demonstrates that the organization remains a multilateral institution by nature and keeps the WTO's core principle of consensus alive. The ability to demonstrate consensus is something that has eluded us in recent times. In order to reach consensus, however, we must continue to ensure that the process is inclusive, transparent and that the interests of all Members are included. As small vulnerable economies with unique challenges and priorities, there are some issues that will be of interest to CARICOM more than to others. We hope that, despite our different emphasis on these issues, these will still find their way into the outcome document, particularly in circumstances where there is no immediate operative effects calculated. With this said, the nexus between trade and climate change, trade and natural disasters, is of core importance to countries like ours, notwithstanding the views of others. Our insularity and small sizes cause us to be particularly vulnerable and susceptible to the ravages of climate crises and natural disasters. In the immediate period after such an event, efforts are made to ensure that trade facilitating

measures can assist in getting necessary supplies including food stuffs into our countries and that trade continues. Finally, we have not been demandeurs for the inclusion of many issues in the outcome document, but we would hope that our interests can be collectively taken up within the context of the draft outcome document.

7.20. The representative of Mongolia, on behalf of the LLDCs, delivered the following statement:

7.21. As a land-locked developing Member with a small and vulnerable economy, Mongolia has been and is supportive of the WTO and the multilateral trading system. Mongolia believes that improving and reforming of our organization should be in the interests of all Members, large and small, developed and developing. At the same time, the benefits of international trade should be reaped by all, including landlocked countries. The participation of landlocked developing countries or LLDCs in global trade is below 1 per cent. On average, LLDCs continue to pay more than double in transport costs compared to their transit neighbours. Therefore, the meaningful integration of these countries into the multilateral trading system is essential. In this regard, Mongolia as a coordinator of the LLDC Group is promoting the transit rights of LLDCs in every possible way. The LLDC Ministerial Meeting took a place on 4 November and adopted the declaration that was circulated among WTO Members in document WT/GC/237 along with proposal of a paragraph for the MC12 outcome document. The LLDC Group proposed this paragraph with the main purpose of drawing attention to and initiating relevant studies of the issues related to the trade of landlocked developing countries, in particular on transit. The work programme mentioned is not aimed at obtaining any additional S&DT, but only to make the WTO's relevant rules and regulations for transit clearer and detailed. Mongolia and the LLDC Group count on Members' support and cooperation and is ready to work with Members further on the proposal with a view to refining it to fit the interests of all concerned.

7.22. The representative of South Africa delivered the following statement:

7.23. We commend the Chair on the manner in which he has been conducting consultations. We take note of the initial draft he has proposed to Members under his own responsibility that aims to achieve an appropriate balance. We recall our Statement made in the GC in October. MC12 will happen under difficult circumstances, these are not normal times. We should aim to reach in principle agreements on the direction that the WTO should take in the next few years. These could be crystalized in the form of work programmes. The outcome document must be balanced, not seek to undermine existing mandates, nor change Members' commitments and obligations. Importantly, it should also reaffirm the principles and objectives of the WTO as outlined in the Marrakesh Agreement. We want to stress that if we are to have an outcome, the outcome document must only capture the issues that have a multilateral mandate. We must avoid using the outcome document as a launchpad for issues that have not been properly discussed among Members and where reaching consensus is not feasible. MC12 must aim to preserve and strengthen an inclusive, open, transparent, fair, rules-based and development-oriented multilateral trading system with the WTO playing the central role. The system must take into account the interests of developing countries and LDCs if it is to have legitimacy. At this time, we would like to conclude with a few words about arrangements for the forthcoming Ministerial Conference. There are genuine concerns that need further clarification in relation to the entry requirements, vaccination certificates, and costs associated with regular testing that will have an impact on inclusive participation at MC12. These warrant greater attention since inclusive participation is key if we are to have balanced outcomes. A hybrid approach is not a solution. We would need to make a call at an appropriate time on whether the conditions are ripe for an in-person meeting given the ever-evolving COVID-19 situation.

7.24. The representative of Cambodia delivered the following statement:

7.25. Cambodia associates the statement made by Chad on behalf of the LDC Group. I commend the Chair and all delegations for the hard work in coming up with the current draft MC12 outcome document. LDCs are the most vulnerable constituency of the WTO and that special attention should be given to the challenges they face. It is therefore important that LDC-specific elements as proposed by the LDC Group and Members be considered for inclusion in the MC12 outcome document. The elements proposed by the LDC Group in the MC12 outcome document reflects the actual needs of the LDCs as called for by LDC Ministers in the LDC Ministerial Declaration for MC12 in document WT/MIN(21)/2 dated 27 October 2021. By including those elements, we would reflect the WTO's commitment and principles to support the most vulnerable Members. On specific topics, DFQF and Preferential Rules of Origin are critical elements for the LDCs in accessing and utilizing preferential market access accorded to LDC by preference-granting Members. On LDC Graduation, the proposed

text reflected the LDCs' full flexibility in working with all Members to come up with a solution that can be accepted to all Members. This transition will allow LDCs to be ready to face new challenges from the new status. On accessions, we take note that there has not been any country acceding to the WTO since 2016. The benefits provided through the multilateral trading system with the WTO at the core, especially to LDCs, has been well documented. Therefore, facilitated process to allow LDCs swift accessions to the WTO would allow them to start reaping the benefit from the rules-based multilateral trading system and address their development needs. On Aid for Trade, I raise the importance of the support from the EIF to LDCs. As the only Aid-for-Trade agency fully dedicated to the LDCs, the EIF has made significant contributions to the LDC in capacity building and productive capacity development. The EIF's support and contributions should be recognized in the MC12 outcome document.

7.26. The representative of Indonesia delivered the following statement:

7.27. Indonesia expresses our appreciation to the Chair's excellent leadership and tireless efforts in our collective work to have an agreement on this very important document. Indeed, it has been four years since the last WTO Ministerial Conference was held. Furthermore, the world today faces unprecedented challenges. Thus, it is essential for this organization to show its solidarity and show the world that we are still relevant. Acknowledging the progress that has been made in the outcome document negotiations, we are optimistic that at MC12 we will be able to deliver a meaningful text. In terms of substance, we are pleased to note that important issues such as WTO Reform and the dispute settlement mechanism are being deliberated. The devil is in the details. As we are nearing the eleventh hour, the remaining issues are the toughest to resolve. In this regard, we urge all Members to exercise flexibility and work on building convergence. We fully support the Chair's initial approach to avoid any Member's redlines and contentious issues that are impossible to achieve. Having said that, Indonesia is committed to continue to engage in the discussion and work towards a positive outcome for MC12.

7.28. The representative of Malaysia delivered the following statement:

7.29. Malaysia commends both the Chair and the Facilitator for their leadership in their respective processes. The MC12 outcome document was still a work in progress. With only a week left before MC12, we must put our collective efforts to explore possible common ground to come to an agreed text in time for MC12. On the WTO's Response to the Pandemic, we have a great responsibility to save lives and protect livelihoods of people around the world. Because of the urgency, we call on Members to exercise flexibility to reach a possible landing zone on IP, with a view to present a workable solution to our Ministers. My delegation looks forward to contributing constructively during the final stretch and call all Members to join hands to ensure the success of MC12.

7.30. The representative of Liberia, on behalf of the g7+ WTO Accession Group, delivered the following statement:

7.31. We want to express the opportunity for the overwhelming support that WTO Members have shown in supporting the language that the g7+ WTO Accession Group presented to the General Council. This language is very simple - not complicated. We want to let you all know that we are still available for further discussion that will make you more comfortable with the language. Our group, through this paragraph, is only requesting that we all recognize that trade plays an important role in promoting economic development, peace and stability. Also, to welcome the efforts of fragile and conflict affected States to integrate and participate more effectively in the multilateral trading system. This is the language we presented and we hope that we will garner greater support for it to form part of the MC12 outcome document.

7.32. The representative of the European Union delivered the following statement:

7.33. Let me first thank the Chair of the General Council and colleagues for their hard work on this document. This is a good moment for a reality check. We still have a significant amount of issues to resolve before the Conference opens. Our common goal should be to try to agree on the greatest number of issues so that only a manageable handful of subjects are put to Ministers. This in practice means that we need to make more progress and with greater urgency, to reduce brackets in the outcome document. We must also agree to make all efforts to try to close certain accompanying texts and documents ahead of the Conference. We all agree that reforms are needed in this

organization. It is essential that, at MC12, Members give political priority to WTO Reform and agree to set up an efficient and structured process of discussion in the WTO on how to make the WTO work better across its three functions. Let us agree on text to this end in the MC12 Ministerial Declaration that is concrete and non-prejudicial as to the outcome. We cannot put this discussion off any longer. We also need to show that the WTO is not detached from reality and acknowledges the existence of global environmental challenges and climate change. We hope that in the Ministerial Declaration, Ministers do not shy away from reaffirming mutual support between trade and environmental policies as enshrined in the Marrakesh Agreement and subsequent declarations.

7.34. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

7.35. We commend the Chair for starting consultations on this outcome document early. He has patiently sat through various mutations of the text to be able to obtain several clean paragraphs. We are grateful for that. I think the different perspectives at play in the WTO were quite obvious as we went through the process of exhausting our vocabulary to find the perfect word that everyone could agree upon. I have no doubt that this exercise will continue. But we appreciate the fact that we remained – in spite of all these difficult situations – inclusive and with a spirit of consensus generation as we went forward to try and engage on the text. There were different perspectives and very different groups in the WTO in different configurations. The African Group will remain supportive of the situation of the LDCs, acceding countries, landlocked developing countries, and of course we look forward to having a paragraph on SVEs and NFIDCs. It is not what people would term a Christmas tree approach. It is a reality of what exists in the WTO and it must be reflected because Ministerial Conferences do not happen every day. On the other issues, the African Group will remain engaged. On WTO Reform, we agree to the question of reform under the purview of the General Council in dedicated sessions. We simply ask that on any other new issues to be brought in, and which are not based on multilateralism and on the specific mandate, there should be consensus on moving these issues forward. We remain engaged and we look forward to working with you.

7.36. The representative of the United Kingdom delivered the following statement:

7.37. We commend the Chair for his patient and inclusive work on this document. Let me echo many of the words expressed by my EU colleague just a few moments ago. Just to say that, on the subject of Christmas decorations, I do not think it is appropriate to compare the empowerment of women, the greening of the global economy or the support for the 95 per cent of our businesses that are MSMEs with Christmas baubles.

7.38. The representative of Guatemala delivered the following statement:

7.39. Guatemala commends the Chair for his tireless efforts and the Secretariat staff who are assisting him in this process. In Guatemala's view, consensus on the outcome document is within reach. A successful conclusion will depend, however, on the frank exchange of views and the political will of all Members. In this regard, Guatemala is concerned that there are still few Members objecting to major important issues without providing reasoned and adequate explanations to do so. For example, one Member objected to the overwhelming support for inclusion of a paragraph containing Ministers' commitment to revitalize the WTO negotiating function and to strengthen its rulemaking. Only this Member appears to be comfortable with the status quo – a status quo that, over a period of 25 years, has only produced one multilateral agreement. The same Member objected to mentioning climate change in the outcome document, despite being part of, and having agreed to a wide range of commitments at the Conference of the Parties, or COP26, of the United Nations Framework Convention on Climate Change. The same Member, together with another Member, objected to a paragraph recognizing that women can benefit from trade, notwithstanding that, less than a month ago, these two Members agreed to a full paragraph concerning Women's Empowerment at the G20 meeting. The same two Members also objected to a paragraph recognizing the critical role of MSMEs in economic and social development, while in the territory of one of them, there are above 63 million MSMEs providing employment to around 120 million persons; while in the other Member, there are above 2 million MSMEs, employing between 50 and 60 percent of its work force. By providing these examples, Guatemala is in no way questioning the ability of Members to object, when they deem appropriate, to proposals by other Members. However, Members should provide reasoned and adequate explanations about their objections and they should fully engage with other Members with a view to finding mutually agreeable solutions. It is critical to reach consensus on the outcome document. The outcome document contains, as of today, important

political declarations that are necessary to reinvigorate the work of this organization. We also need to convey to the world that we care – that we care about our stakeholders. Therefore, we urge all Members to show the necessary flexibility. My delegation stands ready to continue working constructively with all Members to ensure a successful conclusion of the outcome document.

7.40. The representative of Nepal delivered the following statement:

7.41. Nepal commends the Chair for his contribution to engaging all Members in developing the outcome document collectively through various rounds of discussions. The main concerns of the LDC Group, as mentioned in the LDC Ministerial Declaration, will be reflected in the outcome document. Continuation of Members' commitment to the effective implementation of past Ministerial decisions on LDCs, smooth transition period for graduated LDCs and adoption of interim arrangement, technology transfer by the developed countries under the TRIPS Agreement, Work Programme on Electronic Commerce to bridge the digital divide and capacity gaps, stimulus packages for the recovery of international trade with targeted programmes for early recovery of severely affected economies and sectors mainly in the LDCs are some of our priority areas for MC12. Similarly, support for capacity building to cope with challenges faced by LDCs in meeting NTM requirements, WTO Reform with a view to addressing emerging challenges, exploiting new opportunities and bridging the existing gaps in the WTO laws and practices, climate change and resilient economy by acknowledging traditional farming, ecotourism, and traditional health practices in the LDCs, among others, are other main areas of interest of the LDCs including my country Nepal. Finally, the WTO's response to the COVID-19 pandemic should provide special priority to LDCs and LLDCs.

7.42. The representative of Paraguay delivered the following statement:

7.43. Paraguay commends the Chair for his efforts and for the transparency in this process. We have a number of preliminary comments on RD/GC/17/Rev.1. On the paragraphs concerning WTO Reform, Paraguay would like to express its support for the reform of this organization and support the creation of an open Working Group for all Members with the aim of putting forward recommendations for an Action Plan with concrete deadlines for proposals. We would also like to make reference to a specific proposal for a language which is included in the "Additions" part of the outcome document, which is that language put forward by Mongolia for LLDCs. My delegation would like to stress that the language in this proposal, while still under internal consultations, does not seek to create a new subcategory of Members but rather to address trade policy and adapt them to the particular situation of the geographical circumstances of these Members to strengthen the WTO's ability to attend to the need of those Members. We therefore once again request that Members consider this language favourably and its inclusion in the MC12 outcome document.

7.44. The representative of the Philippines delivered the following statement:

7.45. It feels as though we are now running the hardest mile in a marathon. Many of us are starting to feel physically and mentally drained. We must have the mental fortitude to move forward and cross the finish line. I appreciate the work that has been done on the Political Declaration and the constructive approach displayed by many delegations. We need a political outcome that will send the message that the WTO is back in business and we need a practical outcome that demonstrates our collective resolve to effectively respond to the pandemic and speak clearly on the WTO's contribution to trade and environment and Sustainable Development and we thank the Chair on his leadership with the constructive contributions of the ACP, through Ambassadors Cheryl Spencer and Chad Blackman, and other delegations leading to paragraph 5A. We also thank the Chair for RD/GC/17/Rev.1. We appreciate how coherent and eloquent the text now reads and note the important elements requiring Ministerial deliberations and guidance. The Philippines will continue to work with others in producing a balanced outcome that shows the WTO is ready to confront the many challenges before us: from WTO Reform, development, environment and sustainability, to pandemic response. We take note of the ongoing small group discussions on a range of issues, and specifically on the draft Declaration on the WTO Response to the Pandemic. We encourage pragmatic convergence on the text that is on the table. Let us show to the world that the WTO is relevant and able to finish this marathon exercise through to its successful conclusion.

7.46. The representative of the United States delivered the following statement:

7.47. I join others in thanking the Chair for his efforts to guide us towards a possible consensus outcome document. The United States has worked hard to find language where we can, to allow Members to express their views, consistent with the guiding principles that the Chair set out. If this is going to be a consensus document, it must articulate those views and words that we can all agree with. We have heard several interventions today that indicate that some Members continue to seek to push others across well-known redlines, while at the same time telling others to avoid their own redlines. We want to remind the Chair of what we said at the beginning of this process, that is the benchmark of success for the United States means a document that provides Ministers with a basis for understanding where we are as an organization and assist them in giving us guidance to where they want us to go.

7.48. The representative of Ecuador delivered the following statement:

7.49. We commend the Chair for the work and leadership in this process. We are optimistic in achieving an outcome document for MC12. As a developing country and an SVE, Ecuador considers a multilateral rules-based system based on transparency, openness and inclusion. The work of this house and trade can and should become a positive agent for economic recovery and international trade post-COVID-19. We should form part of the international response to the current health crisis, in line with other international organizations and we must show that we can participate in a global response to COVID-19 – a response based on cooperation at the international level and solidarity. Equally, sustainable development and protection and preservation of the environment are key objectives for this house. The relationship of trade with climate change, natural disasters, pollution and loss of biodiversity must be reflected in our outcome document. This is very important, and we wish to achieve a consensual agreement on this. Environment is a concern for all WTO Members. As other Members have already expressed, we must show that the WTO is not disconnected from reality and that it recognizes the existence of global environmental challenges. We hope that the Ministerial Declaration will allow our authorities to reconfirm the link between trade and environment, which is already established in the Marrakesh Agreement and in subsequent declarations. We cannot be the only international multilateral organization which does not express its will to contribute to addressing these global challenges. The same with women's economic empowerment which does not address a minority. It addresses 50 per cent of the global population. To speak on gender issues is to speak on the recovery of the global economy. This seems obvious. But it looks like this is not the case for some Members. We therefore hope that this matter will also achieve consensus.

7.50. The representative of Australia delivered the following statement:

7.51. I agree with Malaysia. We must join hands to secure a multilateral agreed outcome document at this Conference. And then of course we must quickly use some hand sanitizer. Because of the pandemic, this is the first conference after the milestone of this organization reaching the age of a ripe quarter-century. It is an opportunity for renewal and revival on all three pillars. We need to give effect to that through a process of WTO Reform – to agree to a process, as others have said, on how to make the organization work better – with clear guidelines to report with recommendations for decision by the next Ministerial Conference. All of us have ideas to contribute and nobody should be prejudiced by this effort. WTO Reform has been discussed in many places in recent years – it is time it is taken up here, in this house, and time to act. Australia is working for an MC12 package that delivers meaningful multilateral outcomes for our collective future. On fisheries subsidies, we are closer than we have ever been to finalizing these negotiations – now, we must come together and agree on a meaningful deal that effectively curbs harmful fisheries subsidies. The sustainability of our oceans and marine life hangs in the balance and the international community is looking to the WTO to make a contribution to preserve global fish stocks.

7.52. On trade and health, we thank Ambassador Walker for his considerable efforts in consulting Members on possible MC12 outcomes. It is important that we achieve an outcome on trade and health that is ambitious enough to meet stakeholder's expectations for what the WTO should be able to deliver in response to a crisis of this magnitude. At a minimum, this will require us to reaffirm the value of openness in the international trading system, and the importance of ensuring any emergency trade measures, including export restrictions, are targeted, temporary, transparent and consistent with WTO rules. We have heard the concerns from some Members regarding capacity constraints and the need to preserve policy space. However, we have also heard the priority that many Members, particularly those smaller developing states that depend on imports for some critical

medical supplies, place on the issues of transparency and export restrictions. Those who are fortunate enough to be producers of such goods need to demonstrate leadership on these issues. We also encourage all Members to engage in ongoing discussions on the intellectual property issues with a spirit of compromise and flexibility. Action on agriculture is critical for global food security, sustainability and the environment – and for levelling the playing field in agricultural trade. We must grasp this opportunity to put in train a meaningful agricultural reform process that will deliver modalities by MC13. We cannot let this process elude us for a further 25 years. It is now likewise evident that the plurilateral negotiations are likely to provide a baseline of success for the Ministerial Conference. Substantial progress has been made on the e-commerce and investment facilitation Joint Statement Initiatives, and the conclusion of the Services Domestic Regulation Joint Statement Initiative – launched at the last Ministerial Conference – demonstrates much-needed advancing of the rulemaking function. Through the MC12 package the WTO has the opportunity to assist the global response and recovery from the pandemic. We have the opportunity to act collectively to shape a sustainable and fair future for our world.

7.53. The representative of Chile delivered the following statement:

7.54. Chile commends the Chair for all his efforts and the transparency with which he has led this process. Many Members have already raised this and thanked him for his efforts in bringing us towards a solid Declaration – the first in four years. The process is going well, and we need to show that we are committed and flexible. But we have also seen that some Members are not as flexible as what is called for. To this end, the WTO's commitment to multilateralism, development, women's economic empowerment, MSMEs, environment and WTO Reform are very important points to raise.

7.55. The representative of Thailand delivered the following statement:

7.56. I place on record Thailand's sincere gratitude for the hard work of Ambassador George Mina from Australia on his kind assistance on Thailand's issues in the dispute case and we highly appreciate it. Together with the Secretariat, I also place on record our appreciation to Ambassador Manuel Teehankee my good friend from the Philippines for his kind cooperation. We cannot forget the Chair because he is the one who suggested that we undertake this when he was the Chair of the DSB so that at this moment we appreciate that things have come to, not conclusion, but arriving at the point where Thailand is very grateful for the help and cooperation from all. I also thank Ambassador Sørli for his hard work. Thailand places importance on the TRIPS Waiver issue. We are quite flexible on the details, but we definitely look forward to seeing a part of the WTO Response to the Pandemic as one of the deliverables at MC12. I do not have to explain that it is very important to the credibility of the WTO. This is an issue which is critical to the world and the WTO can play an important role in helping us move towards fulfilling that objective. I have also just looked at RD/CG/17/Rev.1. At our meeting last night, Thailand said that we would like to have some time to look at the paragraph on LDCs. I am very delighted to report that my capital can support the current language and paragraph on the LDCs that we saw the abbreviated version from last night. Thailand has always been supportive of LDCs and work closely with them. Now, we hope that the paragraph on LDCs will be operationalized in the future and we look forward to future cooperation with them.

7.57. On other issues, Thailand, like many others, see the importance of WTO Reform. We would definitely like to see that as an element in the outcome document. We should reach a common understanding on working towards an ambitious goal comprising of an agreement at MC12 to establish a Working Group or some kind of permanent, semi-permanent, body to work on this issue. We can be flexible to look at other options but we definitely think that this is a must. Although the WTO is not a person, it is time for it to take a look at itself. It is time to reinvigorate and consider how we can improve this organization. On trade and environment, Thailand supports the inclusion of a paragraph on this area. But we would like to see the language that is as close to the COP statement as possible. Thailand has been an active participant of this issue in APEC, among others. The WTO can definitely play some role in contributing to this. Lastly, Thailand looks forward to working with the Chair, the Director-General and other colleagues in the upcoming MC12.

7.58. The representative of Tunisia delivered the following statement:

7.59. We take note of the revision prepared under the Facilitator's responsibility and await its circulation to better examine it. We align ourselves with the statement delivered by Pakistan on behalf of the co-sponsors of document JOB/GC/278 and we stress the paramount importance of the process, which could have a direct impact on the credibility of our organization and could be, in our

view, a barometer of the success of the Twelfth Ministerial Conference. The few days remaining until MC12 will be crucial for Members to demonstrate the unity and the flexibility needed to respond effectively to the current pandemic, and to prepare for any future pandemics. In this regard, we would have preferred that the facilitator's text be more responsive to the considerations of developing countries and least-developed countries, which would have saved us precious time that was lost these past few weeks in the search for the right balance. Tunisia has engaged constructively and positively throughout this process and will continue to do so until we arrive at a meaningful and equitable outcome that will benefit all Members. Tunisia's main concerns have been reflected in document JOB/GC/278, which aims, in particular, to strike the right balance that would meet the needs and ambitions of various Members, including developing countries and LDCs. In that regard, a global response to the pandemic must, in our view, cover all sectors and aspects affected by the pandemic. In an exceptional health, economic and social situation, it is of the utmost importance that we are able to use all the proposals that can help to tackle the pandemic and promote a rapid recovery of economic systems, many of which seem to be on the verge of collapsing. Therefore, my delegation strongly supports the inclusion of a positive response to the request for a waiver from provisions of the TRIPS Agreement in the final text. It would be a shame if WTO rules deprived the world of a real opportunity to strengthen global production of vaccines and other medical products needed for the prevention, containment and treatment of COVID-19. Likewise, particular attention should be paid to the specific challenges faced by the countries most vulnerable to crises. Thus, the issues of food security, economic recovery, resilience-building, and technology and know-how transfer, cannot be ignored during this process. Furthermore, these Members should not see their policy space reduced by new obligations that would impact their ability to deal with crises. I would also like to acknowledge Members' greater involvement in this final stretch and the work undertaken by the small working group to provide updates on landing zones in order to achieve a balanced text representative of the concerns and priorities of all parties. Allow me to reiterate our commitment, like the majority of developing countries, to an effective and tangible WTO response to the pandemic, and to insist that, as a matter of priority, all voices and all concerns be heard and treated equally.

7.60. The representative of Vanuatu delivered the following statement:

7.61. We have listened very carefully to the comments made by delegates and we commend the Chair for conducting a very transparent process which we support. Some Members' positions during the discussions of the MC12 draft outcome document are yet to be further explained to us but I think that we should not ignore Members' views. We should all keep engaged so that an outcome can be arrived at without so much of extreme positions taken by all of us.

7.62. The representative of Iceland delivered the following statement:

7.63. I commend the Chair for his work and engagement on this outcome document and for taking our proposal into account. As a co-chair of the Informal Working Group on Trade and Gender, Iceland welcomes the language on women's economic empowerment in the MC12 outcome document also still bracketed. In case there are any doubts about the inclusion of this text in the document, Iceland would like to highlight that gender equality benefits societies and economies in several concrete ways, including having a positive effect on trade and it contributes to increasing economic growth. We urge Members to engage constructively towards achieving consensus on this important topic.

7.64. The representative of Argentina delivered the following statement:

7.65. I commend the Chair for this report and for the efforts undertaken at the sessions convened to draft the Ministerial Declaration for MC12. Argentina is actively participating in this process and we welcome the commitment, effort and flexibility shown by all Members to reaching a consensus, especially on issues that are the subject of opposing views. We are aware of the systemic concerns of some Members, but we also believe that there needs to be sufficient flexibility to establish a collective way forward that will give fresh impetus to the WTO in all its functions and provide it with the tools to deal with current and future challenges. We hope that everyone's commitment will be reflected in a document that sends out the necessary signals in this regard. We also thank Ambassador Walker for his report on the WTO response to the pandemic. With a week to go until the start of the Ministerial Conference, we reiterate that we do not believe we can realistically be expected to resolve, in such a short space of time, the profound conceptual differences that remain over the elements to be included in that response. We must adopt a balanced approach and think collectively. We cannot harbour high ambitions on the issues that each of us considers to be important, while at the same time disregarding or downplaying others that may be core issues for

other Members. The way forward must be to acknowledge that all these issues are relevant and that they must be addressed, whether as a proposal adopted for immediate action or through a commitment to deal with them after the Ministerial Conference, with specific objectives and defined deadlines. The declaration and action plan proposed by the facilitator as the structure of an outcome offer the pathway and platform required to guide that discussion. Let us be pragmatic. Let us not put our Ministers in the awkward position of having to tell their citizens that the WTO has nothing to say about the pandemic and that it will continue to act as if nothing has happened.

7.66. The representative of Uruguay delivered the following statement:

7.67. I thank the Chair for his efforts to bringing us towards a common Declaration, which for the first time in several years has managed to show the general feeling of the entire Membership. As recently shared in this room, 95 per cent of our economy is formed by MSMEs, many of them are led by women. The pandemic has had a very serious effect on MSMEs and a very serious effect on women. Support for those MSMEs which have been significantly affected and who will be crucial in the recovery and committing ourselves to women's economic empowerment will undoubtedly support these individuals and these key players. Helping MSMEs to integrate themselves better into international trade will contribute to our common economic recovery. These are some reflections, but I think they are shared by everyone. I do not think anybody here in this room could possibly be against them – be against MSMEs and women's economic empowerment. This is a safe path towards a joint declaration representative of all.

7.68. The representative of Norway delivered the following statement:

7.69. The outcome document should reflect three main points: First, a reaffirmation of the core values and principles underpinning this organization. This is now well covered in the agreed part of the text. Second, we need to acknowledge that we have to do better, meaning that we need to agree to start work on WTO Reform that covers all three pillars. Third, the WTO needs to adapt and be relevant to the challenges of today's world. These challenges are embodied in the concept of sustainability in its social, economic and environmental dimensions. The proposed paragraphs addressing women's economic empowerment, MSMEs and environment and climate are all relevant in this perspective and should be included in the outcome document.

7.70. The representative of Costa Rica delivered the following statement:

7.71. I commend the Chair for the efforts he has made to produce this text. We highlight the importance for Costa Rica of reaching an agreement in relation to WTO Reform that allows us to revitalize the functioning of this organization in its three pillars: negotiation, dispute settlement, and transparency and monitoring. I also highlight the importance of trade and environment issues, in particular the contribution of the WTO to sustainability and the fight against climate change, as well as the recognition of the importance of promoting the participation of women in international trade and their empowerment, and the WTO's contribution to promote MSMEs.

7.72. The Chair encouraged all delegations to remain actively and constructively engaged in this process in an effort to build convergences in the remaining days ahead of the Conference and to clean up the text as much as possible, so as to ensure a manageable agenda for the Ministers.

7.73. The General Council took note of the Chair's report¹², the statements made, and that work¹³ was continuing in the immediate next few days on the draft MC12 outcome document, as he had said in his report, and that any results from this work would be before the Ministerial Conference, for consideration.

¹² The Chair's report was subsequently circulated in document JOB/GC/282.

¹³ See RD/GC/17/Rev.2.

7.2 WTO Response to the Pandemic – Report by the Facilitator

7.74. Ambassador David Walker (New Zealand), Facilitator for the WTO Response to the Pandemic, provided the following report:

7.75. I am pleased to provide my report to the General Council on the WTO's multilateral response to the pandemic, in view of the forthcoming 12th Ministerial Conference. Let me first recap the road that took us here today. Since my appointment as Facilitator on 22 June at an informal meeting of the General Council, I have undertaken consultations and convened meetings in a range of formats, and I provided my first report to the General Council on 27 July (JOB/GC/269). As I have done throughout this process, I have met with and listened to any delegation that wanted to consult with me and convey its views.

7.76. In September, I convened a series of thematic sessions, focusing on themes inspired from earlier discussions, in particular from the consultations that Ambassadors Spencer and Tan had undertaken with the Membership, as captured in RD/GC/14. Those six themes were: (1) transparency and monitoring; (2) export restrictions and prohibitions; (3) trade facilitation, regulatory coherence and cooperation, and tariffs; (4) the role of services trade; (5) collaboration with other international organizations and engagement with other key stakeholders, and (6) a framework for future pandemics and crises. In addition to those sessions, I also held consultations in different configurations, including meetings with Group Coordinators and other delegations.

7.77. In my second report to the General Council, on 7 October, I provided an overview, theme by theme, of what I felt was emerging from discussions with Members. This report was circulated as JOB/GC/273. At that meeting, I also informed Members of the intention to carry the work forward by undertaking a solutions-oriented text-based discussion. Accordingly, I convened three text-based sessions on 12, 15 and 18 October, and also convened a meeting with Group Coordinators and other delegations on 21 October. For each of those sessions, I circulated, under my own responsibility, draft text with the intention of helping to focus and structure discussions. Over the course of October, I introduced a number of specific revisions that, in light of what I heard from delegations in those sessions, seemed to reflect emerging convergence.

7.78. At the Heads of Delegations meeting of 25 October, I shared draft text for a Ministerial Declaration on the WTO Response to the COVID-19 Pandemic, accompanied by a post-MC12 Plan on Pandemic Preparedness and Resilience. This is contained in JOB/GC/279. While prepared under my own responsibility, that draft text was rooted in discussions held by delegations over the last months. It was inspired by the report I provided to the General Council in JOB/GC/273, which itself was based on discussions and consultations that had taken place in the thematic sessions in September. Those discussions and consultations, in turn, drew inspiration from the proposals put forward by Members as well as from the compilation of elements gleaned from the consultations undertaken by Ambassadors Spencer and Tan, contained in RD/GC/14.

7.79. After my report to Heads of Delegations on 25 October, I convened meetings on 28 October and 9 November with Group Coordinators and other delegations. At those meetings, I recalled that the draft text circulated in JOB/GC/279 aimed to reflect areas of emerging convergence, in light of what I had heard. However, a number of outstanding issues remained, where delegations still had very different views. Indeed, there were issues that some Members wanted to see included or that they wanted to see addressed quite differently, while others disagreed. Also, on various parts of the draft text, there were questions about what aspects might be addressed in the Declaration and what should rather be reflected in the post-MC12 plan. In order to achieve a multilateral outcome, I then stressed the need for delegations to engage with those that had different views and to find common ground.

7.80. At another meeting with Group Coordinators and other delegations on 12 November, I indicated that I had been discussing with delegations in different configurations, both bilaterally and in small groups, with the objective of getting Members from different corners of the room to converge. I brought together a group of Members with different views, and of different levels of development, so as to help identify landing zones on outstanding issues. This "reference group" of delegations representing various points of views across the Membership worked extensively and constructively. Their discussions contributed to the identification of common ground in some areas. On other issues, this group has not fully converged, but their discussions have, in my view, helped to point towards possible landing zones. Last week, I convened another informal meeting with Group

Coordinators, on 16 November, and then open-ended consultations on 17, 18 and 19 November, where I gave examples of areas where the reference group seemed to have found some elements of common ground, and where I listened to further views from Members as a whole.

7.81. The draft text that I am presenting today will be attached to the written copy of my report, which will be circulated later today. This draft text is again submitted under my own responsibility. This revision from the October 25 text aims to reflect my best assessment of possible landing zones on outstanding issues, in light of what I have so far heard from Members from different corners. Naturally, some will think that the draft is not sufficiently ambitious, while others will have opposite views. Nobody will think that it reflects their own national preferences. I think that the text is now hopefully much closer to a possible landing zone and acceptance by Members at MC12.

7.82. I would now like to highlight some of the changes to the draft text since my report to Heads of Delegations. But before that, let me point to two important aspects that have not changed. First, preambular language continues to confirm that the draft Declaration would not alter the rights and obligations provided in WTO agreements. The focus is on political language to reaffirm shared values and help guide our collective response to the pandemic. The intention is not to develop, for the Ministerial Conference, a new legal instrument that would modify existing rights and obligations under the WTO agreements. Second, as indicated from the start of my work as Facilitator, proposals under significant consideration in the TRIPS Council have not been the subject of the discussions that I have convened. Throughout this process, however, delegations have acknowledged the relevance of making an outcome of the TRIPS Council considerations part of the WTO Response to the Pandemic and a number of delegations have made clear that an outcome in that area was of critical importance.

7.83. Changes that I introduced in the draft text were done under my own responsibility, but were inspired by discussions between Members from different sides of the issues. Generally, you will see that the Declaration has been streamlined, while the annexed post-MC12 Action Plan on Pandemic Response, Preparedness and Resilience has been further developed. The logic to this recalibration is that certain specific issues did not appear ready for political commitments at the Ministerial Conference, but should form part of a structured plan of work after the Ministerial. Overall, keeping a balance between a credible political declaration for MC12 and a robust post-MC12 Action Plan is key to a document that will be acceptable to all.

7.84. While the draft text does not aim to duplicate discussions that are ongoing in the TRIPS Council, it now includes a placeholder in the preamble to refer to an outcome of those discussions. In addition, I have included language that does not interfere with the TRIPS Council process and that I had orally shared with delegations on earlier occasions. Preambular language thus notes the shared desire to ensure that the intellectual property system supports Members' responses to the pandemic and the Action Plan includes IP issues in the list of areas for discussion post-MC12. Finally, to reflect an area where there seems to be emerging convergence, the draft text also recalls the Doha Declaration on the TRIPS Agreement and Public Health of 2001.

7.85. In the preamble, a number of additions were made, aiming to capture elements of convergence in the reference group, for example to acknowledge the impact of the pandemic on food and economic insecurity, particularly in developing countries and LDCs, and to highlight the differing challenges posed by the recovery. Additional language was also included in the introduction, so as to reflect emerging convergence in recent discussions. One such addition aims to carefully recognize the impact of issues related to vaccine certificates, drawing from the language in the recent G20 Leaders' Declaration. Given the different views among delegations on this aspect, this seems to be, in my view, a possible landing zone, and to reflect what the traffic could bear.

7.86. Sections 2 to 5, on "transparency and monitoring", "export prohibitions or restrictions", "trade facilitation, regulatory cooperation and coherence, and tariffs", and "the role of trade in services" were streamlined so as to point to landing zones in view of previous differences of opinions, and items were moved to the Annex so as to boost the Action Plan. The sections on "collaboration with other intergovernmental organizations and stakeholders" and on the "framework for future preparedness" were also streamlined.

7.87. The draft Declaration also includes a new section on "Supporting Inclusive Recovery and Resilience", which draws from discussions in the reference group. The section underscores the critical role of the WTO in promoting inclusive growth and development and the importance of understanding

how WTO rules have supported Members, notably developing and least-developed countries, during the COVID-19 pandemic and their role in future pandemics. It also includes text on food security in the context of resilience-building. Clearly, views remain different on the substance of a number of these issues, but the draft text aims to acknowledge these issues and to highlight the contours of a possible landing zone for the purpose of this document. On this aspect, like on others, Members will need to continue engaging in a constructive manner to find ways to converge.

7.88. Finally, the Action Plan has been expanded and provides additional detail and information on the various issues relevant to addressing the response to the current pandemic and to enhancing future preparedness and resilience. The Action Plan lists various substantive areas of discussion and focus. It also suggests some aspects of orientation that each WTO body would seek to address in light of factors they may consider relevant. Such factors may include levels of development or the situation of import-dependent Members, for example. The basic structure and operation of the Action Plan has also been clarified. One aspect that remains to be decided is whether the entity overseeing work under the Action Plan will be the General Council or a newly created Body. Throughout the text, these two alternatives are reflected, and in brackets, pending Members' agreement on which entity should lead the work.

7.89. Members need to get to landing zones and to bridge the differences of views that had been expressed over the last weeks. I hope that the draft text that I just described, and which will be circulated with my report, will help us to that. The world is watching, and we need to focus on what can be agreed, not on issues that will make it more difficult to reach convergence. The plight of the many small and import-dependent Members has grown louder in recent weeks and all Members will surely have listened carefully. The importance of a meaningful and credible multilateral outcome on this topic for the forthcoming Ministerial Conference has never been clearer. I convey this draft text to the Chair and Members for consideration in capitals. I hope that Members can continue to narrow gaps under your guidance so as to help bring to Ministers a text that is as close to being agreed as possible.

7.90. The representative of Nigeria delivered the following statement:

7.91. Nigeria supports the Facilitator Process. In our view, this process must remain open, transparent, and inclusive. We believe any meaningful outcome in this area should include the TRIPS Waiver that would pave the way for the ramping up of production of diagnostics, therapeutics, and vaccines to combat COVID-19 as well as commitment on technology transfers to foster the building of pandemic resilient health sectors in developing countries. Nigeria would continue to engage constructively on this issue towards the delivery of a win-win outcome.

7.92. The representative of Pakistan delivered the following statement:

7.93. We deliver this statement on behalf of the cosponsors of the document JOB/GC/278 namely, Egypt, Pakistan, South Africa, Sri Lanka, Tunisia, Uganda and the Bolivarian Republic of Venezuela. We thank the Facilitator for his efforts and work done so far. We note that while work is still going on to produce a consolidated text, the Facilitator has tabled his own text. We understand that this is under his own responsibility. However, we feel that a balanced, meaningful, and representative consolidated text reflecting the needs and ambitions of various Members including developing countries and LDCs is a necessary step towards achieving an outcome on this issue at MC12. We need to produce that text in a Member-driven process and allow time for Members to finalize a text that can be accepted by the Membership at MC12. We have already spent considerable time and energy on this issue as we felt that the text from the beginning needed to be more meaningful and balanced. We stress that the work should remain Member-driven, transparent and inclusive. It should allow as much time as may be necessary to achieve the desired result leading up to the MC12 and during the conference, if necessary. It should particularly allow adequate time for small delegations, who are already stretched due to limited resources and time pressures, to participate fully in the consultations in various configurations.

7.94. Specifically, it is our considered view – reiterated on multiple occasions – that without a meaningful TRIPS Waiver, and an effective IP component, there will be no possibility to harvest a credible WTO response to the pandemic. In terms of the ongoing work, we have noticed that several issues of importance to the cosponsors still remain in brackets or are pending effective engagement, while several others have been cleared. For us, it is important that the balance in the text is achieved not only in the number of issues dealt with, but also across and within sections of the document

where all issues are given equivalent weightage. For instance, the specific needs for policy space of developing countries and LDCs must be recognized and the principle of S&DT be upheld as a right for all developing countries and LDCs. Measures or policy tools for economic resilience and recovery during pandemics or similar crises must, therefore, be clearly emphasized. The need to address IP barriers undermining diversification of production and supply of COVID-19 products must be underscored. At the same time, recognition of critical food security issues in developing and LDC Members further exacerbated by the pandemic and similar crises must be given proper attention.

7.95. On all issues, and in all sections of the document, we must remain mindful in our drafting that we do not undermine existing WTO rules or principles established under the Marrakech Agreement, diminish any flexibilities already available to developing and LDC Members, take due regard of limited resources and capacity constraints of those Members, do not compromise the WTO's Member-driven nature and give due regard to past mandates established through ministerial declarations. Care must also be taken to balance the various sections of the document. Any work to be undertaken for future preparedness post MC12 must flow from recognized elements within the declaration. The Declaration is fundamental for enabling a political engagement over the work plan and the related coordinating entity. We firmly believe that the best place to work on the response to the pandemic and other crises post MC12 would be the General Council which has established rules of procedure and would simplify the process and make it more time and resource efficient going towards the next MC. We remain committed to the formulation of a response by the WTO to the pandemic which is useful for the credibility of the organization and for the benefit of its Members. This would be a document that is balanced, meaningful and representative of the concerns and challenges of the wider membership especially those whose economies have been worse hit by the pandemic.

7.96. The representative of Chinese Taipei delivered the following statement:

7.97. We like to sincerely thank Ambassador Walker's tireless efforts and leadership thus far and we need him to continue helping us to successfully complete this work for a few more days. On the WTO's Multilateral Response to the Pandemic, we hope to have a high ambitious Ministerial Declaration and an accompanied Action Plan. But if the high ambition cannot be achieved because of divided views on certain issues, we can live with a little lower ambitious Declaration, with those unresolved issues being put into the Action Plan so that we can continuously deliberate on these issues at the post-MC12 period. We are pleased to hear that the Action Plan has been expanded. This would be very important for our future preparedness for public health risk of similar nature. In any event, we will be ready and constructive to help find a landing zone.

7.98. The representative of Brunei Darussalam delivered the following statement:

7.99. Brunei Darussalam is making this statement on the MC12 Outcome Document and the WTO Response to the Pandemic, respectively. At the outset I would like to thank the Chair and the Facilitator and their respective teams within the Secretariat for all the hard work and tireless effort put in to get us this far. There has been good progress on the MC12 draft Outcome Document and negotiations have reached a stage where we can realistically view that a consensus based Ministerial Declaration is within reach. However, this will only be the case if we stick to the path we are on, and continue to exercise flexibility and a willingness to make compromises. We would therefore urge proponents of proposals that have not achieved support or consensus to reconsider their inclusion or their approaches. The general overarching consideration should be the importance of achieving a Ministerial Declaration that is agreed to by all Members, to show that the WTO remains united in the cause of a multilateral rules-based organization. In the same vein, it is equally important to have a consensus-based outcome on the WTO Response to the Pandemic to show that the WTO can come together in times of global crisis and can speak in one single voice about the devastating impact of the pandemic to the global economy, and that we are willing, indeed eager to work together towards its recovery. We urge all sides to consider the importance of this issue and of a united response – not for mere optics but to ensure the WTO provides a real and meaningful contribution to all people.

7.100. The representative of Jamaica, on behalf of the ACP Group delivered the following statement:

7.101. We look forward to wrapping up our negotiations on the MC12 outcome document. This is a priority of the ACP Group. We have not had a declaration since 2015 and so we believe the WTO needs political guidance on the many issues that confront it. This is especially so given the unprecedented environment in which the multilateral trading system currently operates. Hence, the outcome document should seek to direct the WTO's operations to a focus on development and

elevating the interests of developing countries and LDCs, especially in the context of building back better from the COVID-19 Pandemic. We do hope that the document would be able to focus on the issues of relevance to the organization. We take note of the intention by Members to include language on digitalization in the document. We believe that if the issue of digitalization is to be addressed in an outcome document, we must take the opportunity to make reference to the digital divide in our Members, the lack of digital infrastructure and the role that the 1998 Work Programme can play in advancing the interest of developing and LDC Members.

7.102. The issue of trade and environment is an issue of interest to the ACP Group. In particular, natural disasters and climate change-induced events often affect our trade infrastructure and our ability to integrate in the global economy. Additionally, we constantly experience trade barriers imposed under the guise of environmental measures. This is an issue that must be treated with delicately in the outcome document. The document must make reference to S&DT and treat it as a fundamental part of WTO rules. We anticipate that the document refers to Paragraph 44 of the Doha Development agenda and the central role of the CTD SS in this regard. LDC and LLDC issues must be properly represented in the document. We also call for concessions from acceding developing countries to be commensurate with their capacity and development needs. As the document seeks to address WTO Reform, this is a matter supported by the ACP Group but we are of the view that we should be minimalist in approach and should seek to avoid inclusion of sensitive issues. We have made a proposal on WTO Reform on screen which we sanitized for political sensitivities and ensured that it accomplishes our objectives. We stand ready to engage constructively on this proposal.

7.103. On the COVID response document, we renew our support for the initiative and we will support the Facilitator. The outcome should not create rules nor alter Members' rights and obligations. It should include issues of interest to all Members. We therefore welcome the Facilitator's effort to take on the ideas of various Members through a drafting group. This is commendable. We urge patience from the Facilitator and from Members in this regard and call on the process to run its natural course without usurping the process. The process should be inclusive and transparent and all small group processes should be open to interested delegations. For us, the WTO has an important role to play in complementing the work of international organizations and other stakeholders in respect of responding to the impact of the pandemic from a health, stabilization, recovery and sustainable rebuilding perspective. We anticipate that Ministers will be able to use MC12 to effectively guide the organization on how we carry out this task. For this to happen, however, the onus is on us, Ambassadors in Geneva, to make the necessary preparation so that solid, relevant and appropriate recommendations can be put to our Ministers to facilitate a decision. We expect that the facilitator process will not only stabilize, recover and rebuild, but also leaves us with a blueprint as it relates to how we respond to future international crises. We agree that any outcome from the process must address the health dimension of the crisis especially from a TRIPS and COVID perspective taking into account work in the TRIPS Council.

7.104. The representative of Guatemala delivered the following statement:

7.105. Guatemala thanks the Facilitator for his continued efforts in conducting the discussions on this issue. We look forward to receiving his new draft text. The pandemic reminded us how much international cooperation is needed to address global challenges. Members' individual efforts to deal with the pandemic are insufficient. International coordination is key. Members must cooperate with a view to provide a coordinated response to the pandemic. Trade has been playing an essential role in moving vaccines and medical goods around the world. The WTO rules-based system has underpinned this process and we need to improve it for the benefit of all Members, especially the small developing countries and LDCs that depend on imports. Trade is part of the response to the pandemic. The WTO is us – the Members. We all need to respond. We are very proud to say that the WTO is a Member-driven organization. I encourage all delegations to engage constructively and find practical solutions. As I noted at last week's meeting, the pandemic was declared almost two years ago. Yet, there is no formal response from the WTO to it. MC12 is a unique opportunity to provide the much-needed response to the pandemic. Failure is simply not an option. Guatemala does not participate in the small group negotiations on the response of the WTO to the pandemic. We have been informed about proposals that were tabled by different groups of Members and we know that there are ongoing discussions to find mutually agreed solutions. While we value Members' contributions, absent an agreed outcome, Guatemala considers that the first text proposed by the Facilitator represented a good compromise solution. Guatemala looks forward to reviewing the new draft proposal by the Facilitator. Members need to be pragmatic and weight the Facilitator's text

against the scenario of no response to the pandemic. Guatemala stands ready to make constructive contributions to this process.

7.106. The representative of Chad, on behalf of the LDCs, delivered the following statement:

7.107. The LDC Group thanks the Facilitator for his tireless efforts to find convergence amongst Members on the WTO Response to the Pandemic. We refer to our statement made under this sub-item at the TNC held on 19 November.¹⁴

7.108. The representative of Barbados, on behalf of CARICOM, delivered the following statement:

7.109. We reiterate our support to the Facilitator-led process on the WTO Response to the Pandemic. The trade-related impact of the pandemic on our individual economies is significant and requires us to ensure that the WTO develops a dedicated response to the ongoing pandemic. The discussions must remain transparent, inclusive and complementary to the response by other international institutions in responding to the impact of the crisis. The discourse in the WTO must also be reflective of the views and interest of all Members. We are aware of the linkages that exist between these and the discussions that are ongoing in the TRIPS Council. We must reconcile both of these areas if we are to ensure that the WTO in charge with the development and management of trade rules can address issues that are the core of its function. The CARICOM Group has a systemic interest in the WTO's response and will continue to engage constructively in this regard and we wish to align our intervention with the statement delivered by Jamaica on behalf of the ACP Group.

7.110. The representative of Sri Lanka delivered the following statement:

7.111. On the MC12 outcome document, Sri Lanka highly commends the Chair for the very transparent process launched for this purpose. Due to his determination and the manner in which the meetings are organized, small and marginalized delegations such as Sri Lanka could effectively participate at the discussions to ensure that the document entails fair and balanced formulations so that Ministers could adopt it at MC12. We also thank the Facilitator for his efforts and work done so far. The Facilitator has tabled a proposed text which is clearly not designed to resolve the pandemic. Rather, the draft text promotes the same liberalization demands made by developed countries in various fora and interventions that will further constrain regulatory space and policy tools available to Members. The 278 co-sponsors have engaged constructively in negotiating different areas of the declaration text. At this stage, we have achieved some progress in certain areas but still major work needs to be done to achieve balance within each element and across the whole text. In order to preserve the outcome document on pandemic response that bears the characters of fair and balanced reflection of concerns of all Members, the co-sponsors have been engaging tirelessly in the small group process. It is not us who are supposed to be delaying things. If the original format of the text remained balanced, we would not need this long effort, but we cannot let an unbalanced or one-sided text go through without addressing our issues. This Declaration text remains in need of major work to reflect the concerns and ambitions of all Members and allow for the needed balance that we have been calling for. Accordingly, it is clear that there remains major work needed to achieve the balance sought in the text of the Declaration that would meaningfully reflect the needs and ambitions of various Members including developing countries and LDCs. For this purpose, the work in the remaining time until MC12 should focus on working in that direction towards achieving the needed balance. This should be a Member-led process. Work should remain based on the composite draft Ministerial Declaration annexed to the text. The co-sponsors remain committed to achieving a fair and balanced outcome which includes a satisfactory resolution on the TRIPS Waiver and robust and meaningful activities on pandemic preparedness and resilience so that it can be endorsed by our Ministers at MC12.

7.112. The representative of Singapore delivered the following statement:

7.113. Let me start by expressing my appreciation to the Chair and the Facilitator for the hard work and intensive preparations that have brought us to this point. I also acknowledge the efforts from all Members who have worked tirelessly including over the past weekend on this document. First, the WTO's credibility is at stake if MC12 fails to deliver. Against the backdrop of the ongoing COVID-19 pandemic, the eyes of the world will be on MC12. The WTO is under intense scrutiny. In this

¹⁴ The statement of the LDC Group at the 19 November Formal TNC Meeting are reflected in paragraphs 4.33 to 4.42, pages 18-19 of TN/C/M/42.

context, it is imperative that Members deliver a credible and meaningful Ministerial Declaration for MC12 and the WTO Response to the Pandemic. Second, it is imperative that the outcomes of MC12 are meaningful and make a real difference, and both the MC12 outcome document and the WTO response to the pandemic must address the critical issues confronting the WTO and this include reforming the WTO to be future-ready and taking pragmatic steps to increase vaccine production and enhance more equitable distribution. Members must develop practical solutions to address issues such as supply chain vulnerabilities, preparedness for future pandemics and climate change. Third, with the clock ticking down to D-day, which is Delivery Day, Members must exercise flexibility and redouble efforts in the remaining seven days to MC12. As I said before, the time for megaphone negotiations or political grand standing has passed and it is time to focus on securing mutually acceptable solutions. We must also, first, remove the wooden lock from our own eyes before we can see clearly to remove the speck of dust in our brothers' eyes. Even as we work through long days and nights, we need to remind ourselves that there is often darkness before the dawn. As always, my delegation and I stand ready to put our shoulder to the wheel to contribute to the success of MC12 in any way we can.

7.114. The representative of the European Union delivered the following statement:

7.115. Let me thank the Facilitator for his report and the way he has conducted this complex process very ably in a challenging context. Earlier this year, we as Members collectively felt that the WTO could make an important contribution to the global efforts to combat the pandemic. Our newly-appointed Director-General made this a personal priority and she organized a series of high profile and successful events to bring the key actors together. Throughout we have been listening carefully to stakeholders from across the world. The European Union together with a large Group of Members from different continents and levels of development made concrete proposals that we hoped could help the WTO rise to the challenge. We coalesced because the global community will be better off coordinating efforts rather than having every Member going its own way. We heard views from the LDC Group and a number of other developing countries in support of greater transparency and care in the application of export restrictions, and those views resonated with us. We felt that the Facilitator's text reflected those wider interests, including specifically those of developing countries.

7.116. We recall that hope remained in concluding an agreed text before the opening of next week's conference. The Facilitator has proposed to include a placeholder to reflect the need for Minister-level discussions on intellectual property, and he has always underlined that intellectual property would have to be an integral part of a balanced MC12 outcome on the WTO Response to the Pandemic. At the same time, the Facilitator said that this should not stand in the way of progress on the rest of his text. We regret that this objective could not be met. He has had no option but to submit a text to us today that is not agreed between Members. We also regret that negotiations on elements of his text proposed by Members could not proceed in the small group over the weekend. In not having an agreed WTO Response to the Pandemic text ahead of MC12, Ministers will now unfortunately have to familiarize themselves with an additional set of texts next week. The European Union is ready to pursue discussions on his text over the next days if others are willing too.

7.117. The representative of Japan delivered the following statement:

7.118. A week from today, MC12 will be held for the first time in four years. At this juncture, it is crucial for the credibility of this organization to be able to demonstrate, through its Ministerial Declaration and its Pandemic Response Declaration, its accountability in response to the imminent global trade agenda arising from the pandemic and to clearly present the direction of its future. The WTO also needs to exhibit its awareness and readiness to respond to the expectations from business as its major partner and stakeholder. In his content, Japan offers its profound respect and appreciation to the tireless leadership exercised by the Chair. In order to meet the expectation of the international community entrusted onto the WTO, it is essential to send a clear message about its commitment with specific work plans to materialize a fully functional WTO through its reform efforts including on its rulemaking/negotiation function and dispute settlement function. The WTO needs to be, and to appear to be, fully aware of the evolution of the global trade environment it works in and of the issues and concerns of the global business community starting with MSMEs. These include advancement of digitalization, various environment and sustainability policy agenda, and their interface with trade legal framework. The next 2 weeks will be critical in determining the credibility and, eventually, the sustainability of this institution. To keep this cause within our reach, all delegations would be expected to exercise their full pragmatism and flexibility.

7.119. On trade and health, particularly on the export restriction on health products and services, we consider that the world experienced a very severe and difficult initial pandemic period because we do not have enough supply on those products and certain services. We consider that is very important for this house to take care of the export restriction side of this issue. Overall, the WTO has been putting emphasis from the viewpoint of production. But, for the future of the WTO, we consider that consumer protection is very important because any commercial transaction has been made between producers and consumers. If consumers start to doubt that they cannot buy enough supply, we face some difficult situations. That really has a shrinking effect on trade. We consider that export restriction side on the health issue is very important. Frankly speaking, we are not in the small room of the negotiations. We are waiting outside the gate of the small negotiation room. We try to be constructive while the small group is producing some results. But at the same time, we are waiting outside the room with strong passion on this subject that I just explained.

7.120. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

7.121. We have not had the opportunity yet to look at the text produced by the Facilitator but we will do so as a group and come back to you so we reserve our views on this for the time being. Nonetheless, we reiterate what we have always said as a group. The cornerstone of the response of the WTO to the pandemic is the TRIPS Waiver and we look forward to this being part of the response. We would appreciate understanding the future process for the Walker text. We are not sure if the text will be looked at the level of the General Council or how we can do more work on this before it goes to the Ministers. It is important from our perspective that the process remains inclusive, constructive, responsive to the reality on the ground and addresses the concerns of developing countries. It should not lead to new obligations and remain balanced in approach. The focus remains on providing a response to the pandemic and we look forward to working on that direction.

7.122. The representative of Tunisia delivered the following statement:

7.123. We take note of the revision under the Facilitator's own responsibility. We would like to receive it to have a better analysis. We align ourselves with the statement made by Pakistan on behalf of cosponsors of JOB/GC/278. This process will have a direct impact on the credibility of this organization. This is how success at MC12 will be measured. The upcoming days will be crucial for Members to come together to respond effectively to the current pandemic and prepare for future pandemics. We would have preferred that the Facilitator's text be more reactive to developing and LDC Members which would have allowed us to gain precious time in our attempt to achieve consensus. We have contributed constructively throughout this process and will continue to do so until we manage to achieve a meaningful result, which is equitable and balanced for all Members. Tunisia's main concerns have been reflected in document JOB/GC/278 which seeks a fair balance for all including developing and LDC Members. An overall response to the pandemic must cover all factors affected by the pandemic in any social, economic and health context which is exceptional by nature. It is extremely important that we are up to the task of using all proposals to contribute to our fight against the pandemic and encourage a rapid recovery. Therefore, Tunisia defends the inclusion of a positive response to the request for a TRIPS Waiver. It would be disappointing to see the WTO depriving the world of a real opportunity to strengthen global vaccine production and the production of other necessary equipment and products. Particular attention must be paid to the specific challenges which the most vulnerable countries face including food security, restarting the economy, resilience and technology transfer. All of these topics cannot be ignored. Additionally, Members must not see their ability to work restricted by any legal obligations. I commend Members for their efforts particularly those made by small groups in order to seek a landing zone and a balanced text which will represent the concerns of all. Like many developing country Members, Tunisia commits itself to an effective WTO Response to the Pandemic and stresses the importance that all concerns and voices should be heard and treated equally in this process.

7.124. The representative of Canada delivered the following statement:

7.125. Canada expresses a deep appreciation to the Facilitator for his perseverance and his patience with Members to get us to this point. An MC12 outcome with a clear and unambiguous indication of Members' resolve to do no harm in the current situation and that sets in motion work to learn how to react better in a future pandemic with a specific timeline for a result is a sine qua non for Canada. The 25 October text was the baseline for Canada, but we have heard different voices in this organization and have worked to recognize the issues those voices have raised, always mindful of

parallel conversations on these same topics in other WTO bodies. We trust in your judgement and expect that the modified text you will circulate shortly will be a fair and balanced reflection of all the different trade and health related discussions across this organization and that it can signal a credible and meaningful WTO Response to the Pandemic. We also expect that it will put us on a define path to learn from recent experiences and create a framework to prevent us from repeating any mistakes made. Canada looks forward to an agreement among Members on a package of trade and health measures at MC12 and commits to actively contributing to the work ahead.

7.126. The representative of Turkey delivered the following statement:

7.127. We thank the Facilitator for his efforts to put together a streamlined text for the WTO Response to the Pandemic. This is a significant mission to demonstrate the role that trade can play in response to the pandemic. Turkey has a positive overall perspective concerning the original text proposed in document JOB/GC/279. As the Facilitator just explained, certain Members were working on this text and throughout last week we were informed of the specific developments on that front. We are looking forward to receiving the revised text. We welcome the explanation by the Facilitator that the new text continues to not incorporate language which may modify existing rights and obligations of Members. We think it is best to focus on a more efficient functioning of existing instruments available to us in our response to the pandemic.

7.128. The representative of Indonesia delivered the following statement:

7.129. On the issue of the WTO Response to the Pandemic, Indonesia acknowledges the efforts by the Facilitator in the attempt to find convergence on this very important topic. The WTO Response to the Pandemic should be the centrepiece of MC12. The world is waiting for us and the organization to deliver a meaningful and credible outcome on this issue. To this end, we must ensure that the text that will be agreed upon should be balanced and holistic. In this regard, we welcome the submission made by Members particularly JOB/GC/271 and JOB/GC/278/Rev.1 as they certainly add value to the text. It is important that the WTO Response to the Pandemic does not only address the interest of all Members but also all sectors that are affected by the pandemic, such as the issue of food security and TRIPS Waiver. Our delegation cannot emphasize enough the importance of having a meaningful outcome on the TRIPS Waiver. A WTO Response to the Pandemic that leaves such a large carveout will lose its merit and relevance. In this regard, we thank the Facilitator for circulating a revised text of the draft so that Members can consider appropriately, contribute positively and coordinate effectively with the capital. With that in mind, Indonesia would like to contribute further to the discussions. As such, we share the view of others to have greater transparency and inclusivity in the negotiation process.

7.130. The representative of the United Kingdom delivered the following statement:

7.131. We echo and note the concern expressed particularly by developing countries including the LDC Group on export restrictions. Throughout this pandemic, Members have repeatedly called for restraint on the imposition of export restrictions on medical goods and food. Many Members have quite eloquently described the effect of those waves of export restrictions, how they have reduced global supply, how they have led them to suffer from price spikes, especially among those countries that lack the economic resilience of more developed economies. Faced with those challenges, many vulnerable economies have noted the need to restrict their own exports. It is a vicious circle. We are grateful to those Members who have stood up and made these calls for restraint on producers applying restrictions. We have listened to those calls and we agree with them. Calls have also been repeatedly made for transparency on those restrictions. We have listened to them and fully support them. We stand behind the language agreed by the G20 and adopted by many others including APEC that any measure on essential goods must be temporary, transparent, targeted and proportionate. We are ourselves a producer of a number of medical goods and, at the same time, need to import many other medical goods. So, for our part, the United Kingdom will be willing to step up to take political commitments in this declaration around the fact that substantial producers should recognize their particular responsibility for exercising restraint and ensuring transparency. I encourage others who are also fortunate enough to be substantial producers of such goods to take similar steps and take the political commitments necessary to recognize our particular responsibilities.

7.132. The representative of Paraguay delivered the following statement:

7.133. We reiterate our support to this process. We have taken note of the Facilitator's report on the new draft and look forward to this being circulated so we can analyse it in more detail. We consider that this document is a good framework for us to move forward. We reiterate the need to have ambitious language especially when it comes to export restrictions and trade facilitation bearing in mind the needs of net importers of vaccines without local production capacity such as Paraguay. We also note with concern that in the previous document, we see proposals from countries on food security which resort to only one type of tool and policy and could indeed endanger food security while side-lining other approaches less damaging to trade. We would continue to work and follow with interest the negotiations in the TRIPS Council to include these negotiations in the WTO Response to the Pandemic. We will continue to work constructively to contribute to the Facilitator-led process so that we have both a substantial and tangible result for MC12.

7.134. The representative of the Russian Federation delivered the following statement:

7.135. We would like to express our concern that the process of drafting a document within a small group is already somewhat delayed. The longer this process drags on, the less chances of success this document has. The "take it or leave" option for the deals made behind closed doors will not work. This document should be presented in the form of a political declaration. It should not change the existing scope of rights and obligations of Members. The whole wording of the document should not pretend to alter the rights and obligations of Members for example on Paragraph 3 related to export restrictions. The functional responsibilities of the Secretariat should not be expanded. Regarding the creation of an ad hoc coordinating body, we should have a clear view of the usefulness and scope of this structure. We urge all parties to stop pushing ideas that are a priori impassable. It would be more pragmatic for those Members whose proposals have not gathered consensus up to now to admit that they have no chance to be adopted at MC12. On the other hand, we urge everyone to focus on what unites us and where a consensus is likely to be formed. For example, the Russian Federation proposes to include in the project of the Ministerial Declaration on the WTO Response to the Pandemic the following item: "We encourage the recognition of vaccine certificates, test results and other measures, which can help to fight the pandemic, to boost services trade and post-pandemic economic recovery." We judge it as an urgent and necessary political signal. We can put this new item in as Paragraph 5.5 since this issue is specifically relevant to Mode 4 of services trade.

7.136. The representative of Switzerland delivered the following statement:

7.137. We look forward to reading the text and very much hope that it will take us a step closer to consensus. Our priority is still to adopt a multilateral Ministerial Declaration on COVID-19 that makes a difference on the ground. It is our duty to make international trade a powerful tool in efforts to contain the pandemic and promote economic recovery. Disciplining the use of trade restrictions and enhancing the transparency of trade measures can make a real difference to ensuring the flow and availability of medical supplies, above all those required for vaccine production. We have duly noted the explanations given by the Facilitator including on IP. As we have repeatedly pointed out, IP protection also has a role to play in a holistic approach. We nonetheless recall that deliberations on the IP component take place in the TRIPS Council and must not impede progress in other areas, including value chains. With a week to go until MC12, it is time for us to be pragmatic while ensuring a level of ambition that remains higher than the WTO's current practices.

7.138. The representative of the United States delivered the following statement:

7.139. I wanted to acknowledge the hard work of Members over the past few weeks. Members were finally given a chance to engage and felt that for the first time all Members' interests and priorities were part of the text and the discussions and we have found the interaction of Members in the small group to be constructive. We should not be giving up when the going gets hard. Otherwise, "Member-driven" is a meaningless phrase. There appears to be growing convergence that the declaration needs to take a light touch and represent a balance of Members' different priorities and we support much of what was expressed earlier by Sri Lanka. There appears to be a growing convergence on the Action Plan which should be specific enough to ensure results and that it should deliver responses in an expedited timeframe. It is important to recall the description provided by the Facilitator which is that "the Declaration should not result in changes or is not intended to result in changes in rights and obligations" and yet that is not an accepted goal by all Members and therein lies one of the key problems that Members need to work out between and among themselves.

7.140. The representative of Chile delivered the following statement:

7.141. As we have not participated in the small group consultations mentioned in the report, Chile would like to know more about the discussions that have taken place including for example an overview and explanation of the changes made so that we can form a clear picture of the process and the next steps. With discussions in their current state, the WTO Response to the Pandemic will not meet the expectations of everyone outside this room and of the millions of people who have been directly affected by the pandemic. We do not understand where the focus was lost given that the problems our countries faced in looking after our citizens during the pandemic are so clear. Who could not be in favour of learning from what we have been going through for the last year and a half, and of being prepared for future pandemics, including, on the one hand, the export restrictions and prohibitions that have caused so much harm and, on the other, trade facilitation measures? It has been clear from the start that the exchanges should have focused on low production, export restrictions and problems in the supply chains of essential medical goods, including vaccines, and their distribution to the furthest corners of the world. But today, on seeing the working text, we note with concern that the discussion has been side-tracked and confined to disasters only, covering concepts such as food security that are not appropriate in this context. We hope that, in view of the limited time available to us, delegations will focus on the real problem at hand, leaving their longstanding goals in other areas to one side, and will act in a constructive manner in the discussions ahead. We want a substantial, meaningful and holistic package which includes intellectual property.

7.142. The representative of Ecuador delivered the following statement:

7.143. We thank the Facilitator for his efforts in trying to find consensus on the WTO Response to the Pandemic. When the Director-General came to the WTO, she said that it was not business as usual. This is particularly the case when it comes to the pandemic. The political messages and commitments that we need to undertake are at the centre of this process. We trust we bear in mind developing countries that are net importers of COVID-19 products such as Ecuador and particularly vaccines, diagnostics and therapeutics when it comes to the drafting of the document. On export restrictions and trade facilitation, we need substantial progress while taking into account the views of consumers as indicated by Japan. We must also ensure that there is political commitment both in the spirit and the letter of the WTO Agreements that would allow for progress in this areas. Our political declaration needs to be based on international cooperation and the role of the multilateral trading system to ensure that all States, and in particular net importers of COVID-19 products, have equal and fair and universal access to COVID-19 products, particularly vaccines, therapeutics and diagnostics. We look forward to seeing the new draft. We will continue to work diligently to ensure that we meet an agreement which reflects our concerns while bringing together the political will of all.

7.144. The representative of the Republic of Korea delivered the following statement:

7.145. We appreciate all the efforts of Members who are engaged in the separate small group discussions. After two years of no collective official signal from the Membership since the outbreak of this pandemic, the WTO's relevance is now at stake. If we cannot produce a meaningful political declaration this time, the WTO's credibility will be seriously damaged. With a few days remaining before MC12, we at the WTO need to focus on elements most relevant to the WTO as a premier organization governing international trade. Such elements should include, without doubt, strong and clear trade-related guidelines, in particular on export restrictions, trade facilitation and transparency. We will continue to work closely with other Members.

7.146. The representative of India delivered the following statement:

7.147. The ongoing pandemic, with its ever-evolving nature, has had an unprecedented devastating effect on lives and livelihoods, resulted in severe disruptions to societies, economies and trade, and food security. The pandemic has also thrown open a number of challenges, including those relating to the need for ensuring timely, equitable and affordable access for all to medicines, vaccines, diagnostic tools and other products essential for its prevention, treatment and control, and for that the urgent need to diversify and scale-up production by addressing challenges related thereto, particularly on IP. While the primary focus of this exercise has to be addressing challenges posed by the current pandemic, including IP challenges in augmenting production, response mechanism put in place should also better prepare us for future pandemics and natural disasters. The Facilitator-led process on WTO Response to the Pandemic being a multilateral process, it is necessary that views

of all Members are taken into consideration. We are also aware that it has taken us more than two months to have a consolidated draft Ministerial Declaration text which incorporates elements suggested by various Members. We need to see whether today's Facilitator's text is adding value to Members' work or not. The small group constituted by the Facilitator has been engaging constructively on such consolidated text to arrive at possible areas of convergence.

7.148. As we are aware in another multilateral process, examining the most important element of WTO Response to Pandemic, the TRIPS Council has decided to continue its consideration of the waiver proposal, including through small group consultations and informal open-ended meetings, and report the outcome to the Twelfth Ministerial Conference. It would therefore be appropriate to provide similar time to small group discussions under this multilateral process on WTO Response to the Pandemic and all future discussions on this issue should be on the basis of the consolidated draft texts being examined by such small group. There has been intensive engagement under this process, and we must focus on a balanced response that is not skewed in favour of a few. We must also refrain from approaching this as a market access issue or with a view to take away policy space available for Members or impose cumbersome transparency obligations on them that serve to benefit a few. Doing away with the legitimate policy instruments like export restrictions or aiming to make temporary tariff elimination/reductions permanent or calling for burdensome transparency obligations is not a panacea to our problems. It is deplorable that despite over a year's discussions and debates there has been no movement on the TRIPS Waiver proposal. Its co-sponsors have tirelessly engaged with everyone and shown flexibility and pragmatism. But opposition by a couple of Members on such an issue is testing the credibility of the multilateral trading system. While the world is watching us with great expectations to deliver solutions, these Members have ensured that the solutions remain elusive. We reiterate that the TRIPS Waiver constitutes the most critical and important part of the WTO Response to the Pandemic and any WTO response without the TRIPS Waiver element in it would not at all be credible.

7.149. The representative of South Africa delivered the following statement:

7.150. We align ourselves with the statements by the JOB/GC/278 co-sponsors, the African Group and the ACP. The WTO Response to the Pandemic is the most important priority for the WTO and we have engaged constructively both in the Walker process and in the TRIPS Council towards a TRIPS Waiver. We believe that the response must be comprehensive and must include both the IP and trade-related aspects. There are five key elements to a WTO response to the pandemic that South Africa would like to see: (i) approval of a targeted and time-limited TRIPS Waiver in order to boost and diversify global production of vaccines, diagnostics and therapeutics; (ii) diversification of location of production and scaling up of production capacity across the world, especially in Africa; (iii) protocols covering transparency and equity in vaccine contracts and pricing; (iv) meaningful commitment to keep supply chains open; and (v) forward-looking TRIPS provision to address future pandemics and obviates the need for special arrangements and waivers. Together with the other co-sponsors of JOB/GC/278, we are participating constructively in the Facilitator-led process in an effort to produce a balanced document that places the WTO in a position to meaningfully and credibly respond to the pandemic. Our response must also include high-level political commitments on food security and efforts to promote economic recovery. We are concerned that there seems to be much more enthusiasm to conclude this process than what we have witnessed in the TRIPS Council. However, we cannot have an outcome on a WTO Response to the Pandemic with nothing on the TRIPS Waiver proposal. We note the Facilitator's report in which he indicated that he will present a text under his own responsibility. This is despite the fact that intensive work is still underway to produce a consolidated, balanced text. We will study the document as soon as it is made available and as stated by Mauritius, we will reserve our comments at this stage. The outcome of this process must contain an appropriate balance in the interests of the broader Membership if it is to garner consensus. As such, Members should be accorded adequate time and space to conclude work on the composite text.

7.151. The Chair thanked Ambassador Walker for his report and for his able leadership of this process. His tireless effort over the past few months was a true testament to his commitment and dedication to the organization. In his capacity as Chair of the General Council, he could not thank him enough for having stepped in to guide and facilitate this multifaceted and complex topic. He thanked all delegations and group coordinators for their tireless work in this process, under the leadership of the Facilitator, Ambassador Walker. Members had repeatedly heard the importance of MC12 delivering results on this issue, and the world would be looking at the WTO to see what the WTO Response to the Pandemic would entail. They had very few days left before the Conference.

He therefore appealed to all Members to (i) step up their efforts, (ii) show pragmatism and flexibility, and (iii) engage in a true spirit of collaboration and solidarity – so that they would ensure that they would offer a meaningful and credible response to the pandemic.

7.152. The General Council took note of the report¹⁵ by the Facilitator, of the statements made and of the fact that the Chair would be in contact with delegations and the Facilitator to discuss how to take this work forward to MC12.

8 WORK PROGRAMME ON ELECTRONIC COMMERCE

8.1 Report by the Chair

8.2 Communication from Australia; Canada; Chile; Colombia; Costa Rica; Ecuador; El Salvador; Georgia; Guatemala; Hong Kong, China; Iceland; Korea, Republic of; Mexico; New Zealand; Norway; Peru; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; Ukraine; United Kingdom and Uruguay (WT/GC/W/831/Rev.2)

8.3 The Moratorium on Customs Duties on Electronic Transmissions: Need for Clarity on its Scope and Impact – Communication from India and South Africa (WT/GC/W/833)

8.1. The Chair suggested to take up his report on the first sub-item after going through the two communications presented by some delegations. He would then open the floor after all sub-items had been taken up. He invited the delegation of Switzerland to introduce the communication in document WT/GC/W/831/Rev.2.

8.2. The representative of Switzerland delivered the following statement:

8.3. I am making this statement on behalf of the following co-sponsors of the room document WT/GC/W/831/Rev.4 on the Work Programme and moratorium on electronic commerce. Those co-sponsors are representing 62 Members of the WTO. The following Members are the co-sponsors: Australia; Brazil; Canada; Chile; Colombia; Costa Rica; Ecuador; El Salvador; the European Union; Georgia; Guatemala; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; the Republic of Korea; Lichtenstein; the Republic of Moldova; Montenegro; Mexico; New Zealand; North Macedonia; Norway; Panama; Paraguay; Peru; the Russian Federation, Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; Ukraine; the United Kingdom, the United States and Uruguay. We are delighted to present this working paper today which is supported by a large part of the WTO Membership from both developed and developing Members. Members were recognized that this proposal has also been subject to discussion in open-ended consultations led by the Chair of the General Council on 5 November and 17 November. The proposal aims to continue work under the E-commerce Work Programme and extend the E-commerce Moratorium until the next Ministerial Conference. Over the past years, Members have held a series of fruitful discussions under the Work Programme, as we welcome this renewed vigour, the topics covered confirmed that the Work Programme mandate is very broad and provides opportunities to Members to discuss a wide range of topics. The E-commerce Moratorium is a foundational multilateral decision that plays an important role in increasing the utilization of cross-border trade. The pandemic has once again revealed the potential of the digital economy and how much global trade depends on digital connectivity as well as the ready availability of digital tools. We do not believe that degrading the international regulatory framework for digital trade will be a helpful development for anyone. The WTO would be sending a disconcerting signal if the commitment not to impose customs duties on electronic transmissions were to be terminated. We will welcome further support from other Members to continue this long-standing practice.

8.4. The General Council took note of the statement.

8.5. The Chair invited the delegation of India to introduce the communication in WT/GC/W/833.

¹⁵ The Facilitator's Report was subsequently circulated in document JOB/GC/281.

8.6. The representative of India delivered the following statement:

8.7. India has been advocating evidence-based decision-making on the question of the Moratorium on Customs Duties on Electronic Transmissions. In order to arrive at a conclusion on this topic which addresses an effective way to promote digital trade, a broader discussion with information and data is paramount to ensure productive negotiations. If the WTO is to truly attempt to promote digital trade, it cannot be based on a discussion of a single policy instrument or a one size fits all solution. Therefore, for any decision on the Moratorium to go forward, it must also include the recognition of other tools beyond the Moratorium which are available to promote digital trade. It is in this context that India and South Africa have jointly submitted the paper titled "The Moratorium on Customs Duties on Electronic Transmissions: Need for Clarity on its Scope and Impact" in WT/GC/W/833. This paper as well as our earlier paper in WT/GC/W/798 made it clear that the scope of this Moratorium is not well-defined. Our current paper brings out four key conceptual and methodological issues in the arguments made by the proponents in WT/GC/W/799/Rev.1. There is no single solution. It needs a multifaceted approach. First, our paper explains the use of a methodological sleight of hand. The proponents of WT/GC/W/799/Rev.1 conclude that while digital trade is booming, they still need greater market access through the continuation of this Moratorium. The convenience of the methodology used to gain undue advantage in their arguments is astonishing. When assessing the total trade of electronic transmissions, the proponents of WT/GC/W/799/Rev.1 consider only digitizable goods and conclude that trade in these goods remains modest. But when estimating the impact of the Moratorium on exports, especially of MSMEs, they consider the extended scope of the Moratorium by including services and find the positive impact to be huge. This scope expansion of the Moratorium to include services has been done without giving any rationale or argument to support this understanding.

8.8. Secondly, our paper shows how the proponents of WT/GC/W/799/Rev.1 have not just conveniently defined the scope using two contradictory arguments simultaneously, they have also glossed over the fact that the cost of the Moratorium is being disproportionately borne by the developing countries. The paper outlines UNCTAD data which shows that the annual loss of tariff revenue from this Moratorium based on the identification of a small number of digitizable goods in five areas is USD 10 billion on an annual basis. A more recent view from the UNCTAD places this loss at USD 12 billion. The proponents of WT/GC/W/799/Rev.1 characterize this loss as a small one. However, they fail to mention that almost all this loss is being borne by the developing countries. As per UNCTAD studies, the developing countries are letting go revenue to the tune of 4.35% of their total customs revenue. This impact is a mere 0.24% for the developed countries. This is yet another example of how the arguments made by the proponents is based on cherry-picked data. Third, these submissions also do not reflect the impact that new technologies such as 3D printing can have on domestic industries especially MSMEs in developing countries. While 3D printing is currently at a nascent stage in developing countries, its market is expected to grow at a rapid pace. The most affected sectors could include sectors such as textiles and clothing, footwear, auto-components, toys, mechanical appliances, and hand tools, among others, which generate large scale employment for low skilled workers and are sectors in which most MSMEs operate. Not a word is spoken by the proponents of WT/GC/W/799/Rev.1 on these concerns.

8.9. Fourth, we explain in our paper how the proponents of WT/GC/W/799/Rev.1 do not address the concerns of the developing countries with respect to the importance of preserving their policy space. Customs duties are used by countries to support nascent domestic industries, regulate an unwanted surge in imports and facilitate industrialization. Customs duties have been resorted to by developed countries to provide protection to their industry and to enable them to become internationally competitive. The submissions suggest that instead of imposing tariffs on electronic transmissions, governments could consider imposing non-discriminatory internal taxes for raising revenue. Internal taxes are not an alternative to customs duties and serve a different purpose. For countries that want to promote digital industrialization, customs duties should remain part of the toolbox to be deployed based on the strategic objectives of each country in pursuit of industrial policy. Our paper thus makes it clear that the proponents of the Moratorium have abjectly failed in demonstrating any concrete benefits this Moratorium brings to Members at large. Let us be clear that the Moratorium is not a silver bullet to promote digital trade. There may be many other ways to achieve the same end objective. In light of this, we reiterate our commitment to evidence-based policymaking in the WTO and call upon the proponents of the Moratorium to back their claims with relevant, consistent and non-contradictory data.

8.10. The General Council took note of the statement.

8.11. The Chair recalled that, at the October General Council meeting, he had provided a comprehensive report on his consultations on the Work Programme on E-commerce and the Moratorium. His report had subsequently been circulated in JOB/GC/275. In that report, he had emphasized that, any decision on the way forward with respect to both the Work Programme and the Moratorium was in Members' hands. Throughout his consultations, he had not heard any specific objection to continuing the activities and consultations under the Work Programme. However, several delegations had expressed concern that, in their view, there had been no substantive engagement nor had the Work Programme achieved concrete results. On the other hand, others had been of the view that there had been engagement particularly in the Council for Trade in Services; in the structured discussion as well as at the workshops held over the past two years. Furthermore, they had noted that various studies had also helped inform Members' discussion. With respect to the Moratorium, Members' positions continued to differ. Those differences were well-known and did not need repeating. Suffice to say that while many had expressed their readiness to continue with both the Work Programme and the Moratorium, some had reiterated the need for clarity on the Moratorium's scope and on the definition of electronic transmissions first. Proponents of the Moratorium had emphasised that the Moratorium provided certainty and predictability. While they preferred a permanent moratorium, they were ready to at least extend it until MC13. At the same time, some delegations believed that discussions should not just focus on the Moratorium. In their view, the Work Programme should also address the development-related aspects of e-commerce including the digital divide. It should also be noted that some delegations considered that the Moratorium and the Work Programme were a package and they were not ready to agree to one without the other. Despite the divergent views, Members continued to attach importance to e-commerce particularly in light of the pandemic which had further highlighted both opportunities and challenges.

8.12. In terms of preparation for MC12, he had urged Members to focus on a possible draft Ministerial decision for Ministers' consideration. In that regard, three communications had since been circulated. First, WT/GC/W/831, which had since been revised to include additional co-sponsors, contained a draft Ministerial decision that called for the continuation of the Work Programme and the extension of the Moratorium until MC13. Second, WT/GC/W/833 which called for, among others, clarity on the Moratorium's scope. Both communications had been introduced by their respective proponents in the previous sub-items. On his part, he had convened two informal open-ended meetings on 5 and 17 November to discuss these communications. He had also held consultations in different configurations. Third, on 18 November, another draft Ministerial decision had been circulated and was contained in WT/GC/W/838. This draft decision included some preambular text and language on the reinvigoration and extension of the Work Programme. While he had not had the time to convene an open-ended meeting to consider this most recent submission, he had held consultations on 21 November with a small group to consider both WT/GC/W/831 and WT/GC/W/838. His objective had been to facilitate a discussion between proponents of the two draft decisions they currently had in front of them and consider possible compromise language. However, delegations could not reach consensus on the way forward. In that regard, he suggested that both draft decisions – WT/GC/W/831 and WT/GC/W/838 be forwarded to Ministers for their consideration. As General Council Chair, he would provide a report, under his own responsibility, reflecting Members' discussions to date. He stood ready to facilitate further discussions in the coming days, if necessary.

8.13. The representative of India delivered the following statement:

8.14. India has been advocating evidence-based decision-making on the question of moratorium on customs duties on electronic transmissions. The current submission WT/GC/W/831/Rev.4 does not really provide any evidence as to why this moratorium should continue. My plea and request to the proponents are that, when we hear evidenced-based decision-making or policymaking, please follow that practice in your proposals also and strengthen our argument so that we can arrive at informed political decisions in front of our Ministers. On WT/GC/W/838, I would like to thank South Africa for joining it. Here, we have in the Preambular paragraph. We are requesting Members to take cognizance of the digital and technology divide, recognize uneven spread of global electronic commerce and acknowledge the importance of work under the Work Programme. Our request is to continue the Work Programme. The third one is on the paper presented, that is WT/GC/W/833, on the need for clarity on scope and impact. We have already made a detailed statement on this but let me just touch upon two or three points. We often hear, when we discuss the TRIPS Waiver or the Permanent Solution for PSH, that there is no single solution. But I do not know why the proponents of the extension of the Moratorium forget that sentence and say that the extension is

the only solution for digital expansion. Therefore, I would request them to reflect upon and see that, yes, we agree that customs duty is one of the components based on which one can expand digital footprint. But let us not say that this is the only instrument and without that, digital expansion will fail. Similarly, on digital expansion, as we hear that pandemic response is a multifaceted work and does not only involve TRIPS Waiver, food security is also a multifaceted work and not only involve public stockholding. In the same manner, the expansion of digital trade or digital infrastructure is a multifaceted task and it cannot depend only on the extension of the Moratorium. So, in our paper, we have enumerated and I will not repeat what we have said in that Open-Ended General Council meeting that there are the issues of digital industrialization, policy space, loss of revenue, not equating internal taxes with customs duties and future expansion – what we have seen in the last couple of years particularly in the case of 3D printing. Keeping all these things in mind, it is high time that before extending the Moratorium, we must have the clarity on the scope and the impact. Therefore, we need more transparency from the Members who always repeat the phrase on more transparency on what kind of impact and trade is taking place presently in digitizable goods so that we can take informed policy decisions.

8.15. The representative of Panama delivered the following statement:

8.16. Panama is pleased to co-sponsor the draft Ministerial Decision contained in document WT/GC/W/831/Rev.4 on the renewal of the Work Programme on Electronic Commerce and the request to extend the Moratorium. Even more so than in 1998, the digital economy, technology and e-commerce now play a central role in trade and economic growth. The reinvigoration of the Work Programme should not be understood as a continuation of the eternal talk shop that it is depicted as today. Its mandate provides for recommendations to be made by the bodies. After more than two decades, the time has come to demonstrate tangible outcomes. Panama is a driving force behind making the Moratorium permanent as it facilitates the flow of digital information, data and content by fostering innovation. It promotes security and predictability for both national digital economic activity and global production networks and supply chains. We nonetheless recognize the concerns expressed by some Members. We can therefore support the extension of the Moratorium until MC13.

8.17. The representative of Malaysia delivered the following statement:

8.18. On this pertinent issue, Malaysia views the importance for the WTO to send a positive signal to the business community and general public at large. Malaysia would therefore register itself as a co-sponsor of WT/GC/W/831/Rev.4 on the proposed extension of the moratorium until the Thirteenth Ministerial Conference. In addition, Malaysia appreciates efforts by Members to engage in intellectual dialogue to further discuss E-commerce Moratorium issues. Through such initiatives, we do hope it will help Members to better comprehend the issues and to discuss the subject constructively in future meetings.

8.19. The representative of Chinese Taipei delivered the following statement:

8.20. On document WT/GC/W/831, we thank Switzerland and Canada for their leadership in initiating the proposal. There has been more than two decades since we had the 1998 E-commerce Work Programme and the practice of continuously extending the Moratorium. If we suddenly stopped such Moratorium, it would give a very negative signal to the world and business community about the WTO's retreat from trade promotion. Debates had been going on for an extended period of time. There might be some micro-negative implications, but we would like to suggest Members not to just focus on the possible negative aspects, but to seriously look into the real benefits to the industry and to the overall economy arising from the Moratorium. We still look forward to adopting a Ministerial Decision on the Moratorium and the Work Programme at MC12.

8.21. The representative of Canada delivered the following statement:

8.22. As a co-sponsor of document WT/GC/W/831/Rev.4, Canada associates with the statement made by Switzerland on behalf of the co-sponsors. We welcome the new co-sponsors and the overall increased openness to support the extension of the Work Programme and the Moratorium that we all heard in past GC consultation meetings. We also wish to thank the Chair for his efforts. While we strongly support a permanent Moratorium, the most viable, inclusive and realistic option for MC12 is to maintain the longstanding practice of extending the Moratorium and the Work Programme until MC13. We trust the proposal can represent a compromise, balanced way forward, taking into account

past Ministerial Conference practices and allowing us to continue discussion on a vast range of topics in appropriate configurations. Moreover, Canada continues to see the value of continuing discussion under the Work Programme on issues of Members' interest related to digital trade and digital divide in the context that the E-commerce Moratorium is also extended. Canada remains open to engage with Members on specific text-based proposals towards a consensus-based outcome.

8.23. The representative of Argentina delivered the following statement:

8.24. Argentina supports the continuation and reinvigoration of the 1998 Work Programme and understands that it is the best way to address e-commerce issues. Argentina is also in favour of continuing the practice of renewing the Moratorium until the next Ministerial Conference under the same conditions as it has periodically been renewed in the past.

8.25. The representative of Hong Kong, China delivered the following statement:

8.26. I echo the statement made by Switzerland on behalf of the co-sponsors and express Hong Kong, China's strong support to submitting the draft decision for adoption at MC12. The Moratorium has contributed to providing the necessary certainty and predictability for global digital economy to thrive in the past 20 years and it should be made permanent. We understand that some Members are not ready to do so at the moment. So, we agree that it is a pragmatic way forward to extend the moratorium until MC13 while Members continue the discussions after MC12 under the Work Programme. Unfortunately, despite the Chair's efforts to facilitate the discussions in the past few weeks, we are still diverging. It is of utmost importance that the Moratorium be extended until at least MC13 and that letting the Moratorium expire after MC12 would send the wrong signal to all stakeholders at a time when many businesses, especially those operated by MSMEs, start-ups and disadvantaged groups are relying on digital platforms and tools to overcome various difficulties brought about by the pandemic. Hong Kong, China urges all Members to be pragmatic and open-minded to the Chair's suggestions on the way forward including at MC12.

8.27. The representative of Nigeria delivered the following statement:

8.28. Nigeria has been consistent in calling on the Membership to reinvigorate the 1998 Work Programme and explore ways of addressing the difficulties undermining the gains of developing countries from global digital trade. Going forward, we look forward to more structured and targeted discussions on horizontal and vertical issues regarding the trade-related aspect of e-commerce under the Work Programme. Through these discussions, we should seek effective ways of addressing the North-South digital divide and digital exclusion existing within developing country economies and other difficulties undermining the gains of developing countries from global digital trade. We call on Members to work towards the delivery of people-centred development outcomes on e-commerce at MC13 that would foster inclusive growth and development of global digital trade. Regarding the Moratorium, Nigeria is mindful of the negative effects of an unpredictable global e-commerce environment for businesses and consumers that is likely to occur from the non-renewal of the Moratorium at MC12. This would be devastating given that the world is still struggling to recover from COVID-19 and climate-related economic difficulties. In view of this, Nigeria supports the temporary extension of the Moratorium at MC12. Nigeria wishes to register its support for the proposed draft Ministerial Decision in document WT/GC/W/831/Rev.4.

8.29. The joint proposal of India and South Africa is currently being reviewed in our capital. However, we wish to share some preliminary views. On the views expressed in the paper regarding the interpretation of the scope of the Moratorium, our understanding of the 1998 declaration is that the Moratorium also applies to the content of the transmission. Otherwise, it would be of no commercial value. You would agree with us that in assessing the scope of application of any agreement, both de jure and de facto analysis are relevant. On the impact of the Moratorium on fiscal revenue, we are mindful of the legitimate concerns of some Members especially in the light of the growing trade in digitizable products. However, a general equilibrium analysis that takes into account the dynamic effects of the Moratorium will reveal that its benefits outweighs the cost. We call on Members to be mindful of the negative effects of an unpredictable global e-commerce environment for businesses and consumers that is likely to occur from the non-renewal of the Moratorium at MC12 or a decision that rollbacks its scope. We would continue to engage constructively with the proponents so we can seek mutually beneficial solutions to this issue.

8.30. The representative of South Africa delivered the following statement:

8.31. We associate ourselves with the statement by the African Group and the ACP. We inform the Membership that South Africa is now a co-sponsor of the draft Ministerial Decision contained in WT/GC/W/838. South Africa and India have consistently called for structured discussions in the General Council to be reinvigorated. This is all the more important in the context of the pandemic which has exposed the enormous digital divide. Jointly with India, we have submitted a paper in WT/GC/W/833 that outlines our views on the impact of the Moratorium. It recalls our submission, WT/GC/W/798, wherein we stressed that re-consideration of the Moratorium is critical for developing countries to preserve policy space to regulate imports, generate revenue through a simple and direct instrument such as customs duties and achieve digital industrialization. We highlight the impact of e-commerce on SMEs and the impact that new technologies such as 3D printing can have on domestic industries especially MSMEs in developing countries. As outlined before, while 3D printing is currently at a nascent stage in developing countries, its market is expected to grow at a rapid pace. The most affected sectors are sectors that are critical to developing countries such as clothing and textiles. If, "Customs duties on electronic transmissions" cover not only digitized and digitizable goods but also digitally transmitted services, as asserted by a couple of institutions and submissions recently, then the negative impact of continuing with the Moratorium on developing countries would be even greater. Effectively, this implies that the economy of the future, the digital economy, is totally liberalized. The submission of papers with differing approaches on the scope and definition of electronic transmissions shows that there is no common understanding among Members.

8.32. We acknowledge that the digital revolution has provided both opportunities and challenges. However, it is clear that the existing global digital divide has limited the inclusiveness of this opportunity and this has become more visible during the pandemic. In 1998, Members agreed for the first time to the temporary Moratorium without specifying what is included in the category of electronic transmissions and thereby its scope. This Moratorium has been renewed every two years without clarity on the scope and definition of electronic transmissions. A re-consideration of the Moratorium is critical. Apart from providing an important source of revenue, customs duties are an important industrial policy tool to support nascent domestic industries, regulate harmful surges in imports and facilitate industrialization. In relation to revenue, research from UNCTAD indicates that with the significant rise in online imports during the pandemic, the potential tariff revenue loss to developing countries increased from USD 10 billion to USD 12 billion per annum from 2020 using the bound tariffs. Internal taxes are not a substitute for tariffs which serve a different purpose. In this regard, it is important to recognize that tariffs are a policy tool for industrial development. Therefore, clarity on the scope and definition of electronic transmission is critical to decision-making on the Moratorium. Issues identified by Members under the Work Programme must be clarified under a multilateral process to enable a common understanding on e-commerce. The absence of a shared and common understanding on the scope and definition of electronic transmissions will make a decision on the extension of the moratorium at MC12 difficult. We must reinvigorate the Work Programme to remedy the unsustainable inequities and broaden the benefits from growing e-commerce. Developmental aspects of e-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 exploring ways of enhancing the participation of developing countries in electronic commerce remain key. We have submitted papers, including in the CTD, with a view to fostering structured discussions on these issues.

8.33. The representative of Chad, on behalf of the LDCs, delivered the following statement:

8.34. The LDC Group congratulates the Chair for the structured discussions held under his leadership. It is necessary for MC12 to enable us to achieve positive and equitable outcomes in this area so that no Member is left behind. To this end, we draw Members' attention to our communication in WT/GC/W/787. The LDCs remain committed to the 1998 Work Programme and are very interested in resolving issues regarding customs duties on electronic transmissions. We have a submission on the table that deals with the digital divide. The LDCs remain attached to the 1998 Work Programme. We support the Chair's process to find a resolution for a decision to present to Ministers next week.

8.35. The representative of Nepal delivered the following statement:

8.36. In the wake of the pandemic, we cannot survive without going digital. However, due to the huge digital divide between and within the Members, the LDCs and LLDCs have not been able to participate in the global trading system through e-commerce. Insufficient ICT infrastructure and

weak institutional and human capacity are their main obstacles. Needful intervention has become urgent through the E-commerce Work Programme to enable LDCs and LLDCs. Regarding the Moratorium, clarity on its scope is necessary. Implications of continuing the moratorium should be assessed before taking any decision on it.

8.37. The representative of Barbados, on behalf of CARICOM, delivered the following statement:

8.38. The inability of the Membership to clarify and resolve questions related to the scope, definition and impact of the Moratorium has impeded progress on this issue. However, since we have no reason to believe that the longstanding divergent views on this issue could be reconciled ahead of MC12, the Group is of the view that the renewal of the Moratorium until MC13 is the most pragmatic approach at this stage. For the CARICOM Group, the Work Programme must go beyond the question of the Moratorium. We therefore underscore the great importance of the Work Programme including its development dimension for small vulnerable economies in our region. We would like to see the following additions to any proposal for discussion going forward: language related to the reinvigoration of the Work Programme on Electronic Commerce based on the mandate outlined in WT/L/274, text highlighting the importance of addressing the development dimension of the Work Programme in particular and language related to an instruction from Ministers regarding the intensification of structured discussions based on proposals brought forward by Members. The CARICOM Group stands ready to continue its constructive engagement on this important matter, including regarding the incorporation of its textual suggestions.

8.39. The representative of Saint Lucia, on behalf of the OECS, delivered the following statement:

8.40. We align ourselves with the statements made by CARICOM and the ACP. The OECS recognizes the importance of e-commerce to the development of our economies. We firmly supported the General Council Decision of December 2019 to reinvigorate the work under the Work Programme on Electronic Commerce, including structured discussions on all trade-related topics of interest brought forward by Members, including on scope, definition and impact of the Moratorium. We also supported the renewal of the Moratorium. Specific to the Draft Ministerial Decision contained in document WT/GC/W/831/Rev.2, Paragraph 1 contains some of the main elements which we find important. We certainly can agree to continue work under the Work Programme. However, this paragraph can be strengthened by agreeing to continue in frequent structured discussions format. Furthermore, our Ministers are unlikely to agree to a Decision which does not squarely address the development dimension, especially in a context where the digital divide is a real and persistent challenge for OECS WTO Members. On Paragraph 2, the OECS WTO Members have consistently joined the consensus at successive Ministerial Conferences to renew the Moratorium. Therefore, we can support its renewal until MC13. Regarding document WT/GC/W/833, there is tremendous merit in engaging in further discussions on the scope and impact of the Moratorium. We are no closer to a common understanding on these elements and with less than a week to go before MC12, it is not practicable to have complete clarity before our Ministers meet. This makes it all the more important to agree to a reinvigoration of the Work Programme and to mandate frequent structured discussions on all issues of interest to Members, including with respect to the scope and impact of the Moratorium. However, I will caution that it is important that we all make positive efforts to engage meaningfully after MC12 so as to renew the confidence of our Ministers that our concerns are being given careful consideration.

8.41. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

8.42. We thank Switzerland and Canada for their proposal. The African Group remains very much attached to an E-commerce Work Programme that delivers positive benefits. And in fact, the extension of the Moratorium was in the first place premised on the fact that the E-commerce Work Programme would deliver benefits for countries who are not able to avail of such e-commerce. But the latter has not delivered, and we remain doubtful even if we are able to persuade all Members of the Group to go in one direction and have a temporary extension of the Moratorium, whether there would be any benefits in reciprocity in the Work Programme. So, 23 years later, it is clear that whatever paragraph we have on the Work Programme is not sufficient. It needs to see more specific commitments. This means to have more deadlines and more engagement. We need to see more suggested deliveries so that we can actually consider how we take this forward.

8.43. The representative of Jamaica, on behalf of the ACP Group, delivered the following statement:

8.44. The ACP Group commends the Chair for his commitment to this file evidenced by the continued consultations and engagement with Members on the matter. The COVID-19 pandemic has highlighted the need for an even greater focus to be placed on electronic commerce. While the pandemic has expanded e-commerce transactions, there is evidence to suggest that such growth has not been equal across all Members. It has also shown the deficits and shortcomings of many developing countries as it relates to having the necessary digital infrastructure to fully benefit from the opportunities to be derived from e-commerce. Many developing countries also lack the requisite domestic skills and technical competencies to harness the full potential of electronic commerce. The ACP Group has been one of the main supporters for the reinvigoration of the 1998 Work Programme on Electronic Commerce and the structured discussions which were set out in the 2019 decision. We note positively the various discussions which have taken place throughout the year and would like to encourage even further structured, constructive and meaningful discussions. Some of the issue areas to be explored include data localization, internal taxes, data flows, source code, digital divide and infrastructure development. We have taken note of the submission contained in WT/GC/W/831/Rev.2 regarding a draft Ministerial decision as well as the submission from India and South Africa contained in WT/GC/W/833. The ACP is of the view that in our recommendation to Ministers, there should be a clear signal that the Work Programme should be reinvigorated. On the Moratorium, there is a need for greater clarity on the scope and definition of electronic transmissions and the impact that the Moratorium has had on developing countries, particularly from a revenue perspective. Given the limited time before the Ministerial Conference, there is urgency in resolving the question of the Moratorium. The ACP therefore stands ready to engage on this matter and supports ongoing efforts aimed at finding a landing zone among all Members.

8.45. The representative of the United States delivered the following statement:

8.46. The Moratorium has supported the rapid growth of digital trade over the past two decades, and the United States continues to believe that Members should be ready to agree to a permanent Moratorium. To that end, the United States remains firmly of the view that the continuation of the Moratorium is beneficial to both developed and developing countries and are pleased to join as a co-sponsor of the draft decision in WT/GC/W/831. Ending the Moratorium at this critical time would create uncertainty and concern for consumers and businesses, particularly MSMEs. We shared our detailed views on WT/GC/W/833 during the 17 November GC Chair consultation. During that meeting, we conveyed our concerns that imposing customs duties on electronic transmissions would have negative consequences for developed and developing country Members. We also strongly disagreed with the paper's assertion that a legitimate interpretation of the scope of the Moratorium could exclude content. As we have said before, the Moratorium clearly requires tariff-free treatment of digital content transmitted electronically. An alternate view would render the Moratorium all but meaningless, and would call into question what our Ministers thought they were agreeing to in 1998. We therefore support the proposal in WT/GC/W/831 which represents a reasonable compromise that extends both the Moratorium and the Work Programme until MC13 and will allow us to continue our discussions on issues of interest to all Members over the coming two years.

8.47. The representative of Singapore delivered the following statement:

8.48. Members must maintain the Moratorium at the MC12. First, the lapse of the Moratorium would negatively impact many MSMEs and women entrepreneurs who have gone online during the pandemic. This is contrary to the claims made in the paper by India and South Africa. Let me share an interesting example which I came across recently. During the peak of COVID-19 the Self-Employed Women's Association with a membership of over 1.5 million self-employed women from the informal economy assisted women entrepreneurs to market their products online or even join Airbnb to have their own ecotourism ventures in remote and rural parts of India. I urge Members to think seriously and carefully about the potential impact on MSMEs and women entrepreneurs if the Moratorium was to cease. Second, the argument that customs duties will help developing countries develop their domestic digital sector is oversimplified. On one level it does not take into account the risk of potential retaliatory duties which will cause huge GDP losses and have a negative impact on Members' digital industrialization. In the longer run, removing the Moratorium will mean that both businesses and consumers will end up paying more. On another level, digital industrialization is multifaceted and complex, for instance the growing popularity of Bollywood, the Indian movie industry, in recent years is certainly not due to the imposition of customs duties, but rather the improved quality and marketability of its content. Third, removing the Moratorium would send the

wrong signal to both the international and business communities, especially during the COVID-19 pandemic. We welcome all Members to co-sponsor the draft Ministerial Declaration in WT/GC/W/831 to support the Moratorium extension. Let us all work together in the spirit of pragmatism to maintain the only multilateral agreement the WTO has in the domain of the digital economy.

8.49. The representative of Brazil delivered the following statement:

8.50. Brazil is pleased to join 61 other Members as a co-sponsor of the draft Ministerial Decision in favour of the continuation of the work under the Work Programme on Electronic Commerce and the extension of the Moratorium until MC13. Having been established in 1998, Brazil considers that the Moratorium, as the only existing multilateral rule on e-commerce, has been an important component of the global growth of e-commerce, by providing predictability and certainty for business and consumers engaged in international electronic transactions. We are convinced that the eventual discontinuation of the Moratorium would send a negative political message about the ability of the WTO and the multilateral trading system to address the current challenges of the global economy, which is becoming increasingly digitalized. Brazil sees value in continuing discussions on the scope and impact of the Moratorium and any other topic of the Work Programme in order to improve understanding of Members' different positions on these issues and to address challenges faced by Members, particularly developing countries, raised by the growth of e-commerce. We stand ready to collaborate in an open and constructive manner in order to ensure the continuation of the work under the Work Programme and the renewal of the Moratorium.

8.51. The representative of Ecuador delivered the following statement:

8.52. We support the extension of the Moratorium as it is suggested in WT/GC/W/831/Rev.4. It is a pragmatic solution that brings benefits to all countries, including developing countries such as Ecuador. The Moratorium is a mechanism by which we can continue to promote the digitalization of electronic trade in a general manner and in a specific way particularly in this period of recovery from the COVID-19 pandemic. While there are still concerns about the impact of the pandemic, it has definitely led to an increase in the use of digital trade and many developing countries have seen the digital divide of e-commerce being reduced from what it was before. The Moratorium must be renewed in due form – alongside the TRIPS Moratorium discussed earlier.

8.53. The representative of Japan delivered the following statement:

8.54. As a co-sponsor of the proposal in WT/GC/W/831/Rev.4 requesting the extension of the Moratorium until MC13, Japan believes that the Moratorium has provided certainty and predictability in digital trade for both consumers and businesses, including MSMEs. We should maintain our current multilateral practice of the Moratorium at MC12, and make it permanent eventually. In addition, electronic transmission includes contents. Therefore, this proposal is a compromise. To continue the Moratorium at MC12 is significant particularly under the current COVID-19 pandemic when a sound and liberalized environment through e-commerce is important and the promotion of safe and socio-economic transactions are needed. Discontinuation will be regarded as a serious step back not only for the multilateral trading system but also for the global economy as a whole.

8.55. The representative of Norway delivered the following statement:

8.56. As a co-sponsors of WT/GC/W/831/Rev.4, Norway associates with the statements made by Switzerland. The WTO and its membership must mirror real world developments and adjust the rules-based trading system to the real world. This was the real reason why we supported the establishment of the Work Programme and the Moratorium back in 1998 and have supported later renewals. This was also why Norway joined the JSI on E-commerce in Buenos Aires. Since then, we have, together with a majority of Members, been involved in a forward-looking process exploring and searching for common ground on a wide range of important issues of relevance to the digital economy. Norway agrees that it is important to continue our dialogue on the relationship between development and e-commerce and we are looking forward to continuing discussions under the Work Programme. The Moratorium has provided predictability and stability for more than 20 years and has not limited Members, like Norway, to set up VAT-programmes creating a more levelled playing field between foreign and domestic suppliers and for collection of revenues on goods and services ordered via electronic marketplaces. Norway is strongly in favour of a continuation of the current Work Programme and the Moratorium. Creating more uncertainty should not be the WTO's purpose.

8.57. The representative of Thailand delivered the following statement:

8.58. As a co-sponsors of WT/GC/W/831/Rev.4, Thailand associates with the statement made by Switzerland. We also thank India, South Africa and other co-sponsors of the submissions that are on the table. We have said on several occasions that Thailand supports the continuation of the Moratorium and the Work Programme until MC13 because this is very important for our businesses, especially MSMEs, during the post-COVID recovery. These would keep certainty and predictability at least for the next few years to allow them to focus on economic recovery and on strengthening the confidence of the businesses in Thailand. As a developing country, Thailand is enjoying relatively positively the impact of e-commerce during the pandemic. We look forward to further expand during the recovery period. But at the same time, we are following a lot of ongoing developments in domestic regulatory agencies of the international community as well as technological advancements that have bearing on e-commerce and on digital economy and digital regime around the world. This is why at this stage we support the extension of the Moratorium until MC13. We want to have the policy space to consider all developments that are taking place and the issues that have been highlighted today including by South Africa on 3D printing and Jamaica on data localization and tax regimes, among many others. These are the things that Thailand is following with great interest. We hope that at least post-MC12 there will be occasions where we can also discuss all these things that are developing. So, we want to have a "reinvigorated Work Programme".

8.59. I likewise heard a lot of developing Members talk about the digital divide. In Thailand's experience, the divide now is not digital nor on access to telecommunications and networks. It is the divide on how to utilize e-commerce and the digital environment within the digital ecosystem. I hope that one of the things that we can start discussing after MC12 is the new capacity building programme relating to e-commerce that would focus more on helping developing countries and LDCs to utilize e-commerce more – not simply talking about access to network or technology. Our focus should be on how we can make use all the new technological advancements to help each of us further develop. Good will in this organization is always welcome and I hope we can find a way build convergence on this issue together.

8.60. The representative of Colombia delivered the following statement:

8.61. We support and endorse the statement made by Switzerland on behalf of the co-sponsors of WT/GC/W/831/Rev.4, as well as the previous statements made in support of the text. As a developing country that faces major challenges in matters of trade and taxation, Colombia has always considered e-commerce to be a tool for development. The very basis of this tool are the opportunities it provides for countries such as ours to access other markets on an equal footing and by taking advantage of the fact that e-commerce has lower costs and fewer intermediaries. The organization cannot backtrack on this matter. The termination of the Moratorium would send a very negative message about the disconnect between the WTO and the priorities of businesses and communities, especially now that the pandemic has illustrated the importance of this type of trade for livelihoods and inclusiveness in developing countries. We also reiterate the call we made during our intervention on the TRIPS Moratorium to maintain the balance established by discussing and approving the two moratoria at the same time, which has allowed both to continue to be renewed.

8.62. The representative of the United Kingdom delivered the following statement:

8.63. Some of this debate seems like déjà vu. It has been repeated many times. We continue to be a strong supporter of the Work Programme and associate with the statement made by Switzerland on behalf of the co-sponsors of WT/GC/W/831/Rev.4. We strongly support continuing work under the Work Programme and have played an active role in those discussions. We have set out on countless occasions the value of the Moratorium. As I said on the 19 November TNC meeting, I cannot imagine something more difficult to explain to British business groups than the suggestion that we might not renew the Moratorium at MC12. With all due respect, I call on my fellow Members and my fellow Permanent Representatives to support extending the Moratorium and the Work Programme at MC12 in the interest of certainty for consumers and businesses and show that the WTO is not just back in business but backing business.

8.64. The representative of Guatemala delivered the following statement:

8.65. Guatemala thanks Switzerland for its statement on behalf of the co-sponsors of WT/GC/W/831 which we co-sponsor. We reiterate the importance of maintaining our practice of not imposing customs duties on electronic transmissions. Put more simply, Guatemala supports the Moratorium.

8.66. The representative of Sri Lanka delivered the following statement:

8.67. Sri Lanka attaches great importance to the continuation of the Work Programme. There is still a lot of work that can be done under the Work Programme to understand and contextualize how the WTO can respond to the development needs of developing countries in the digital economy. With this in mind, the way forward presented in India and South Africa's proposal in WT/GC/W/838 laying formulation for a Ministerial Declaration to be reached by the Ministers on the reinvigoration of the Work Programme with specific time issues to be covered in a timely fashion receives Sri Lanka's fullest support. The Work Programme should continue to serve as an important basis to discuss mandated issues among all Members in particular on the classification of services, the scope of electronic transmissions, the deep technological divide afflicting developing countries and LDCs, and the inequitable gains arising from the highly concentrated e-commerce sector. Our position on the Moratorium has not yet been altered. Due to lack of greater clarity on those aspects referred to above and not having any positive assurance that those will be addressed without any further delay, until we can evaluate all the related impact of the Moratorium on small economies such as Sri Lanka, it will be very hard for us to continue with another extension of the Moratorium.

8.68. The representative of Pakistan delivered the following statement:

8.69. As we have mentioned in previous statements, the General Council must fulfil its mandate to reinvigorate the structured discussions on various aspects of electronic commerce. However, we have noted that there has been little or no engagement from certain delegations on this aspect. It remains extremely important that we collectively find solutions for developing and LDC Members to address pressing challenges such as the digital divide, technology transfer and the effective utilization of digital raw material to advance digital development in those countries. On WT/GC/W/831 which seeks an extension of the Moratorium, under the Ministerial Decision of 1998, the Moratorium must only be renewed by consensus after duly reviewing the conditions and necessity of its extension. Pakistan has been consistent in its view that a fundamental reassessment of the situation and answers to emerging questions are required before extending the Moratorium due to new technological developments, emerging realities in the digital realm and the lack of understanding surrounding the scope and definition of electronic transmissions. We welcome WT/GC/W/833 by South Africa and India which duly puts forth the questions and concerns surrounding the issue of the Moratorium. Other than clearly establishing the definition and scope of the Moratorium, the developmental implications must be clearly understood, both from fiscal and revenue perspectives and also for the development of digital industries and the future of digitizable products. The paper also points to the necessity of policy space for developing countries in the digital arena. Even if the Moratorium is not extended, it does not automatically impose duties, but only allows Members the right to do so, if and when they deem it appropriate. We look forward to engaging extensively with the proponents of WT/GC/W/833 to address the issues highlighted and to find lasting, meaningful and development-oriented solutions.

8.70. The representative of the Russian Federation delivered the following statement:

8.71. The Russian Federation joined the co-sponsors of WT/GC/W/831. We stand for the continuation of the work under the E-commerce Work Programme and the extension of the Moratorium until MC13. The existing Moratorium provides a predictable environment for e-commerce at the multilateral level. This is important for stimulating the development of the digital economy. At the same time, we share the concern that many years of negotiations have failed to reach a consensus on the interpretation of certain terms of the Moratorium. This fact highlights the complexity of e-commerce and the need for a comprehensive approach in discussions. These issues cannot be discussed in emergency mode. Taking into account the complex agenda we have in the General Council, the lack of understanding on these longstanding issues should not block the decision which was a subject of consensus in the past. The Russian Federation is committed to engage constructively in the post-MC12 discussions on the Work Programme including on clarification of the scope of the Moratorium.

8.72. The representative of the European Union delivered the following statement:

8.73. The European Union fully supports this draft decision which we co-sponsored. The Moratorium provides the predictability and security that our consumers and businesses – both in developed and developing countries – need when engaging or planning to engage in e-commerce. We would also like to recall that several recent economic studies have provided scientifically solid new evidence on the positive economic implications of Moratorium. The European Union is clear in its view that the Moratorium, together with the Work Programme, must be extended at the upcoming Ministerial Conference, due to its systemic and economic importance. This is of outmost importance.

8.74. The representative of Indonesia delivered the following statement:

8.75. It is unfortunate that despite the fact that the digital sector has been experiencing growth in a rapid manner, wide gaps of the level of benefits that could be reaped from the utilization of the sector particularly between developed and developing countries persist. We should also take into consideration that while digitalization has also affected trade, development, distribution and access to technology, they remain uneven between Members. Hence, we believe proper attention should be provided to the surrounding elements arising from the development of digital trade such as digital divide. In this regard, bearing in mind that Members have agreed to establish a comprehensive Work Programme to examine all trade-related issues arising from global e-commerce in 1998, we remain convinced that the reinvigoration of work under this mandate should continue to be carried out. In recalling our well-known and longstanding position on the Moratorium, we reiterate that discussions to reach clarity and consensus on the scope, definition and impact of custom duties will be imperative prior to agreeing on any course of action towards the Moratorium.

8.76. The representative of Australia delivered the following statement:

8.77. With digital trade fuelling global recovery from COVID-19, we urge all Members to extend the two-decade old Moratorium at MC12. A failure to extend the Moratorium would be a significant blow to the WTO's credibility and encourage e-commerce trade barriers at a time when the world can least afford them. The onus is on those who seek to change the status quo to deliver evidence as to how that would be helpful. We consider the Moratorium's scope to be clear – it applies to all goods and services transmitted electronically, including to content. There is no legitimate basis for any other interpretation. Nothing in the language of the Moratorium or any WTO agreement supports restricting the Moratorium to exclude content. Indeed, such an interpretation would render the Moratorium meaningless. We note India and South Africa's recent communication in WT/GC/W/833 and we acknowledge the centrality of development issues to digital trade commitments in the WTO. Indeed, our 2020 communication on the Moratorium in WT/GC/W/799/Rev.1 engages precisely on this issue, cites credible evidence on the economic benefits of the Moratorium and details more efficient and practical-behind-the-border options for revenue collection. Australia has engaged in depth on these issues with all Members, including a recent presentation on value added taxes on digital products to the Chair's structured discussions.

8.78. Australia would be open to continued discussions on the economic impacts of the Moratorium, informed by recent global economic studies. This includes a recent University of St Gallen paper which shows that many developing countries already have tax regimes in place to enable non-discriminatory collection of revenues from digital products. We also note the recent OECD report on 3D printing, circulated by E-commerce JSI co-convenors to all Members on 12 November, which found a positive association between 3D printing growth and goods trade – undermining claims that 3D printing would reduce traditional tariff revenue. We note the draft Ministerial Decision proposed by India in WT/GC/W/838 and are concerned that this decision contains no reference to the Moratorium. We see the Work Programme and the Moratorium as linked given they both originated from the same 1998 decision. In our view, any decision on the Work Programme needs to be succinct and balanced and should not pre-judge outcomes on Work Programme topics. Australia will continue to support substantive, inclusive and transparent discussions on the Moratorium and would be willing to engage with Members on how to better reflect a forward agenda for the E-commerce Work Programme in our draft Ministerial Decision.

8.79. The representative of the Republic of Korea delivered the following statement:

8.80. The current practice of not imposing customs duties on electronic transmissions should be made permanent. This will provide economic efficiency for all stakeholders and a solid foundation for a stable and credible development of the e-commerce environment. With only one week remaining before MC12, we urgently need to reach consensus on this issue. Korea reiterates its support for the proposal in WT/GC/W/831 to extend the Moratorium until MC13, and we welcome new co-sponsors of this proposal. Failing to extend the Moratorium will damage seriously the credibility of the WTO, particularly at this time when we need to accelerate the post-pandemic recovery. Keeping in mind that the text should address both the Moratorium and the Work Programme, we look forward to further consultations to reach a Ministerial Decision in this area.

8.81. The representative of Costa Rica delivered the following statement:

8.82. As a co-sponsor, we associate with the statement made by Switzerland on behalf of the co-sponsors of WT/GC/W/831/Rev.4. We consider the renewal of the Moratorium to be fundamental, at least until MC13, in the WTO's contribution to one of the most dynamic sectors of the world economy which has also played a key role during the pandemic and that will be even more relevant for the recovery of our economies in a post-COVID context. The current Moratorium is in accordance with the principles of the Marrakesh Agreement which in its preamble calls for the reduction of obstacles to trade and the elimination of discriminatory treatment in international trade relations. Its non-renewal would add uncertainty to electronic commerce at a time when it is precisely even more necessary to ensure safe conditions for companies in developing countries. For 23 years, Costa Rica, together with other Members, have presented evidence on the benefits of the Moratorium. We invite those who still oppose it to review all the material that has been presented demonstrating the value of the Moratorium for the economies of developing countries.

8.83. The representative of Chile delivered the following statement:

8.84. We are concerned about the lack of progress in this area given some Members' reluctance to reach an agreement. Chile is pleased to be a co-sponsor of the proposal to renew the Moratorium and the Work Programme, and associates with the statement made by Switzerland on behalf of the co-sponsors of WT/GC/W/831. We also wish to extend a warm welcome to the new co-sponsors of the proposal: Panama, Israel, Kazakhstan, Republic of Moldova, Montenegro, North Macedonia, Paraguay and Liechtenstein. The Moratorium applies to content transmitted electronically. Otherwise, it would be worthless. For reasons we have given on numerous occasions, Chile hopes one day to reach a permanent commitment at the WTO not to impose customs duties on electronic transmissions. However, given that an outcome would currently be unacceptable for some Members, we propose that the Moratorium be renewed at the next Ministerial Conference until MC13. Not renewing the Moratorium would be a step backwards for the WTO at a time when it needs positive results. By renewing it or, better still, making it permanent, we would be preserving a practice that is of direct benefit to our consumers and to MSMEs.

8.85. The representative of Mexico delivered the following statement:

8.86. We support the continuation of the Work Programme and the renewal of the Moratorium. We would like to reiterate our position that not renewing the Moratorium in the current situation would be incomprehensible for most stakeholders. It would be based on a short-sighted fiscal view which would be more damaging than beneficial.

8.87. The representative of Switzerland delivered the following statement:

8.88. We would like to thank all the Members that have expressed support for a Ministerial Decision to extend the Work Programme and the Moratorium as set out in WT/GC/W/831/Rev.4. This proposal represents a pragmatic basis for decision-making by Ministers. Thank you for your efforts and initiatives. Despite the willingness on the side of the co-sponsors to engage in a drafting exercise, we regret that it was not possible to agree on a merged text reflecting the positions of both sides. We nevertheless hope that we will be able to come to a balanced result at MC12 and are ready to engage with all Members. We also invite Members sharing our approach to join us in our endeavours.

8.89. The Chair thanked delegations for their respective interventions. As he had said earlier, he stood ready to facilitate further discussions and consultations in the coming days.

8.90. The General Council took note of the Chair's report¹⁶, and of all the statements made.

9 A SMOOTH TRANSITION PACKAGE IN FAVOUR OF MEMBERS GRADUATING FROM THE LDC CATEGORY

9.1 LDC Group's Interim Arrangement Submission on LDC Graduation – Communication from Chad on behalf of the LDC Group (WT/GC/W/829)

9.2 Trade Related Challenges of the Least-Developed Countries and Way Forward: A Draft for MC Decision – Communication from Chad on Behalf of the LDC Group (WT/GC/W/807)

9.1. The Chair recalled that this matter had been discussed in the General Council since December 2020. At the LDCs' request, he had facilitated consultations in 2021, and had regularly followed up on this issue with them. On 18 October, the LDCs had circulated a submission for an interim arrangement in WT/GC/W/829. In response to a request from the LDC Group, he had conducted open-ended consultations on 5 November, at which the LDC Group had presented its submission and Members had been given the opportunity to provide comments. In the discussion, Members had recognized the particular challenges faced by LDCs, including graduated ones. While expressing their readiness to discuss how to best ensure a smooth transition for Graduated LDCs, some Members had raised questions on the specific aspects of the proposal. He understood that since that meeting, the LDC Group had continued its outreach with other delegations. This matter had also been raised in the context of the MC12 outcome document process.

9.2. The representative of Bangladesh, speaking as the LDC Focal Point on Graduation, delivered the following statement:

9.3. We commend the Chair for his efforts including facilitating the discussions on this particular issue. LDC Graduation is one of the key priorities of the LDC Group for MC12. The proposal has been discussed already five times at the General Council since December. In view of the time constraints, we submitted a draft interim arrangement on LDC Graduation focusing on the market access dimension involving trade preferences granted unilaterally to LDCs by their trading partners. We hope to examine the topic of LDC Graduation and the application of WTO rules, including LDC-specific S&DT provisions next year. There are several unilateral LDC-specific GSP schemes where there are procedures available to extend LDC trade preferences to Graduated LDCs for a certain period of time. Our interim arrangement submission is simply to encourage others to consider similar practices in their respective preference schemes for LDCs. It is up to preference granting Members to see how they want to consider this interim arrangement in their unilateral LDC specific schemes. It is an encouragement, not an obligation, to show support and commitment to sustainable growth and development of the most vulnerable Members. What we are calling for, in the latest submission, is a best endeavour effort. This is the least that Members can do to help Graduating LDCs better integrate into global trade. This is a text flexible enough to agree on, but we are ready to negotiate further. We need the readiness and willingness of our partners to engage in a meaningful discussion to find a reasonable and acceptable outcome. We call on all Members consider our submission favourably. The Director-General has also made similar calls in the past which we really appreciate.

9.4. The representative of China delivered the following statement:

9.5. The LDCs' revised proposal shows their flexibility and positive engagement at this crucial moment with no more than two weeks before MC12. The revised proposal has been structured in a forward-looking way which is constructive and could serve as the basis for further discussion. The pandemic has affected Graduating LDCs more severely than others. As the Director-General mentioned "The COVID-19 pandemic has wiped out a decade of progress for LDCs in global trade". China recognizes the importance and necessity for continued international support for LDCs to keep the pandemic in check and achieve better integration into the global economy. We support the

¹⁶ The Chair's Report was subsequently circulated in document JOB/GC/284.

smooth transition for Members graduating from the LDC category. China calls for Members' collective, constructive and open-minded engagement in the discussions.

9.6. The representative of Nepal delivered the following statement:

9.7. We associate with the statement to be made by the LDC Group. I wish to refer to the statement delivered by my delegation since last December in different occasions and reiterate all the justifications shared earlier to be taken into account. LDC Graduation is a process of development and global target with common responsibility. LDCs have accepted the global process of graduation and proceeding ahead despite of devastating impacts of the COVID-19 pandemic in their development endeavours. All LDCs will graduate soon as the world wishes to see no more LDCs after a certain time. Sustainable graduation requires continuation of LDC-specific support for a certain number of years after graduation in line with the smooth transition accepted globally. This is well-reflected in the submission of the LDC Group. Such extension is a matter of global partnership for achieving the global targets of LDC Graduation and achieving SDGs in a timely and sustainable manner. LDCs are not asking for any additional support but just requesting for the continuation of flexibilities they currently have for a few more years. We have shown the maximum level of flexibility through our proposal for an interim arrangement in WT/GC/W/829 and we urge all Members to consider our proposal positively.

9.8. The representative of Chad, on behalf of the LDCs, delivered the following statement:

9.9. Following the statements of Bangladesh and Nepal, I would simply like to recall my previous comments. The LDCs in the WTO are considered a separate category which was created by the United Nations in 1971. Since the creation of this category, only six have left the said category based on the assessments and recommendations of the UN Committee for Development Policy. Even these six, if we evaluate them today, would perhaps not have graduated today. During the fourth United Nations Conference on LDCs held in Istanbul in 2011, the LDC Action Programme for 2011-2020 was adopted. The main objective has been to ensure that half of the LDCs meet the graduation criteria by 2020. Currently, 26 LDCs, of which 19 are Members out of a total of 35, are in the process of graduating from the category. While taking into account certain concerns raised by Members in the discussions the proposal clearly sets out as a principle that any support must be applied automatically, equally and unconditionally to all Graduated LDCs for an equal period in line with the change of status. An agreement on this would be an important step in addressing the difficult situation that those countries leaving the LDC category face. On this we have shared a great deal of flexibility and we count on the flexibility of Members in this regard.

9.10. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

9.11. The African Group supports the submission made by the LDC Group. We recognize that an abrupt loss of benefits can prove to be challenging and that it takes a certain amount of time for an LDC to be fully compliant with the obligations of WTO Agreements. In addition to that, the pandemic has significantly harmed the development of least-developed countries and the scarcity of vaccines and therapeutics has further impaired their capacity to restore sustainable economic growth. We therefore support the request for a 12-year transition period for Graduating LDCs in view of giving them a reasonable amount of time to adjust to new rules.

9.12. The representative of Zambia delivered the following statement:

9.13. Zambia supports these submissions. Without a smooth transition from the LDC category, it would be very difficult for us LDCs to meaningfully participate in the multilateral trading system and this is because we have experienced a number of challenges, especially with the pandemic. We still remain a moving target up to now. So, a smooth transition for us and many other LDCs will be key in how we manage this crisis in the medium to long term. Having a smooth transition would also allow us not to fall back into the LDC category in the long term given the challenges that are being faced by a number of our countries because of the pandemic.

9.14. The representative of the United States delivered the following statement:

9.15. We thank the LDC Group for their proposals. As Members are aware, the issue of LDC Graduation raises some challenging questions, and we appreciate the continued outreach from the LDCs. Looking at WT/GC/W/829, Paragraph 1 proposes the gradual phase out of unilateral trade preferences, stating that preference granting Members: "shall seek to have procedures in place to extend and gradually phase out their preferential market access scheme over a period of 6 to 9 years....". This language raises several initial questions for us. For example, should the WTO be attempting to shape unilateral preference programmes? Second, is the call for action in Paragraph 1 aligned with, or even relevant to, our various preference programmes? And we are continuing to examine these questions. The second part of the proposal, regarding potential support measures, also raises some questions. Given that LDC Members face different challenges and unique circumstances, is a one-size-fits-all approach to S&DT a wise approach? And we believe, there is already WTO research that has looked into this question as well. Also, given that, at the actual time of graduation, which we know is extended through the graduation process, graduating LDCs are often in a better position, in terms of development indicators, than some non-LDCs, should such graduating LDCs have a claim to benefits not available to non-LDCs who may have lower levels of development? So, we are not sure why we should be creating pockets of Members who are being left behind and we do believe that we need to consider a more inclusive approach.

9.16. These are important questions, and we do not have sufficient time to unpack them in the short time remaining to MC12. That said, we have taken note of the LDC Group's interest in technical assistance, in Paragraph 4.ii. We think there could be an opportunity, post-MC12 at the expert level, to discuss a better approach to technical assistance for LDCs aimed at the implementation of WTO rules, and perhaps better linked with other WTO processes, such as Trade Policy Reviews. As an initial matter, we are not sure that such a discussion need be limited only to Graduating LDCs. It could be relevant and helpful to all LDCs. While we do not think that the proposal in WT/GC/W/829 offers a basis for an MC12 outcome, we can foresee further discussion of certain issues, among experts, particularly related to technical assistance to LDCs.

9.17. The representative of Jamaica, on behalf of the ACP Group, delivered the following statement:

9.18. The ACP Group continues to pledge its full and unwavering support for this important submission on behalf of the LDC Group. We commend the pragmatism shown by the LDC Group. The vulnerability of these countries to external shocks is real and should always be taken into account by the WTO. Graduation is never automatically accompanied by favourable conditions that warrant immediate relinquishing of LDC flexibilities. A transition arrangement is of utmost importance to graduating LDCs and the proposed transition period in the submission is reasonable to allow these Members to face the significant trade and development challenges post-graduation. As a Group of developing countries and LDCs, we can relate to the vulnerabilities of LDCs which the COVID-19 pandemic has exposed and exacerbated. Our systems are fragile and it only takes a global crisis of any magnitude to inflict irreparable damage to our economies, lives and livelihood. The ACP Group supports the LDCs Group's submission. We look forward to further productive engagement on the matter in order to support LDCs, including graduating LDCs, in their developmental aspirations and their efforts to integrate into the multilateral trading system. We urge the Membership to give favourable consideration to the submission. MC12 can make this happen.

9.19. The representative of South Africa delivered the following statement:

9.20. We associate with the statements made by the African Group and the ACP. We thank the LDC Group for its submission and its continued efforts towards a meaningful outcome and recall our previous statements on this issue. As WT/GC/W/829 states, while LDC Graduation represents a significant achievement, leaving the LDC category also implies that graduating countries lose access to the LDC-specific international support measures which have contributed to their socio-economic development. At this time of heightened uncertainty, LDCs need special development support more than ever. Based on the LDC Group's well formulated analysis, South Africa reiterates its support for the submissions in WT/GC/W/807 and looks forward to constructive discussions towards a decision at MC12 that will ensure continued support to LDCs after graduation. It is important for the multilateral trading system to deliver on issues impacting its most vulnerable Members. We also support the call to reinvigorate the work of the Committee on Rules of Origin on the Implementation of the Bali and Nairobi Decisions.

9.21. The representative of Uganda delivered the following statement:

9.22. Very soon we are all going to be LDCs. It is tragic that there is a political declaration on the WTO Response to the Pandemic as opposed to some actionable results. Uganda stands with the ACP and the LDCs and ask, is there possibly a fourth way? I have heard my Director-General mention a third way and I would like to propose, and this is a question with no good answer but to ask is there a fourth way? Because I think if we all come here in two days' time and there is nothing on the response, there is nothing on the economic impact. No one has been more severely impacted than LDCs and we are looking to our brothers and sisters graduating to graduate and yet every single brother and sister who was planning to graduate has suffered greatly during the pandemic and are fully back into the group in need of, as the United States has said, post-MC12 technical assistance and perhaps it should not only include transition countries. So, I come to a fourth proposal. We appreciate everything that has been done by all our partners through COVAX and other companies and other manufacturers that have made it possible for us to try and reopen our economies. As the Director-General has said in various discussions with all partners and key stakeholders, we were wondering as LDCs, is there a possibility for us to open or reopen our economies through a combined and consolidated procurement of vaccines? We see the work that COVAX has done. We see the work that GAVI has done. But in addition to the work that has been done, as we try to open our economies, if we have combined procurement or consolidated procurement as LDCs, as Africa, as Latin America, as Asia, would this then bring the prices of the vaccines down within the TRIPS Agreement? I ask this question because of boosters. Soon, we are going to start to scientifically discuss the efficacy of the vaccine. We are negotiating for something that will pass in December and will not be relevant to anyone. Once it is scientifically proven that the vaccine wins, we need not just boosters but perhaps additional vaccines. Could we begin to look at a fourth way? Could we begin to work with every manufacturer? Could we begin to work together to find a way to procure beyond COVAX in a manner combined and consolidated for the lowest price, the highest volume and the fastest delivery? This is Uganda speaking outside of all of the wonderful statements made but just to propose a fourth way – as economies must open. Otherwise, we will all be LDCs in 2023.

9.23. The representative of Cambodia delivered the following statement:

9.24. Cambodia supports and associates with the statement made by the LDC Group and thanks those Members who support the LDC Group's proposal. Graduating out of LDC status indicate the level of achievements and development of a country but it also brought about new challenges which the newly graduating country would need to face. No LDC should be discouraged from striving to graduate from the LDC status but there should be a smooth transition from moving up to another level. The proposed extension would provide this much needed time for the graduated country to adjust to new surroundings and make appropriate adjustments. The proposed transition period would go a long way in sustaining and accelerating the level of development of Graduating LDCs and to avoid falling into a situation that holds back development. The LDC Group has been listening to views of all Members and have made appropriate adjustments which reflect strong flexibility and full engagement on our part. We hope that the membership could favourably consider this proposal.

9.25. The representative of Tanzania delivered the following statement:

9.26. We associate with the statement of LDC Group and call on Members to view LDCs as a special category of countries with special economic needs. Due to their special needs, LDCs have been granted favourable treatment in the WTO including preferential market access, the GSP, preferential rules of origin, services waiver, TRIPS waiver and many others in the multilateral trading system. As a result, these arrangements have immensely assisted the LDCs to grow economically. Currently, a number of LDCs are about to graduate. This is good news yet at the same time scary for the respective Members knowing that all special treatment will be gone in an instant. The issue of LDC Graduation need to be carefully handled through provisional meaningful transition period for a smooth landing to avoid backsliding. The WTO has the role of doing the heavy lifting and nurturing the LDCs economically through trade and should seriously consider the LDCs' draft decision.

9.27. The representative of the United Kingdom delivered the following statement:

9.28. We thank the LDC Group for bringing forward this proposal and for the changes they have made to it in the course of the discussions with us and the number of other delegations' openness to that sort of dialogue. We are extremely supportive and indeed pretty keen that we ensure there is a positive outcome for LDCs at the Ministerial next week. We remain absolutely committed to

supporting LDCs in their graduation efforts including through our own trade preference scheme and technical assistance. Graduation should be a cause for celebration. At the moment, we cannot as a delegation commit to a specific number of years particularly as we engage in establishing our new developing countries trading scheme which aspires to be more ambitious and more pro-growth than our existing scheme. We remain very much open to working with Members including LDCs on the proposals to ensure a smooth transition which is a positive development in itself. We are concerned, as I know some others in this room are, about the proposed unconditionality of the measures and we would like to understand how constructive it would be to have the Sub-Committee looking at issues around S&DT, which are obviously issues of much wider concern in this organization where we could not yet, sadly, reach consensus.

9.29. The representative of India delivered the following statement:

9.30. India has been a votary of LDCs' integration into the multilateral trading system, and remains committed to undertake efforts to increase their share in global trade. The LDCs have been disproportionately impacted by the pandemic. They would need a reasonable additional time period to address the extensive economic, development, technological and health challenges facing them. To that end, India unequivocally supports an approach to be taken by all Members for an expeditious outcome on this issue with a reasonable time period post-graduation.

9.31. The representative of the European Union delivered the following statement:

9.32. The European Union is mindful of the challenges that least-developed countries face in integrating in the global trading system. The European Union believes that there should be support and flexibilities for Members commensurate with their needs and capacity constraints beyond the group of LDCs. Regarding the revised communication, the European Union welcomes the proposed reduction of the recommended transition time-period which is going in the right direction. In the area of trade specifically, the aim of the European Union is to focus on how to facilitate and enhance the capacity of countries to assume commitments that foster integration in the global economy. In our view, that is the best way that the WTO can effectively contribute to sustainable development.

9.33. The representative of Australia delivered the following statement:

9.34. Graduation from the LDC category is a major achievement, and Australia supports the development of appropriate transition arrangements in the WTO context, to complement such arrangements in our bilateral and regional engagement. We welcome the LDC Group's leadership in seeking to identify appropriate transition arrangements. To be most effective, these arrangements should be tailored to the diverse economic circumstances and development needs of each graduating country. Australia is actively considering the proposal to instruct the Sub-Committee for Least-Developed Countries to develop draft transition measures. However, it is unhelpful to be prescriptive about the scope of this Sub-Committee's work. Australia's system of unilateral trade preferences already extends tariff concessions to LDCs for more than nine years beyond graduation but Members should have the flexibility to tailor extensions to need in consultation with the graduating country. Australia supports the approach outlined in the UNGA resolutions noted in Chad's covering communication to WT/GC/W/829 – LDC-specific special and differential treatment should be extended for a period appropriate to the development situation of the graduating country. We look forward to engaging constructively with the LDC Group to achieve this outcome.

9.35. The representative of Switzerland delivered the following statement:

9.36. As we signalled at the December and March meetings, Switzerland is ready to discuss ways and means to support LDCs that face a changing environment due to graduation. We participated in the Chair's consultations and also met with proponents. We welcome the new proposal in WT/GC/W/829. The increased focus on preferential Market Access as well as the long-term perspective have improved the proposal. We stand ready to further consult with LDCs and other Members on this proposal. We hope that an outcome on this topic for MC12 is within reach.

9.37. The representative of Mozambique delivered the following statement:

9.38. We associate with the ACP statement and support the need for progress and a positive conclusion of debates in this issue. Members are well aware that LDCs have been negotiating with a

view to seek achievement of a common ground on the so desired flexibility. The interim arrangement submission by LDCs is a temporary one that LDCs seek so that Members can help them better fulfil their commitments during the transition stage. Even though graduation could be seen as an upgrade of the development level, such brings new challenges including the loss of certain markets that were once fully open to them due to their LDC status. The pandemic has also substantially wiped out decades of progress and gains in the implementation of SDGs. It has also exacerbated the social and economic gains achieved so far by LDCs. Given the current challenges that have aggravated the LDCs' weak economic situation, we call on all Members' to be more understanding on the LDCs' need for flexibilities and solidarity so that the discussions on this request can lead into an acceptable landing zone. Despite all these challenges, the LDCs are committed to continue their firm and devout efforts in this regard. We call upon all Members to lend a positive consideration to this request with a view to achieve the desired and necessary outcome.

9.39. The representative of Bangladesh delivered the following statement:

9.40. On behalf of the LDC Group, we thank all Members who participated and extended their support. The LDCs are flexible and look forward to further discussions. We are ready to consult with Members and are open to any textual suggestions to address your concerns on our proposal. So, please guide us in this process. Through Members' cooperation, the LDCs are hopeful that an outcome at MC12 is possible. At the same time, we request the Chair, if possible, to conduct consultations in whatever configuration he deems best. As always, we appreciate his guidance.

9.41. The Director-General delivered the following statement:

9.42. LDCs are an important constituency of this organization. At a personal level, their issues are close to my heart. Institutionally, they are a test of the multilateral trading system's ability to deliver for all of its Members. The COVID-19 pandemic has not only reversed progress achieved on several dimensions, especially poverty, education, nutrition and health. It has also exacerbated pre-existing development challenges. I am pleased to see LDCs at the WTO advance work in a united way and take an active part in discussions in the various WTO bodies. A number of LDCs are in the process of graduation, reflecting their success and raising incomes and reducing vulnerability. This is a very significant accomplishment, particularly in the face of the pandemic, and in many cases reflects effective integration into the multilateral trading system. But it is not without its own challenges because of the associated loss of the special status accorded to LDCs in the WTO rulebook. To gain a better appreciation of their concerns, last week I met with senior officials from Graduating LDCs from different geographic regions. Those conversations reinforced the importance of an outcome on LDC Graduation at MC12. This has also been reflected in the constructive approach the LDC Group has taken recently by recalibrating their proposal. This pragmatism is what we need at this final hour. It is time we move into solution-finding mode. An outcome on LDC Graduation is within reach. My good offices have also been requested by the LDC Group to find common ground. I will work closely with the Chair and all interested delegations to ensure that we deliver an outcome for LDCs at MC12. We cannot let this opportunity slip from our grasp. Let us roll up our sleeves and find an outcome that will ensure a smooth and sustainable transition for Graduating LDCs.

9.43. The Chair said he understood how important this issue was to the LDC Group. He also recognized that some questions remained and he positively acknowledged that there was clear willingness from the membership to continue discussing this matter with a view to finding a mutually agreeable way forward.

9.44. The General Council took note of the statements made and that work was continuing on this matter.

10 REINVIGORATING THE WORK OF THE COMMITTEE ON RULES OF ORIGIN ON THE IMPLEMENTATION OF THE BALI AND NAIROBI MINISTERIAL DECISIONS ON PREFERENTIAL RULES OF ORIGIN FOR LDCS – STATEMENT BY THE LDC GROUP

10.1. The Chair noted that the item was included in the agenda by Chad, on behalf of the LDC Group, and invited the delegation of Chad to make a statement.

10.2. The representative of Chad, on behalf of the LDCs, delivered the following statement:

10.3. The LDC Group takes note of the report that is looking at the specific rules for LDCs on rules of origin with a view to reaching a paragraph on this matter for MC12. On the basis of this, we call on all Members to strengthen the rules with regard to implementing the relevant Ministerial Decisions and to continue to explore the link between the requirements for rules of origin and the preferential rules that were being used, to adopt best practices on the preferential rules of origin and the administrative requirements linked to it and to report on this work at the next Ministerial Conference.

10.4. The representative of Cambodia delivered the following statement:

10.5. Cambodia associates with the statement made by the LDC Group. The preferential rules of origin for LDCs is a longstanding issue since the Hong Kong Ministerial Conference in 2005 which called for preferential rules of origin applicable to imports from LDCs be transparent and simple, and contribute to facilitating market access. This call was further built upon by the Bali Ministerial Conference in 2013 then Nairobi in 2015 which called for further improvement on preferential rules of origin by preference-granting Members in favour of LDCs. The Nairobi Decision, in particular, is an achievement for LDCs in this area. Yet the implementation of this decision is lagging behind in terms of reform of rules of origin by preference giving countries. We appreciate the work of the Committee on Rules of Origin regarding the implementation of the Bali and the Nairobi Decisions on this particular issue. However, there are still a lot to be done for the LDCs to further improve on the current level of market access. Therefore, the proposal calls for taking stock of the ongoing work on utilization rates that has been initiated by LDCs and considering best practices on preferential rules of origin and related administrative requirements to be reported to the next Ministerial Conference. We call on all Members to support the inclusion of this paragraph at the MC12 outcome document.

10.6. The representative of Nepal delivered the following statement:

10.7. Nepal associates with the statement made by the LDC Group and with the further clarification to be made by Tanzania. We support this proposal and urge all Members to positively consider this.

10.8. The representative of Tanzania, speaking as the LDC Focal Point on Rules of Origin, delivered the following statement:

10.9. Tanzania associates with the statement made by the LDC Group and takes note of the progress achieved so far in the small group in finding a consensual text which will be included in the Ministerial Declaration. The text is mainly to affirm Members' commitment to fully implement the Bali and the Nairobi Ministerial Decisions and to continue the work in the CRO post MC12. We also take note of the implementation and progress made on the Nairobi Decision as adopted in 2015 whereby much has been on notification of import data and some minor reforms on substantive rules of origin from few preference granting Members. But much remains to be done. In the past six years, the LDC Group has made several submissions in the CRO describing the challenges and possible solutions that could facilitate LDCs' utilization of preferential markets in the preference granting Members. This should be a shared responsibility of all Members and not left to LDCs only. We therefore urge all Members to adopt the draft text in the CRO for inclusion into the MC12 outcome document where it will not be renegotiated.

10.10. The representative of the United States delivered the following statement:

10.11. We thank the LDC Group for bringing this issue to the agenda. Since the negotiation of the Nairobi Decision on Preferential Rules of Origin in 2015, the United States and other preference granting Members have worked diligently to implement its provisions, notify programmes, and engage in substantive discussions in the Committee on Rules of Origin. We were surprised when three days before the 14 October meeting, the LDC Group circulated text to be included in a Ministerial Statement. We continue to work with the LDC Group and other Members on text that can be included in a statement, but we cannot accept any text that creates new obligations. We think the continuation of the discussion is best suited for the CRO and not the General Council. We have however offered language that we can accept to the LDCs.

10.12. The representative of Bangladesh delivered the following statement:

10.13. Bangladesh associates with the statements made by the LDC Group and Tanzania. Proper utilization of the flexibilities under rules of origin, as decided by our Ministers in their previous sessions, is crucially important for the exports of the products originating in LDCs. The Group has reported in several occasions that the utilization rate in different export destinations is mostly below the expected level. Therefore, the problem must be addressed. The LDC Group's proposal, as explained by Tanzania, should be considered to fulfil our collective commitment for the LDCs. Bangladesh fully supports the LDC Group's proposal for a separate Ministerial outcome to further facilitate the preferential rules of origin decisions in favour of LDCs.

10.14. The representative of India delivered the following statement:

10.15. India has been a strong supporter of LDCs' integration into the multilateral trading system and we have been at the forefront of efforts to increase their share in global trade. India is the fourth biggest export destination for goods originating in LDCs and we were among the first developing countries to extend preferences to LDCs. Since then, we have substantially expanded the coverage of our scheme for LDCs and simplified preferential rules of origin for the same. India provides duty free access to about 96% of tariff lines for goods originating in LDCs with partial preference on another 114 tariff lines – about 2.15 % of tariff lines. While we are supportive of all efforts to promote LDC integration, any Ministerial Declaration on this issue should appropriately recognize the fact that while developed countries are obligated to extend duty-free quota-free market access to LDCs, developing countries, who have extended such preferences, have done so voluntarily.

10.16. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

10.17. The African Group remains supportive of all LDC initiatives, including the reinvigoration of the Work of the Committee on Rules of Origin and would favour a Ministerial Declaration.

10.18. The Chair understood that additional discussions would take place on this matter between the LDC Group and other Members.

10.19. The General Council took note of the statements made.

11 PAPER TITLED "THE LEGAL STATUS OF 'JOINT STATEMENT INITIATIVES' AND THEIR NEGOTIATED OUTCOMES" BY INDIA, SOUTH AFRICA AND NAMIBIA (WT/GC/W/819/REV.1)

11.1. The Chair said that the item was on the agenda at the request of the delegations of India, South Africa and Namibia and related to the Paper on "Legal Status of Joint Statement Initiatives and their Negotiated Outcomes", together with the communication in WT/GC/W/819/Rev.1. He invited the delegation of India to make a statement.

11.2. The representative of India delivered the following statement:

11.3. The Tokyo Round plurilateral codes created a fragmented system of rules. While in respect of some Contracting Parties, the GATT rules were applicable. In respect of others, the rules of plurilateral codes were applicable. This created considerable complexity in determining what obligations were applicable in respect of which Contracting Party. Recognizing problems created by the fragmented system of trade rules, Members sought an end to this problem. This has been clearly articulated in the following recitals of the Preamble to the Marrakesh Agreement – "Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system" and "Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system." On this issue, the Appellate Body in one of the earliest disputes under the WTO, Brazil – Desiccated Coconut, had observed "The authors of the new WTO regime intended to put an end to the fragmentation (emphasis added) that had characterized the previous system. This can be seen from the preamble to the WTO Agreement which states, 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." Going back

to plurilateral agreements would therefore be a step in the wrong direction, and would be contrary to such clear resolve and determination enshrined in the Preamble of the Marrakesh Agreement.

11.4. As co-sponsor to this paper, my delegation would like to reiterate that we are not questioning the right of Members to meet and discuss any issue. What we are saying is that when such discussions turn into negotiations and their outcomes are to be brought into the WTO rulebook, fundamental rules of the WTO must be followed. More importantly, any attempt to introduce new rules, resulting from JSI negotiations, into the WTO rulebook without fulfilling the requirements of Articles IX and X of the Marrakesh Agreement will create a precedent for any group of Members to bring any issue into the WTO without the required consensus, bypass the collective oversight of Members for bringing in any new rules or for carrying out amendments to existing rules, usurp limited WTO resources available for multilateral negotiations, undermine balance in agenda setting, and most importantly result in Members disregarding existing multilateral mandates arrived at through consensus – leading to the marginalization or exclusion of issues which are difficult but critical to the membership at large such as agriculture. We have seen in the last one month that Negotiating Groups are not getting rooms but JSI meetings are taking place in the Council Room. Meetings on the WTO Response to the Pandemic facilitation process were taking place on Zoom platform because of non-availability of Interpreter or this being very costly but at the same time, Interpreter was used for JSI meetings. Our paper only states 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 the participants of various JSIs.

11.5. The representative of South Africa delivered the following statement:

11.6. The Preamble of the Marrakesh Agreement, is clear that the aim is to create "an integrated, more viable multilateral trading system" among Members, including the establishment of a multilateral trading system that embodies the principles of multilateralism, non-discrimination, decision-making by consensus and the development acquis. The Joint Statement Initiatives aim to develop and adopt new rules on existing and new trade-related matters among a sub-group of Members through modalities that confront the WTO's foundational commitments to multilateralism, consensus decision-making and the development acquis. We need to be aware that introducing variable geometry into WTO negotiations would create an inherently discriminatory multi-tiered multispeed trading system and reinforce asymmetrical bargaining power. The introduction of JSIs, if outcomes are sought to be brought into the WTO, has far-reaching institutional reforms. The JSIs will set a precedent that enables sub-groups of Members to develop their own rules on their own terms, bypass mandated bodies and processes, launch negotiations on topics that are not agreed, including whether those issues can be brought into the WTO.

11.7. We are concerned about the systemic implications of JSIs – importantly, its implications in fragmenting the multilateral trading system. Any process that enables some Members to change or redesign the WTO's rules without consensus decision-making should be of concern to all of us. The rules and principles of the Marrakesh Agreement provide the foundation for the WTO and should continue to be our guide of what was envisaged with the establishment of the WTO. Article II.1 of the Marrakesh Agreement provides clarity on what the purpose of the WTO is which is to "provide the common institutional framework for the conduct of trade relations among its Members". It was established as a forum concerning Members' "multilateral trade relations". The systemic concerns include whether JSIs will worsen an already challenging situation wherein agreed mandates and issues are put in the periphery. We are already witnessing this in the context of the Doha Round where concerns of developing countries to rebalance WTO rules, obligations and commitments which were promised as the price for agreeing to the Uruguay Round now remain largely unfulfilled.

11.8. The Marrakesh Agreement does not make provision for the so-called open plurilaterals and flexible multilateralism. Therefore, any suggestion that when offered on MFN basis, no consensus is required for bringing new rules into the WTO is legally inconsistent with the fundamental principles and procedures of the Marrakesh Agreement. Importantly, new rules cannot be brought into the WTO through amendment of Members' Schedules. We do not question the right for any group of Members to discuss any issue informally, but where such discussions turn into negotiations, and their outcomes are sought to be formalized into the WTO framework, this can only be done in accordance with the rules set out in the Marrakesh Agreement. The legitimacy of the WTO and its agreements depends on its ability to address the issues of its interest and concern to all Members and to find balanced outcomes even on the difficult issues that confront the Membership. The Paper gives options that Members can consider in accordance with rules. We urge the Membership to reflect

on the issues raised in the paper and we remain ready to engage constructively with Members with a view to strengthen the multilateral character of the WTO.

11.9. The representative of Guatemala delivered the following statement:

11.10. Guatemala has carefully considered the document submitted by India, South Africa and Namibia. Guatemala recalls that consensus in this organization means that a decision is agreed unless there is an explicit objection to such decision. The lack of consensus in the many negotiating areas is, precisely, the reason why some Members have been exploring other flexible approaches, including plurilateral initiatives. It is telling to observe that some of the Members that have used more generously their right to object decisions in this organization are the same that are expressing concerns with the plurilateral discussions undertaken by other Members. The issue of plurilateral discussions would become moot if Members were ready to commit to revitalize the WTO negotiating function and to strengthen its rulemaking. Unfortunately, as of today, India, one of the proponents of the document under consideration, is not ready to accept a paragraph containing such commitment in the MC12 outcome document. To conclude, the discussion on joint initiatives is not a legal but a political one. Members need to decide whether joint initiatives are necessary to overcome the deficiencies of this organization in finding compromise solutions through multilateral negotiations and whether they will be part of the WTO Agreements. This implies a political decision. What is clear to my delegation is that, whether we like it or not, Members will continue discussing and negotiating either here at the WTO or elsewhere. Legal arguments will not stop Members from pursuing common objectives in favour of much-needed disciplines. Business and the world economy move fast, and governments need to catch up.

11.11. The representative of the United Kingdom delivered the following statement:

11.12. I would have liked to enthusiastically endorse this proposal but I would not – for the same reasons that we have not on several occasions before. I could endorse pretty much every word spoken by Guatemala just a second ago. I would dearly love, as I am sure would many people in this room, for us to be witness to a flourishing series of multilateral initiatives that are going to bear fruit next week at MC12. Sadly, that is not where we are. Where we are is that the energy in this organization lies in a series of plurilateral initiatives, JSIs, that are actually addressing some of the most important issues facing the world today, whether that be women entrepreneurs, MSMEs that comprise 95% of global businesses, the services sector through domestic services regulation, the environment and climate challenge that we are facing. This unfortunately for better or worse is where the vitality, the innovation and the ideas lie in this organization. So, the real debate we should be having today is about how we harness that energy, that innovation, that creativity for the benefit of the organization as a whole – not to stifle the one bit of creativity that we have in this organization.

11.13. The representative of Chile delivered the following statement:

11.14. At the 19 November TNC meeting, reports by the coordinators of the joint initiatives, including on investment facilitation for development, demonstrated that certain topics can in fact be discussed in this organization and that agreements can be reached to the benefit of developing and least-developed countries, even when they have not participated in the relevant negotiations. We have not lost our way in such processes. We knew the what, the why and the how. These initiatives are the response to the demands and challenges of a 21st century economy and they promote sustainable development and resilience, particularly in the context of recovering from the pandemic. We will continue to follow this path if, as is becoming evident, we cannot move forward multilaterally. It is regrettable that the proponents have not yet agreed to begin discussions on the necessary reform of the organization's negotiating pillar which clearly does not work and requires pragmatic and flexible solutions.

11.15. The representative of Nepal delivered the following statement:

11.16. Safeguarding multilateralism and facilitating rules-based, predictable, transparent, and inclusive trade with a view to achieving broad objectives of the Marrakesh Agreement is essential which is well-highlighted by the paper. Consensus-based decision-making and consultations, discussions and dialogues to achieve the WTO objectives are crucial. Nepal supports the essence of the paper as it is consistent with the promotion and protection of the provision and spirit of the Marrakesh Agreement.

11.17. The representative of Chinese Taipei delivered the following statement:

11.18. When we see this agenda item being brought up again, we are reminded that the WTO really needs new input and reform after 26 years. Whether people like it or not, there is the fact that more and more JSIs in important areas are emerging and are discussed among the vast majority of Members with the same objectives of updating the WTO rulebook to reflect to the new developments and to cope with new situations. This trend shows the need of the WTO legal structure allowing for more flexibility. Only with such flexibilities can the WTO really stay relevant and respond to the rapidly changing global trade especially in a digitalized world during the pandemic. The recent significant progress in services domestic regulation on concluding the JSI negotiation text is the strongest evidence showing that Members are eager to find a new approach to further facilitate trade and boost liberalization regardless of procedural or substantive issues. Other substantial progress were particularly shown on e-commerce and investment facilitation negotiations in addition to MSMEs, trade and environment and trade and gender, among others.

11.19. The voluntary, open, transparent and inclusive nature of plurilateral initiatives is a practical approach to update the WTO rules and to make the WTO a living organization. It does not affect non-participating Members' rights and obligations. Rather, they can choose to join when they are ready. In reality, these JSIs benefit all Members including non-participating ones. In addition, from past experience, multilateral agreements are usually derived from plurilateral negotiations. It would be more practical for Members to find pathways to integrate the results of JSIs into the multilateral trading system. We see it being the only way forward for the WTO to make changes at this stage. What we do not like to see is Members deciding to conduct the negotiations outside the WTO. It would be unfortunate if some Members decide to go elsewhere to negotiate these new items. This would undermine the WTO. We urge Members to exercise their collective wisdom to develop a workable way forward for bringing the real benefit by the plurilateral negotiations to all Members, based on voluntariness, openness, transparency and inclusiveness, and taking into account the respective development stages and maintaining the existing rights and obligations of Members.

11.20. The representative of Indonesia delivered the following statement:

11.21. Indonesia thanks India, South Africa and Namibia for raising this highly important issue and for their very useful basis for the discussion on this matter. Concerns on the institutional issue of initiatives in the WTO should be addressed in a proper manner since WTO Agreements have set rules on pursuing the negotiating agenda in the WTO.

11.22. The representative of the European Union delivered the following statement:

11.23. At previous General Council meetings where this submission was discussed, it was clear that a very large number of Members are involved in plurilateral negotiations under the Joint Statement Initiatives and support such approaches which provide an essential tool to modernize the WTO rulebook. We encourage more Members to join the ongoing JSI negotiations. As stated in previous occasions, maintaining the option of developing rules that respond to current economic and trade realities through plurilateral agreements is absolutely vital for the WTO's relevance and credibility. This is what matters and we need a reflection on how to create an easier path for plurilaterals to be integrated in the multilateral architecture. We should avoid on the other hand having a legalistic debate in this setting on the legal claims of this submission – many of which are simply not valid as we have pointed out in previous meetings. The WTO rulebook provides for a number of options to give outcomes negotiated in such context legal effect such as through scheduling of additional commitments in the individual Members' schedules. This shows the importance of having the discussion on the relationship between the WTO architecture and plurilateral agreements with Members as part of future work on how to improve the WTO's functioning. We urge Members to agree at MC12 to set up a structured process that would allow to have such a discussion in the WTO.

11.24. The representative of Japan delivered the following statement:

11.25. JSIs contribute to updating the WTO rulebook and to ensuring the relevance of the WTO in the world today. Without the JSIs, which work on the front-runner issues facing the world, the WTO risks becoming less relevant and even losing its raison d'être as a cornerstone of the multilateral trading system. We echo what Guatemala said particularly that business will not wait for us and that we really need to tackle the pressing issues. We have high hopes that JSIs will achieve concrete

outcomes at MC12 and beyond. Japan will continue to work with other Members to deliver substantial outcomes in the JSIs.

11.26. The representative of Costa Rica, speaking as the Coordinator of the JSI on Services Domestic Regulation, delivered the following statement:

11.27. On the JSI on services domestic regulation, as I have noted on previous occasions, the participants in this JSI have carefully considered the concerns expressed by India and South Africa, but we do not agree with their legal interpretations. I do not wish to repeat the legal arguments which I have previously explained in the General Council on the reasons why these negotiations, and the outcome they will produce, are firmly anchored within WTO rules. With regard to the JSI on Services Domestic Regulation, the participants make use of the multilaterally agreed flexibility under the GATS that provides Members with the possibility of assuming different levels of specific commitments, with respect to different sectors and measures, and within the context of existing standards. Nor is there any provision in the WTO Agreement or the GATS that requires consensus for a Member to make improvements to its schedule of specific commitments under the GATS. Article XVIII of the GATS unambiguously establishes that Members have the right to incorporate commitments within the scope of this article in their GATS Schedules.

11.28. The representative of Pakistan delivered the following statement:

11.29. This paper has raised very pertinent questions which not only have implications for the legality of steps taken by some Members but also for the fundamental nature and functioning of this organization. We have consistently maintained that notwithstanding the content or subject the JSIs seek to address, they pose a central challenge to the consensus-based decision-making principle of the multilateral trading system. Consensus lies at the core of this multilateral institution. Compromising this principle is a strike at the very foundation of multilateralism. We have heard, even today by certain delegations, that the negotiating function of the WTO needs to be restored. We have also heard from proponents that JSIs are a way of advancing negotiations when they are deadlocked elsewhere. This is precisely the problem. We need to assess and ask ourselves, how is it that the negotiating function is institutionally or structurally broken? We have noted that the NGR, despite the deadlocks over years, is still carrying on its negotiations. Similarly, we see all negotiating bodies and regular bodies convening regularly their Chairs and the Members and working tirelessly in the multilateral format. To be clear, the negotiating structures and function do not need fixing. It is the nature of the subject being discussed in the room, and the diverging views of Members on it that create a stalemate, not a breakdown in the structures of the organization. In addition, if negotiations are launched prematurely when the entire Membership is not ready, or multilaterally mandated subjects that are important to Members are continually blocked, there will inevitably be deadlocks. If by restoring the negotiating function, the intention is to do away with the consensus-based element of this organization, we would be weakening our very foundation. JSIs undermine the true principles of multilateralism even if they are launched behind deadlock in negotiations elsewhere. The questions posed in this paper are pertinent. We look forward to discussing this aspect particularly with reference to upholding and strengthening the fundamental pillars of this system.

11.30. The representative of the Russian Federation delivered the following statement:

11.31. The Russian Federation would like to refer to its previous statements under this agenda item and urge co-sponsors of the initiative to take a more constructive approach towards the WTO's response to new challenges in international trade. The approach introduced by the co-sponsors is not quite fair towards those Members who remain ready and willing to participate in active negotiating format aimed at reaching a common understanding on urgent matters of trade policies not yet covered by the current WTO rulebook. The Russian Federation confirms its interest in incorporating results of the future plurilateral agreements into the WTO law given that such agreements would be open for all Members and abide by the non-discrimination principle. We are confident that this issue may be addressed within the practical work on WTO Reform which we will be able to launch at MC12.

11.32. The representative of Australia delivered the following statement:

11.33. As we have said before, plurilateral negotiations have a long history in this house. WTO-consistent plurilateral trade agreements with broad participation play an important role in advancing

critically-needed rulemaking in this organization and complementing progress towards multilateral outcomes. In just over a week, we are going to register our first major recent success on this front with the conclusion of the Services Domestic Regulation Initiative. We should all be proud of the fact that this Initiative is going to contribute to the success of MC12. As we have said before, and will continue to say, we do not agree with the legal arguments in this paper. In particular, we want to reiterate that consensus is not required in order for Members to launch plurilateral initiatives. Consensus is also not required for a group of Members to collectively improve their schedules. Over 110 Members are participating in one or more of these plurilateral initiatives, and further Members continue to join – as we have seen with the Philippines' welcome news this week that it is joining the Services Domestic Regulation Initiative. This seems to indicate that, at a very minimum, a large majority of Members share our view on this paper. Australia continues to encourage all Members to participate in these plurilateral initiatives – and if they do not wish to join – to at least keep an open mind on them. This will help us to deliver outcomes that can modernize and enhance the WTO rulebook for the benefit of the entire Membership.

11.34. The representative of Tunisia delivered the following statement:

11.35. Tunisia reiterates its commitment to the WTO as an advocate of the rules-based multilateral trading system in which decisions are adopted by consensus. Plurilateralism should remain an exception either as a basis for negotiations or for the adoption of new rules. The progress made in discussions on the work on joint initiatives should not deviate from their informal framework. The formalization of their results under WTO rules can only occur in accordance with the rules of procedure for amendments and decision-making as provided for in the Marrakesh Agreement.

11.36. The representative of Singapore delivered the following statement:

11.37. I echo many colleagues from around the room such as Guatemala, the United Kingdom, Japan, the Russian Federation, Australia and the European Union. This is not the first time that this agenda item has been discussed. Nonetheless, as the proponents of this agenda have done, let me once again read the Singapore's position via three points. First, JSIs are in line and in sync with the workings of the WTO. The most significant feature of the ongoing JSIs is that they remain open, transparent and inclusive. They encourage the participation of all Members with the aim of obtaining a multilateral outcome. We have always negotiated in such spirit at the WTO and this is no different. Second, plurilaterals have been proven to be legitimately integrated into the multilateral trading system. An example is the Information Technology Agreement which many Members including non-proponents of the JSIs are party to. Third, the JSIs strengthen the *raison d'être* of the WTO and enhances its relevance in the 21st century. In a time when this organization faces numerous challenges, they represent bright spots that brought together a vast majority of Members to work towards meaningful and relevant outcomes and address new emerging issues. Third, we look forward to the conclusion of the negotiations in the JSI on Services Domestic Regulation at MC12. We will continue to work closely with like-minded Members and continue the good progress on JSIs.

11.38. The representative of India delivered the following statement:

11.39. India thanks Members for their engagement today on this agenda item. During the discussions today, we again heard a number of delegations stating that they do not agree with the contents of the paper. However, we are yet to hear any legal basis for their disagreement. We would urge these Members to express their views more explicitly on various elements of our paper. Our paper only states that Members need to follow the foundational rules of the rules-based multilateral trading system as enshrined in the Marrakesh Agreement. We thank delegations for explicitly stating that purpose of bringing the reform paragraph in the outcome document is to streamline JSIs into the WTO framework. Does blocking text-based negotiations in the TRIPS Council, the G90 proposal in the CTD SS and the discussion on a permanent solution on PSH in the CoA SS revitalize and reinvigorate the negotiating function? Our paper is not political but legal in nature. We cannot bury mandated issues just because certain Members do not like it or for new issues to be brought in.

11.40. The General Council took note of the statements.

12 PROPOSED GENERAL COUNCIL DECISION ON PROCEDURES TO ENHANCE TRANSPARENCY AND IMPROVE COMPLIANCE WITH NOTIFICATION REQUIREMENTS UNDER WTO AGREEMENTS – ARGENTINA; AUSTRALIA; CANADA; CHILE; COSTA RICA; THE EUROPEAN UNION; ICELAND; ISRAEL; JAPAN; REPUBLIC OF KOREA; MEXICO; NEW ZEALAND; NORWAY; PARAGUAY; THE PHILIPPINES; SINGAPORE; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; UNITED KINGDOM; AND THE UNITED STATES (JOB/GC/204/REV.8 - JOB/CTG/14/REV.8)

12.1. The Chair noted that the item was included in the agenda by the United States, on behalf of co-sponsors, together with the latest revised communication in document JOB/GC/204/Rev.8 – JOB/CTG/14/Rev.8, and invited the delegation of the United States to make a statement.

12.2. The representative of the United States delivered the following statement:

12.3. Today the co-sponsors of the proposal on Procedures to Enhance Transparency and Improve Compliance with Notification Requirements in JOB/GC/204/Rev.8 and JOB/CTG/14/Rev.8 return with additional enhancements to share with the General Council. As MC12 fast approaches, we consider this effort to address systemic issues with transparency exemplary of the kind of reform work that will be necessary to strengthen this institution in the years to come. We are pleased that the proposal now has 21 co-sponsors. We note that just this week Colombia joined as a new co-sponsor. In addition, Paraguay and Iceland became co-sponsors since the previous version was circulated. The revisions in this text are few but significant, and in fact emphasize that improvements to notification procedures will be driven by input from the Members through their active participation in the Working Group on notifications. This is reflected in Paragraphs 3b, 3e and 3h as well as in actions taken in specific committees and bodies as reflected in Paragraph 5.

12.4. We continue to include administrative measures for chronic late notifiers who do not ask for help. We have made serious efforts to ensure that the Members who require assistance will be able to get it to overcome capacity constraints. WTO Membership is a privilege that also includes obligations that all Members agreed to as a condition of Membership. The inclusive nature of the WTO means that we are all responsible for its success, and therefore we must hold each other accountable. In Paragraph 10 a (i), the language has been adjusted to make clear that the designation "Member with notification delay" is to be reported as a standing item on the Council agenda, and not something noted each time a Member takes the floor. We have also clarified that relevant administrative measures would not apply in the case of negotiations, taking note of the concerns raised by some Members during past General Council meetings that Members' rights of participation were being taken away.

12.5. Several additional modifications relating to information collection in reporting documents, including in G/L/223, are intended to provide greater transparency and information on notifications that can be used to develop more targeted training. This is a realistic and practical proposal – one which has evolved gradually and improved significantly thanks to the extensive Member consultations that have taken place over the past year. It includes many good ideas for reforming the operation and effectiveness of notifications without being prescriptive or prejudging outcomes of the Working Group, offers tangible benefits for all Members, developing and LDC Members in particular, and can provide enhanced trade predictability and trust between Members. This proposal is an invaluable opportunity to bring greater transparency to the WTO. It is something tangible we can do right now to make a difference. We invite Members to join in supporting this proposal at MC12 and showing our dedication to WTO Reform.

12.6. The representative of Colombia delivered the following statement:

12.7. As was mentioned, Colombia recently confirmed its support for the proposed decision. The latest changes are meaningful and appropriate, in particular those now extending the same treatment to agriculture notifications and those separating the intended effects on Chairpersons between formal and informal Committee meetings. These changes, together with the willingness of proponents to engage in dialogue, convinced us to lend our support to the proposal. We encourage all Members that have not yet given their support to the proposal to consider the new version of the text carefully and support it. Greater transparency is important in itself for all WTO Agreements. It is important for the organization as a whole and it is important for its domestic effects as it is the best way for keeping efforts focused on being up to date with the notification disciplines. We would like to thank the co-sponsors and the United States for the initial explanations.

12.8. The representative of Brunei Darussalam delivered the following statement:

12.9. Aside from the amendment to state that "Phase 1 Measures" will not apply "in the case of negotiations", the differences in the present text have been minimal at best. Brunei Darussalam agrees that transparency is an important element for the basic functioning of a rules-based organization such as the WTO, and that the monitoring function of the WTO is one of the important pillars holding up the organization. We should also remember however the importance of inclusive participation for all Members and note previous calls made by some Members to bear in mind that transparency should not just be limited to notifications which this proposal is focused on. We also recall that in some of the other points that have been made by Members, the so-called "Administrative Measures" do not address the root cause of delays and would instead have a detrimental, counter-productive and disproportionate effect. In this regard, we are concerned with the timeframes proposed for the escalation from being subjected to Phase 1 measures to then having Phase 2 measures imposed. The current pandemic and its resulting crisis have clearly shown that much can happen in the space of one year which can have a long-term effect on a country and its capacity and resources. As such, and if the goal is indeed to help bring Members into compliance with notification commitments for the benefit of all, timeframes should be realistic and sufficient to operationalize any needed action.

12.10. The representative of Canada delivered the following statement:

12.11. Canada remains convinced of the long-term benefits approval of this proposal would bring to our organization. Much of our discussion over the past year and a half has been about the importance of improved transparency and how it can help us all respond to crisis situations. This proposal offers us an opportunity to examine how to support those improvements to find new tools to support each Member's efforts to comply with the notification obligations and to encourage the provision of the assistance we all know produces positive results. Canada supports its adoption.

12.12. The representative of the United Kingdom delivered the following statement:

12.13. The United Kingdom welcomes this proposal that has been brought to the General Council, for the third time and welcome Colombia as an additional co-sponsor. As we said before, and echoing the comments just made by Canada, transparency lies right at the heart of this organization and anything we can do to enhance it, as this proposal does, should be welcomed. The United Kingdom commends the way the co-sponsors have engaged with others across this organization and thanks those Members who have engaged with us in that effort. I hope that when Members look at this proposal, they will see the way in which the co-sponsors have attempted to take onboard the comments, suggestions and concerns from others across this organization. I hope that in the few days that we have before us before our Ministers gather in this building, we will find other Members following the example set by Colombia this morning to join this proposal.

12.14. The representative of Jamaica, on behalf of the ACP Group, delivered the following statement:

12.15. At the outset, we thank co-sponsors for their submission which we have had the benefit of responding to on previous occasions. The ACP Group attaches great importance to transparency and notification in the WTO. All Members recognize the importance of their notification obligations including submitting them in a timely manner. We also see value in Technical Assistance and Capacity Building for Members which are encountering difficulties in fulfilling their notification obligations. Where the ACP Group has major concerns is with respect to the proposed administrative measures contained in the submission from co-sponsors. Financial penalties are not contemplated in the current and more recent submissions. Nonetheless, we have specific and systemic concerns about the use of punitive measures, especially in a context where developing countries which fail to make timely notifications, are not wilfully or strategically doing so, but have formidable capacity constraints. As we have stated on previous occasions, a punitive approach will serve only to further alienate many developing countries and may even undermine the already faltering capacity of Members to agree on future binding commitments. The ACP Group sees discussions on transparency and notifications as part of broader conversations on WTO Reform. As we have said in previous statements to co-sponsors, reform should be handled in a holistic manner that allows the participation of all Members. It is possible that at MC12, our Ministers may agree to a mechanism to advance discussions on WTO Reform. The ACP Group looks forward to engaging co-sponsors on their ideas in such a context. We will remain open for dialogue and constructive.

12.16. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

12.17. The African Group has always been supportive of the principle of transparency. We further fully understand the importance of timely notifications in this respect and with regard to the monitoring function of the WTO. However, we do not believe that the introduction of administrative and punitive measures, especially against developing Members that fail to meet all their notification obligations, would help either the organization or the Membership. On the contrary, it may end up alienating developing Members that are already struggling to fully comply to their notification obligations. The African Group takes this opportunity to thank the Secretariat for technical assistance provided on notifications. It should nevertheless be acknowledged that such assistance does not address all the difficulties faced by the Group in fulfilling our transparency obligations. We are willing to engage constructively in discussions to improve the transparency rules of the WTO which must not be unnecessarily burdensome and onerous especially in light of the limited institutional capacity of developing and LDC Members.

12.18. The representative of Turkey delivered the following statement:

12.19. We believe keeping trade transparent is one of the most important functions of the WTO. To ensure this and to render the trading environment predictable for our traders, we need to adhere to our notification obligations. On this part, we fully agree with the proponents. We also agree that there is room for improvement of Members' record of meeting their notification obligations. However, as a developing country, we know with first-hand experience that notification requirements may, at times, represent real challenges. Again, experience shows that, once a notification is handled properly, repetition is much easier. The assistance of the WTO Secretariat is of immense importance in this process. That is why, what we need is, in certain areas, simplification of notification formats, longer timeframes, technical assistance and close guidance to assist Members to comply. Although the administrative measures foreseen in the current proposal are further relaxed, we still believe that rather than this kind of measures, what we need for enhancement of transparency is result-oriented, pragmatic approaches. We are ready to work with interested Members for such proposals.

12.20. The representative of Nigeria delivered the following statement:

12.21. We associated with the statements made by the African Group and the ACP. As we earlier stated in the previous meeting, we still want to emphasize that one of the core principles of the WTO is transparency and it is important for Members to ensure compliance to notification. However, it is equally important that the challenges being faced by the developing countries should be taken into consideration. It is imperative to note that the challenges are not only lack of capacities rather it includes systemic and structural challenges in not meeting up with notifications. No functional or administrative measure should be applied on any Member due to delay on notification. The constraint faced by developing countries must be tackled. We do not support any administrative measure to Members at this stage. At the same time, we remain available for constructive engagements on how to enhance notification obligations.

12.22. The representative of Chinese Taipei delivered the following statement:

12.23. We commend the United States' leadership on this transparency proposal and thank its responses to all possible concerns. The proposal addresses the challenges and bottlenecks that hinder the proper operation of WTO Agreements. We therefore encourage all Members to attach greater attention on the positive effects that could be generated by this proposal to improve the fundamental function of the WTO.

12.24. The representative of the European Union delivered the following statement:

12.25. As mentioned by the United States, some further improvements have been introduced, taking into account input by the Membership to make the proposal even more practical and inclusive. This proposal could be a valuable part of an MC12 outcome in relation to WTO Reform in the crucial area of transparency.

12.26. The representative of Barbados, on behalf of CARICOM, delivered the following statement:

12.27. The CARICOM Group associates with the statement made by the ACP. The Group recognizes the importance of transparency as a key tenet of the WTO and therefore thanks the co-sponsors for the revised proposal. We take note of the amendments that have been made to the proposal. Despite the removal of financial penalties, punitive measures remain in the text. We have on a number of occasions now indicated our preference to have these removed from the proposal. Specific reasons for this have been elaborated by the ACP Group in the statement. While we note the inclusion of the reactivation of the Working Group on Notification Obligations and Procedures, a more productive method of work would be to first advance discussions in the Working Group. Only when that work is sufficiently mature should we return to the General Council to seek a decision which is in the best interest of all Members. We repeat our suggestion that proponents enhance their engagement with developing and LDC Members, including with the CARICOM Group. On the nature and extent of the challenges which we face in meeting transparency and notification obligations, this could serve as an indicative gate on how best we will assess technical assistance and capacity building needs of Members. CARICOM remains engaged and ready to further discuss these important issues.

12.28. The representative of Bangladesh delivered the following statement:

12.29. Bangladesh appreciates the recent engagement with the United States on behalf the co-sponsors to further discuss this proposal. Transparency is an essential pillar. Only a few notification templates could not however assure transparency. We take note that the co-sponsors recognize the difficulties of some Members and their capacity constraints to comply with notification requirements. We also welcome the provision on consultations with relevant committees and other working groups and bodies to identify both systemic and specific improvements such as introducing simplified notification formats, updating reporting requirements, holding additional trainings and workshops at the committee level and using new digital tools that can help Members improve compliance with notification obligations. We have earlier stressed that notification provisions under different agreements are diverse and the capability of the LDCs to notify is severely constrained by lack of technical capacity and unique internal coordination challenges. The same is the case for the list of Agreements and Understandings that the co-sponsors mentioned under Paragraph 1 of the draft decision. According to Article XI.2 of the Marrakesh Agreement, the LDCs' "will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities". The LDCs are therefore not to be forced to act beyond their capacity and limitation. Paragraph 9 of this draft decision should take into consideration the challenges that many LDCs face in complying with notification obligations that require severe internal administrative coordination in their capitals. Without addressing these challenges, a conditional pre-requisite cannot do justice to the LDCs. We invite the proponents to review their proposal under Paragraph 9 in light of Article XI.2 of the Marrakech Agreement and look forward to working with Members in this area.

12.30. The representative of Japan delivered the following statement:

12.31. Japan appreciates the collective effort by all the co-sponsors as well as the constructive engagement of other Members on this proposal up to this point. We are pleased to welcome all the new co-sponsors. Enhancing transparency is an important pillar of WTO Reform. As the first step, this proposal is calling for discussions among Members to improve the notification system. We hope that all Members support this proposal to show our readiness to reform the WTO.

12.32. The representative of Pakistan delivered the following statement:

12.33. Pakistan echoes our past statements under this agenda item. Transparency is a fundamental pillar of the WTO which brings predictability to trade. We are not however sure that the proposal will have the desired impact of improving transparency with regard to notifications. We are not convinced that non-compliance is always wilful or has quick fixes, for instance, through technical assistance. The problem must be fixed where it exists and, in this case, the real problems lie in the capacity constraints of developing countries as pointed out by many Members before us. Lack of technical training of staff and institutional capacity, and insufficient human resources to carry out the desired tasks in the stipulated time in the cumbersome detail they are required are a few of those constraints. These problems are not excuses but defining attributes of developing countries, generally. No amount of technical assistance but only long-term development can overcome these

shortcomings. Pakistan therefore re-emphasizes that, on notifications, administrative and punitive measures would not lead to any optimal resolution. Such measures risk being counter-productive.

12.34. We call for simplifying procedures and seek an approach that makes the obligations easier and less complicated. For that, we are willing to have a constructive conversation. We cannot therefore support this paper at this time. We note that no Member is fully compliant with all its transparency obligations at all times including even those with all the infrastructure and capabilities at their disposal. Transparency should permeate the entire functioning of the WTO. In times such as these, where global emergencies require urgent collective action, matters of global interest such as vaccine production and manufacturing licenses and technology sharing must also remain transparent. Transparency is not confined to notification obligations. The conduct of business and procedures, regular work of Councils and Committees, negotiations, approaches adopted for negotiations and in Members' agreements with other Members – all must be equally transparent. In times such as these where global emergencies require urgent collective action, transparency in matters of global interest such as vaccine production and manufacturing licenses and technology sharing must also be transparent. Pakistan can work with Members to address transparency in its true spirit and for the betterment of the Membership.

12.35. The representative of Chad, on behalf of the LDC Group, delivered the following statement:

12.36. The LDC Group appreciates the exchanges we had on this document with the co-sponsors. The Group is aware of the importance of notifications within the WTO and equally aware of the limited ability of Members to meet their notification obligations – which should be taken into account. The Group reiterates that the conditionalities attached to the flexibilities regarding the new obligations may not be sufficient to address the systemic and structural issues we face both in the capital and in Geneva. Footnote 1 regarding administrative measures is not sufficient to provide reassurance to Members who have had negative experiences with administrative measures and believe that such practices run the risk of discouraging Members in their participation in the WTO's work instead of integrating them into the multilateral trading system. The LDC Group wishes to strengthen the capacity of its Members in terms of WTO notifications but is not in a position to support a framework for the discrimination or punishment of Members which are already facing a wide range of constraints. The Group hopes that the co-sponsors will continue to, in line with other Members, work in a positive way to increase the number of notifications in the WTO bodies. The TFA might be a useful model. Thus, the LDCs are open to work with the co-sponsors and any other Members on the issue.

12.37. The representative of Singapore delivered the following statement:

12.38. We welcome the reiterative dialogue over this proposal which has incorporated many constructive comments and inputs from Members. The proposal is comprehensive and balanced in incentivizing notification compliance while ensuring Members with difficulties will receive the technical assistance they require. The proposal recognizes that notification obligations may differ across WTO Agreements and calls for a bottom-up approach by working with relevant committees to identify targeted recommendations to facilitate compliance. Naturally, we welcome Members with further ideas to use that avenue to give us their feedback. The proposal will complement other MC12 deliverables as part of a comprehensive response to the pandemic and WTO Reform. The complete and timely submission of notification is key to ensure effectiveness of the WTO's monitoring function. It will also help to mitigate trade disruptions and facilitate post-pandemic recovery by building a more transparent and predictable trading environment.

12.39. The representative of China delivered the following statement:

12.40. China thanks the United States for raising this important agenda. We support the importance of enhancing transparency. However, on this specific proposal, China still has concerns on some issues, especially on counter-notification and punitive measures. We are open to further discuss the communication with proponents.

12.41. The representative of Paraguay delivered the following statement:

12.42. Paraguay is a co-sponsor of the most recent version of this proposal. In the seventh revision and subsequent changes, Paraguay was critical of the initiative up until that point. However, at that

point we have seen a positive change in the document which reflected Members' comments and addressed their concerns. The new changes which have been introduced in the eighth revision also continue this approach. We urge Members who are still concerned to work collaboratively with us with the view to finding support and bringing this very important initiative forward which will significantly contribute to this organization and its work. Monitoring is a key function of the WTO and depends largely on transparency of Members in the implementation of their policies. This is the best source of trade intelligence especially for those without a vast foreign network. It should be in the interest of all developing Members to co-sponsor this initiative which will allow for more efficient and effective monitoring of their trade interests. The current version provides the requisite balance to address our concerns related to the difficulties faced by developing and LDC Members and the technical assistance which will be provided in order to overcome them.

12.43. The representative of Australia delivered the following statement:

12.44. Listening to the conversation on this item, it is clear that there is widespread consensus that we must act to improve transparency. This proposal has assuaged part of our concerns on monitoring and transparency, and we thank the United States for introducing it. We are willing to enter into dialogue with other Members on this important issue. We welcome the suggestion that the exercise should address the quality of information provided as part of notification requirements. Transparency is likewise an important part of our WTO Reform agenda.

12.45. The representative of India delivered the following statement:

12.46. I completely agree with first paragraph of the preamble in JOB/GC/204 that transparency and notification requirements constitute fundamental elements of many WTO Agreements and a properly functioning WTO system, and thus of Members' obligations. This proposal essentially aims to increase the burden of notifications on developing and LDC Members while terming such additional disciplines as transparency. Additional compliance burden is not transparency. A multilateral organization can only be more transparent if all Members work towards this objective. Several proponents have not distinguished themselves when it comes to setting an example on transparency. Let us look at the deliberations in the last Council for Trade in Goods which took place on 1 and 2 November. Several Members raised detailed concerns and anxieties about non-transparent and arbitrary changes made to tariff schedules, Aggregate Measure of Support and Special Safeguard Mechanism inheriting of either or both the European Union and the United Kingdom as a result of the EU-28 moving to an EU-27 and the United Kingdom structure. We have already had several discussions on transparency in the context of MC12 which is just a week away. Let us reflect on how the negotiations have been conducted in several areas, where Facilitators have brought in text which has been imbalanced. When Members have complained about this imbalance, changes have still not been made or only very grudgingly introduced as Alt texts. While you have conducted your proceedings in a transparent way, some of the other rooms have not given the same respect to the principle of "transparency".

12.47. During the previous meeting, we have already indicated several areas in which proponents need to improve their own notification obligations. I will recap them. First, final bound AMS commitments not provided by some Members for two years beyond their due date. Second, unsatisfactory compliance with GATS Article III:3 notification obligations. Third, non-compliance of GATS Mode 4 notification despite the developing Members pointing this out repeatedly. Fourth, no transparency on TRIPS Article 66.2 commitments to support LDCs with enhanced technology transfer. Fifth, notifications on traditional knowledge in patent applications. Sixth, use of non-transparent ad valorem tariffs by some proponents creating uncertainty and discouraging market access. Transparency in the WTO is not a one-way street. Let us not seek to burden developing and LDC Members with higher notification obligations. Let the constructive character of this forum not be altered into a peer policing one like what Paragraph 5 of the proposal seeks to do. Let Member equality enshrined in the very definition of the WTO not be altered into a penal structure as Paragraph 10 of the proposal seeks to do. We support hand holding – not the punitive approach.

12.48. The representative of the United States delivered the following statement:

12.49. We acknowledge and thank all Members that contributed today. We have had several good conversations in the General Council on this proposal and we are moving in the right direction. I would like to be able to respond to a few of the concerns that we have heard today and just see if we could get some additional clarity because we think that there were no interventions that spoke

to not wanting to fulfil transparency obligations. It was more a question of how do we do better. With respect to the inclusion of other notifications, we have been very clear at the beginning that we were starting small – with the CTG cluster. We would welcome co-sponsors bringing other ideas forward and inclusion of others but we do not understand whether this is a red herring or something else. If you have concerns and you want to voice your dissatisfaction with the compliance of others, yet you are refusing to engage on a solution that would try and improve that compliance, I am not sure how this argument is circled. We would welcome discussion on this, if there are other areas, but again, the co-sponsors chose to start small and work up from the CTG. That does not mean that we are turning our back on other notification obligations. But again, if you are dissatisfied with the compliance then perhaps we should be all be working together to improve that.

12.50. With respect to timeframes, we have included in the provision a number of years before this entered into force so that we could all work together in moving that forward including providing sufficient time, if needed. The current proposal has in brackets an initiation date of 2025 or 2026 and then within that, there is a built-in one year trigger for non-compliance but with a very important 2-year delay that is triggered for developing Members just by asking for assistance. The LDCs have a complete exemption if they ask for assistance. We are therefore a little bit puzzled by concerns raised by Brunei Darussalam and others with respect to timeframes because we have already incorporated some significant time gaps into the proposal and we would be happy to engage further on that. The word "punitive" came up a lot as well. We are a little bit surprised because the administrative measures and the minimal consequences included simply seek more transparency. It is only for those that have not sought assistance or have not availed of the mechanisms that we are trying to create. And so, it is difficult for us to understand how we can all agree on the principle of transparency but then object to transparency when it comes to fulfilling one's commitment.

12.51. This initiative is an opportunity to focus all of our collective efforts on technical assistance and support. We wonder what is going to happen to that energy if we were able to move this forward because we already made a lot of progress in drawing out and seeking ways to improve and streamline transparency obligations. These are with respect to some of the comments that were raised. We have already agreed to transparency obligations and they form part of our contribution to sustaining the system that we all believe in. Although no changes were made to any obligation proposed in the proposal, a number of people have made comments asserting that obligations were being changed. We would like to clarify that there are no transparency obligations being modified in this proposal. At the same time, we are not suggesting that there are any quick fixes. We are just trying to create a pathway forward to focus our efforts on assisting those who are seeking assistance and transparency for those that do not. To be taken seriously as an organization with transparency at its core, we have to take some demonstrable steps to improve the status quo. Our proposal is first and foremost an effort to address the challenges and constraints raised by Members and to mobilize collective effort to address those concerns. These are minimal provisions to make sure that we are all moving in the same direction. We look forward to continue the engagement and ensure that we all live up to the transparency goals and ideals that have been articulated today.

12.52. The General Council took note of the statements.

13 PROPOSED MINISTERIAL DECISION ON STRENGTHENING RESILIENCY AND PREPAREDNESS THROUGH TRADE FACILITATION – COSTA RICA; JAPAN; MEXICO; NORWAY; PANAMA; URUGUAY; AND THE UNITED STATES (WT/GC/W/836)

13.1. The Chair noted that the item was included in the agenda at the request of the United States on behalf of co-sponsors of the Proposed Ministerial Decision on Strengthening Resiliency and Preparedness through Trade Facilitation in document WT/GC/W/836, and invited the delegation of the United States to introduce the item.

13.2. The representative of the United States delivered the following statement:

13.3. We have worked with many Members in the Committee on Trade Facilitation on the Communication that was the source of this Ministerial Declaration, and we are thankful that Members continue to see the value in continuing our work on ensuring the timely and efficient movement of goods globally during the COVID-19 pandemic. Our goal in this document is to ensure that we can have focused discussions in the Committee next year that are based on Members' experiences and lessons learned during COVID-19 with a view to identifying best practices and making recommendations for implementation. We have repeatedly stated we are not seeking any new

outcomes or commitments from Members and we removed any language that Members noted implied a level of commitment which was not our aim. Again, we are seeking to reiterate the importance of implementing the TFA for the benefit of all traders and citizens which became even more important during COVID-19. We see this document as compatible with a successful outcome in a Trade and Health and Preparedness Declaration and Action Plan under the Walker Process. That declaration and this decision stand on their own and this decision simply provides more detailed guidance and direction to the Committee, including how the Committee organizes itself to undertake focused discussions on implementation of the TFA with regard to the COVID-19 pandemic. We look forward to hearing from Members and their reactions.

13.4. The representative of Guatemala delivered the following statement:

13.5. Guatemala agrees with the objectives of the initiative. We consider it important to facilitate import, export and transit procedures for goods. We are convinced that the full implementation of the TFA will allow us to achieve this objective. The health emergency caused by the pandemic highlighted the limitations and challenges in relation to trade facilitation. We need to continue working to remedy these limitations and face these challenges globally. Regarding the list of items that the proponents have identified as being "particularly relevant" to the expedited movement of essential goods, Guatemala does not share the classification of some of them. We would prefer a more general paragraph that does not mention specific items. Guatemala draws Members' attention to the fact that one of the most difficult effects of COVID-19 was the increase in maritime freight costs. The increase in sea freight prices has had a serious impact on world trade particularly for the small and medium sized exporters that cannot cover these costs. Members could take trade facilitation measures in order to improve this situation. This topic should be taken into consideration in the discussions under this initiative to meet the objectives of strengthening resilience and preparing for future crises.

13.6. The representative of Chad, on behalf of the LDC Group, delivered the following statement:

13.7. The LDC Group takes note of the proposal of the co-sponsors which we have had an exchange with one of them. The proposal is currently being discussed in the various capitals of LDCs and we would share our position with the co-sponsors as soon as we have received comments from capital.

13.8. The representative of Uruguay delivered the following statement:

13.9. It is extremely important to obtain a result on trade facilitation at MC12. TFA implementation is already yielding many benefits including better access of MSMEs to export possibilities that can help them recover and make them more resilient. Uruguay co-sponsors this draft ministerial decision because we recognize the importance of implementing the TFA as an essential contribution to facilitate timely and efficient movement of goods to respond to the pandemic and to future crises.

13.10. The representative of the United Kingdom delivered the following statement:

13.11. We all recognize the benefits of the TFA to Members. We have discussed those benefits a great deal in relation to our efforts to mitigate the effects of the pandemic and to recover from it economically. Trade facilitation is an important part of the WTO Response to the Pandemic including on preparations for future ones. The decision proposed by the United States and co-sponsors provide a clear structure to the Committee on Trade Facilitation's post-MC12 Work Plan so that Members can share best practices on this and future crises within the TFA framework. We particularly thank the United States for its bilateral engagement on this initiative. I am delighted to confirm that the United Kingdom will co-sponsor this decision. I encourage other Members across this organization to look favourably upon it including through co-sponsorship.

13.12. The representative of Norway delivered the following statement:

13.13. Norway is among the co-sponsors of this proposal. Trade facilitation measures have a crucial role in ensuring the smooth flow of important goods in global supply and value chains. Experiences gained from Members coping with the pandemic have demonstrated that measures identified and prepared for in good times provide for greater resilience when extraordinary circumstances put governments and authorities under stress. Furthermore, our collective resilience will be strengthened through increased openness about which measures have been put in place and by

sharing experiences about which measures have proven to be most effective in supporting governments in their efforts to combat the pandemic. Norway looks forward to learning from others and to share our experiences with partners. Sharing of best practices is a cost-effective way to support Members in the implementation of the TFA. This will strengthen the resilience of individual Members as well as contribute to the robustness and resilience of global value chains.

13.14. The representative of Panama delivered the following statement:

13.15. As a co-sponsor, Panama associates with the statement made by the United States. The TFA and the Committee on Trade Facilitation have an important role to play as a powerful tool in the WTO's work to deal with the consequences of COVID-19. The proposal aims to promote a structured framework for discussions and the sharing of experiences and lessons learned on the implementation of TFA provisions so that through their effective implementation the WTO can help build resiliency and preparedness for future crises. We hope that Members will support this worthy initiative.

13.16. The representative of Mongolia delivered the following statement:

13.17. Mongolia attaches high importance to TFA implementation as the agreement contributes to supporting the timely and efficient release of goods. Moreover, the trade facilitative measures enshrined in the TFA are instrumental for eliminating transit-related hurdles that landlocked country Members such as Mongolia face. Mongolia therefore supports in principle initiatives that call for accelerated TFA implementation. It is however noteworthy that due to different stance and capacity, not all Members, including landlocked ones, are capable of implementing TFA provisions. Despite the progress made, TFA implementation is estimated to be 51.2 per cent of the notifiable provisions by LLDCs compared to 71.0 per cent for developing countries and 100 per cent for developed countries. In this regard, we emphasize the importance of mobilizing adequate resources to accelerate TFA implementation. We urge Members in a position to do so to continue to provide technical, financial and capacity building assistance to LLDCs on a sustainable basis for the effective implementation of the TFA and other trade facilitation reforms. Transit issues of landlocked country Members should be discussed in the Committee on Trade Facilitation on a regular basis. In this regard, in the context of the ongoing review process of the TFA, Mongolia, on behalf of the LLDC Group, has propose to amend the Committee's spring meeting agenda to include a dedicated session to discuss transit issues of landlocked country Members.

13.18. The representative of Turkey delivered the following statement:

13.19. Turkey attributes great importance to a robust TFA implementation. The initial years of its implementation had a very positive effect on boosting international trade. Its impact became more obvious during the pandemic by facilitating the movement of essential medical goods and equipment. Members and people around the world will benefit from deepening the robust implementation of the TFA and using the TFA as one of the fundamental elements for strengthening capacity and building resiliency for future crises. For future preparedness, we also see a lot of merit in information and experience sharing exercises. As a co-sponsor of the proposed Ministerial Decision, we invite and encourage all Members to support this draft.

13.20. The representative of Chinese Taipei delivered the following statement:

13.21. We agree with the objectives of this proposal and are pleased to be a co-sponsor. We support the United States in urging Members to deepen TFA implementation, to hold a focused discussion to assist Members in supporting TFA implementation and to share and exchange information and experiences which would benefit all Members. The proposal is important especially as we are still battling COVID-19. We urge Members to look at the merits and consider co-sponsoring the proposal.

13.22. The representative of Antigua and Barbuda, on behalf of the OECS, delivered the following statement:

13.23. The OECS associates with the statements made by CARICOM and the ACP. A Ministerial Statement on Trade Facilitation at MC12 is not inappropriate given the important role that trade facilitation reforms have been playing in managing the economic responses to the COVID-19 pandemic and its role in the global economic recovery process. Ministers at MC12 will receive the report of the first review of the operation and implementation of the TFA. However, it is questionable

whether this requires a separate Ministerial Decision on Trade Facilitation. The MC12 political declaration can accommodate general language which notes the importance of trade facilitation in managing the trade-related aspects of the pandemic. There is a proposal in the Trade Facilitation Committee which calls for expedited implementation of some TFA measures. The substance of this proposal, contained in G/TFA/W/25/Rev.2, is replicated in this draft Ministerial Decision which appears to be an attempt by the co-sponsors to translate their proposal into a Ministerial mandate. Several of the trade facilitation measures cited in the draft Ministerial Decision have been notified by OECS countries as Category C measures, for which we require time and technical assistance and capacity building support to implement. To date, some Members have not been very forthcoming in offering support to the OECS to build implementation capacity. Some Members have also sought to block the operations of the Trade Facilitation Agreement Facility which has been helping to build implementation capacity for many developing countries. Notably absent in the draft Ministerial Decision is any reference to TACB support to assist implementation. Furthermore, there is no call on Members to assist developing and LDC Members to accelerate implementation. Reference to the outcome of the first review of the TFA is also notably absent in the draft Ministerial Decision. For these reasons, the OECS is not in a position to agree to a separate Ministerial Decision on Trade Facilitation as per document WT/GC/W/836.

13.24. The representative of Nigeria delivered the following statement:

13.25. We support the statements of the African Group and Mongolia. Trade facilitation is one of the most important tools to boost both domestic and international trade. A functional trade facilitation will address some challenges caused by the pandemic. Most developing countries are however still faced with enormous challenges to fully implement the TFA due to capacity constraints and other challenges. The most unfortunate experience is lack of commitment by some Members who made promises to support other Members in building capacity to implement Categories B and C. While looking at the proposal, we urge developed Members to intensify efforts in supporting developing countries and LDCs with technical, infrastructural and other support with a view to enabling developing countries fully implement the TFA for them to benefit from its dividends.

13.26. The representative of Kazakhstan delivered the following statement:

13.27. I express our gratitude to the United States and other co-sponsors for this proposal and announce that Kazakhstan is co-sponsoring this statement and this initiative.

13.28. The representative of Mexico delivered the following statement:

13.29. I refer to the "World Trade Report 2021", published last week, in which it is shown that trade facilitation measures play a fundamental role in building resilience to crises, by contributing to smooth imports of critical goods, such as food, medical supplies and emergency equipment that may be in short supply in countries affected by an emergency situation. Likewise, the Report refers to a recent WTO study on countries affected by natural disasters which highlights the fundamental importance of preparedness and the early inclusion of specific measures in customs processes and procedures. Considering the above, it is important to recognize that the full implementation of the TFA is crucial to face emergency situations such as the health crisis that we are currently experiencing. The draft Decision that we are discussing encourages the implementation of the provisions related to the facilitation of essential goods in line with the TFA. It also promotes experience sharing on trade facilitation measures which have been implemented as a response to the COVID-19 health crisis in order to strengthen resilience among Members and increase preparedness for future crises. Mexico therefore urges all Members to support this proposal.

13.30. The representative of Brazil delivered the following statement:

13.31. Brazil supports this proposal as it is a response to the difficulties faced in international trade caused by the current pandemic. The WTO is in a privileged position to make a positive contribution to the resilience of international trade in emergencies. We have been negatively affected by COVID-led logistical difficulties imposed on global value chains which stresses the importance of trade facilitation within the multilateral trading system. Brazil remains committed to the full implementation of the TFA.

13.32. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

13.33. The TFA which came into force in 2017 is arguably the most ambitious and relevant development at the WTO since the Marrakesh Agreement. We commend both the WTO and Members for successfully implementing the agreement but we realize that the operationalization and full implementation of the agreement is an ongoing process. In that regard, we encourage Members to ensure that they are compliant with their commitments especially those in Category A. As we are looking at the proposal, several developing and LDC Members face challenges to implement the agreement. It can be just as difficult to secure technical assistance from partners. We therefore urge more flexibility in the conditions and requirements to allow more countries to avail of technical and financial assistance projects. We are confident that technical assistance and capacity building would enable developing and LDC Members improve their compliance level with the TFA.

13.34. The representative of Japan delivered the following statement:

13.35. Japan recognizes the increasing need for trade facilitative measures under the influence of the COVID-19 pandemic. Now is an opportune moment for Members to deepen the robust implementation of the TFA. This is indeed the expected role for the WTO as an organization with the goal of ensuring smooth, predictable and free trade flows. We hope every Member, including developing ones, will support this decision to strengthen resiliency and preparedness through the full and robust implementation of the TFA.

13.36. The representative of Canada delivered the following statement:

13.37. Canada shares the co-sponsors' belief that focused discussions among Members on trade facilitative measures that contribute to build resilience and ensure preparedness for future crisis is important. As such, Canada is pleased to join as a co-sponsor and looks forward to working with Members in this area.

13.38. The representative of Barbados, on behalf of CARICOM, delivered the following statement:

13.39. The proposal includes a number of suggestions which could be of interest to us. However, we must at this time register that we do not support a standalone Ministerial Decision on trade facilitation at MC12. In light of the interlinkages with some of the elements of the Facilitator-led process on the WTO Response to the Pandemic and the MC12 outcome document, a reference to trade facilitation could be better served in the context of these tracks of work. Additionally, with just a few days left before the start of MC12, there is little time to delve into the details of some of the areas that we will find to be of interest to us. We stand ready to engage on the various issues within the context of the ongoing work within the WTO. We associate with the statement of the ACP.

13.40. The representative of Colombia delivered the following statement:

13.41. Colombia recognizes the importance of this proposed decision and has co-sponsored the previous general proposal discussed at the Committee on Trade Facilitation on accelerating TFA implementation. Today, in the same vein, my country is announcing its co-sponsorship of this additional proposal for the Ministerial Conference and we hope that it will be adopted.

13.42. The representative of Jamaica, on behalf of the ACP Group, delivered the following statement:

13.43. The ACP Group takes note of the draft Ministerial Decision which puts forward several proposals which are geared towards having certain activities taken up by the Committee on Trade Facilitation in light of the impact of the pandemic. The TFA remains a significant milestone or achievement in the history of the multilateral trading system particularly for developing and LDC Members. The ACP therefore remains a strong advocate for the continued implementation of the TFA and related commitments by all WTO Members. The COVID-19 pandemic with its multidimensional impacts including on trade continues to pose significant challenges for the development goals and aspirations of all countries particularly developing and LDC Members. In some cases, it has had the effect of reversing significant progress made in the implementation efforts of Members which had to divert attention and critical resources to responding to the immediate health threats posed by the

pandemic. We however acknowledge that while there continues to be challenges associated with the ongoing pandemic, there have been significant opportunities. We commend those Members, including those within the Group, that continued their efforts to meet their various obligations under the Agreement. These measures had the effect of enhancing trade for these Members and fostering their relatively quick recovery from the pandemic. It also allowed for much needed medical equipment to be acquired.

13.44. There are some good elements within the proposed Ministerial Decision put forward by these delegations. TFA implementation can complement Members' and the international community's ongoing efforts to respond to and mitigate the impacts of the pandemic. The Group is encouraged by these actions and notes that there may be important lessons and best practices that can be shared among all Members to strengthen resiliency and build capacity to respond to future crises and events. The proposed draft Ministerial Decision however requires more in-depth discussion and consideration by the Membership to better understand what implications this may have for developing and LDCs Members which are allowed to implement the TFA in keeping with their capacity to do so. It is further recognized that some Members still require external assistance to implement the TFA. In addition, a separate process is currently underway on the WTO Response to the Pandemic. We are therefore cautious about seemingly outlining or agreeing to a work programme for the Committee on Trade Facilitation ahead of the completion of the work being done in that area. The Committee should be given the flexibility to determine how its modalities are developed to give effect to aspects of its work related to the WTO Response to the Pandemic.

13.45. The representative of India delivered the following statement:

13.46. We see merit in all WTO bodies contributing towards pandemic response. We are willing to constructively engage with proponents to better understand their proposal.

13.47. The representative of the European Union delivered the following statement:

13.48. The European Union considers that a comprehensive action plan is the most appropriate path to take at MC12 to ensure that Members are better equipped to deal with the ongoing pandemic and future crises. A comprehensive and meaningful WTO response is needed and we understand that in case of conclusions of these strands, it would not be proposed to adopt this draft Ministerial Declaration. The European Union supports the United States' and other Members' views that the pandemic has led to the need to enhance TFA implementation in particular in the area of digitization, as a way to increase the resilience of the global trading system as well as facilitating recovery. It will be useful to deepen the sharing of experiences started in the Committee on Trade Facilitations notably with the compendium of Members' practices on how best to adjust customs procedures and use the many pertinent TFA Articles to address the obstacles that COVID-19 creates for a smooth, efficient and compliant cross-border flow of goods. It is of critical importance that Members having notified Category C commitments get the needed technical assistance and support to timely implement these TFA provisions that are crucial at times of pandemic. It is also crucial that the WTO continues to cooperate with international organizations like the WCO and the WHO to ensure that the best possible solutions are designed for equipping Members with the necessary tools to address future and ongoing challenges.

13.49. The representative of Pakistan delivered the following statement:

13.50. We will examine this proposal in more detail in our capital. As an initial response, while Pakistan is a TFA signatory and has a good implementation record. The TFA already has built-in, negotiated flexibilities. While some developing Members face difficulties in TFA implementation, they are doing their best to meet their obligations. A conversation on resilience and preparedness can be undertaken but that would involve many more aspects other than trade facilitation. We are also aware that some elements of this conversation and in particular with regard to trade facilitation are already being proposed under the Facilitator-led process on the WTO Response to the Pandemic. We are therefore not entirely convinced of the utility of this draft at this stage.

13.51. The representative of Switzerland delivered the following statement:

13.52. We join the co-sponsors in acknowledging the importance of trade facilitation for the fight against the sanitary crisis and for economic recovery. In substance, we support the idea behind this proposal as facilitating trade is a key element of the WTO Response to the Pandemic.

13.53. The representative of the United States delivered the following statement:

13.54. The United States thanks Members for their contributions today. In particular, we thank the United Kingdom and Kazakhstan for their support. We will reach out to Colombia as well following its encouraging words. What the proponents are putting forward is a very simple proposal that speaks to the moment of where we are in a practical way using the Committee structure that we have. We are extremely open to engaging with other Members and making modifications to the proposal to include the interest of others. We appreciate the expressions that we have heard today. We have reached out to a number of regional groups who were unfortunately unable to meet with us prior to this meeting but we will continue to follow up with them. It is important that we acknowledge that the TFA is the most significant multilateral outcome in the last 25 years and it includes many important innovations that we should not overlook. This very flexible agreement both in its approach to S&DT and to the obligations should be looked at carefully in the context of COVID-19 or other crises to see whether or not this flexibility can be utilized to better address the situation. We are a little bit confused and do not quite understand some of the concerns by the most vulnerable economies who may not want to use the WTO to build preparedness and resiliency. Circling back on that conversation would be incredibly useful.

13.55. The proposal is exactly responsive to mobilizing donors and the enthusiasm for support whether it is in Category C or in other improvements. If we can harness the lessons learned from COVID-19 looking at the stresses that our economies have faced and come forward with solutions, donors would be there to support TFA implementation. No one is suggesting any kind of forced change in schedules in Category C. That certainly does not and should not appear in the proposal. But what we think could be useful is if we can reflect on COVID-19 or other disasters that have triggered the desire to move forward to address vulnerabilities or change the way Members approach TFA implementation. Back in 2013, many of us considered vaccines to be perishable goods and now we all know that they are and so these kinds of discussions allow us to have a conversation to ask "Can we look again at these obligations? Does the COVID-19 experience require us to reprioritize in some ways to make sure that we are reducing our vulnerabilities?" This is the essence. We heard a number of concerns also with respect to waiting for the broader pandemic response. We do not think that it is in our interest particularly or in the interest of vulnerable economies to wait until next year to begin to think about how we want Committees to restructure and respond. There does seem to be overwhelming support for an Action Plan approach and so this is a concrete example of what that could look like. We urge other Committees to begin to think about getting a jump on using the agreements and the committees and discuss how we want to address resiliency and preparedness going forward. We will continue to do our outreach and we appreciate the feedback received today.

13.56. The Chair thanked delegations for their interventions and understood that discussions on this matter would be continuing.

13.57. The General Council took note of the statements.

14 PROPOSED SANITARY AND PHYTOSANITARY DECLARATION FOR THE TWELFTH WTO MINISTERIAL CONFERENCE: RESPONDING TO MODERN SPS CHALLENGES - ARGENTINA, AUSTRALIA, BELIZE, BRAZIL, BURKINA FASO, CABO VERDE, CANADA, CHILE, COLOMBIA, COSTA RICA, CÔTE D'IVOIRE, DOMINICAN REPUBLIC, ECUADOR, EL SALVADOR, THE GAMBIA, GUATEMALA, HONDURAS, JAPAN, MEXICO, NEW ZEALAND, PANAMA, PARAGUAY, PERU, SENEGAL, SINGAPORE, TAJIKISTAN, TOGO, THE UNITED STATES, UKRAINE, URUGUAY AND VIET NAM (WT/GC/W/835 – G/SPS/GEN/1758/REV.9)

14.1. The Chair noted that the item was included in the agenda at the request of the United States, on behalf of co-sponsors of the Proposed Sanitary and Phytosanitary Declaration for the Twelfth WTO Ministerial Conference: Responding to Modern SPS Challenges in the double-symbolled document WT/GC/W/835 – G/SPS/GEN/1758/Rev.9. He understood that this proposed SPS

Declaration had also been discussed in the SPS Committee and that the delegation of Canada would introduce the item.

14.2. The representative of Canada delivered the following statement:

14.3. Canada is pleased to introduce the Sanitary and Phytosanitary Declaration for the Twelfth Ministerial Conference responding to modern SPS challenges. A revision of the declaration, now including the African Group and the ACP Group as co-sponsors was issued two nights ago. We warmly welcome the new co-sponsors and are encouraged by this positive development. With now 89 co-sponsors, the Declaration underlines the benefits of the SPS Agreement to all Members and reaffirms the continuing importance of adhering to its obligations. The global agricultural landscape has evolved since the adoption of the SPS Agreement in 1995. There are new opportunities and emerging pressures relating to international trade in food, animals and plants, such as climate change, population growth, the pace of innovation, shifting pest and disease pressures and environmental sustainability. If Members are to address these demands, the proponents of the SPS Declaration believe that transparent, science and risk-based approaches will be the essential means to do so.

14.4. The SPS Declaration expresses a fundamental point. Enhanced implementation of the SPS Agreement is essential to address the challenges and opportunities of the global agricultural landscape. Importantly, through the SPS Declaration, the Ministerial Conference will instruct the SPS Committee to examine SPS issues arising from emerging pressures that impact trade into report findings and any consensus recommendations to the Thirteenth Ministerial Conference. Over the past 20 months, co-sponsors have engaged with Members leading to an SPS Declaration that is representative of the views of diverse Members. The Declaration does not in any way indicate that there is a need to launch the negotiation of SPS obligations or reopen the SPS Agreement. Rather, it recognizes the value of the Agreement in guiding our collective response to global challenges. In light of the growing momentum for adopting this Declaration at MC12, the co-sponsors are requesting that this item be submitted to the Ministerial Conference for consideration by Ministers.

14.5. The representative of Panama delivered the following statement:

14.6. Panama is pleased to co-sponsor the proposal for a Ministerial Declaration on SPS. It is important to highlight the regional, economic and social diversity of the Members who are sponsoring this statement. The SPS Agreement is as relevant and applicable today as it was back in 1995. The co-sponsors of this proposal wish to draw attention to the benefits to be gained from the continued improvement of its implementation. Panama recognizes the importance of seizing opportunities and successfully rising to new challenges affecting international trade in food, animals and plants, in particular climate change and associated concerns regarding food production and varying pressures owing to the spread of pests, diseases and disease-causing organisms, which are addressed in the Ministerial Declaration on SPS. The twenty-fifth anniversary of the adoption of the SPS Agreement offers the perfect opportunity to highlight achievements and challenges to do with the application of sanitary and phytosanitary measures. We request that the SPS Declaration be submitted for consideration by our Ministers at the Twelfth Ministerial Conference.

14.7. The representative of Jamaica, on behalf of the ACP Group, delivered the following statement:

14.8. We join other members in acknowledging that this Ministerial Conference follows the 25th Anniversary of the Agreement on the Application of Sanitary and Phytosanitary Measures. The successes achieved within this time indicate that the WTO has the capacity to create policies that positively impact international trade in food, animals and plants and address new and emerging challenges within this discipline. The ACP Group renews its commitment to this endeavour and is pleased to co-sponsor the SPS Declaration for the Twelfth Ministerial Conference in G/SPS/GEN/1758/Rev.9. As a co-sponsor of the text, we believe that it sufficiently reflects a sensitivity to some of the most critical concerns for developing and LDC Members particularly in its reference to collaborations with standard-setting bodies for technical exchanges and capacity building as well as a market access perspective. Non-tariff barriers have always been an issue for the ACP Group. This document would bring into focus how developing countries and LDCs are better prepared to deal with this issue. We acknowledge the work invested in preparing this text and encourage other Members to constructively consider its adoption as part of the MC12 package.

14.9. The representative of Japan delivered the following statement:

14.10. Japan is grateful for Canada's introduction of this SPS Ministerial Declaration proposal. This proposed Declaration acknowledges the ongoing contribution of the SPS Agreement to international trade in food, animals, and plants while making reference to common challenges and other relevant issues in the implementation of the SPS Agreement. It also suggests undertaking a work programme that will identify these new opportunities and challenges. As one of the co-sponsors, Japan sees a clear benefit of this declaration. We hope this declaration proposal will be sent to the Ministerial Conference for consideration by the Ministers.

14.11. The representative of the European Union delivered the following statement:

14.12. The European Union thanks the co-sponsors for engaging with us on this draft Ministerial Declaration process. As stated previously at the SPS Committee meetings, we would have preferred to see more robust references in the text of the declaration to the current and future environmental and climate challenges for trade in foods, to sustainable food systems, without prejudice to the well acknowledged boundaries of the SPS Agreement and the remit of this Committee. While confirming the EU Commitment to the relevance and value and to the Good Functioning of the SPS Agreement and Committee, we confirm our reservation to the draft declaration for the reasons expressed today as well as in previous occasions. We also take this occasion to draw the General Council's attention to the document presented by the European Union on the global transition towards sustainable food systems. We encourage the SPS Committee, among others, to be a forum for discussion on this topic with a view to supporting the process and reflecting on setting up a work programme to address issues related to the transition to sustainable food systems in relation with international trade.

14.13. The representative of Mauritius, on behalf of the African Group delivered the following statement:

14.14. The African Group acknowledges the work of the group of Members in the preparation of the draft Declaration. The African Group have followed with keen interest and have contributed in finalizing the document. The African continent is experiencing considerable growth of the intra-African agri-food market. Intra-African food demand is projected to almost double by 2050. Africa's net food import bill is projected to increase ten-fold to reach USD 400 billion by 2030. Unfortunately, however, Africa has the world's highest incidences of foodborne illness claiming tens of thousands of lives and causing millions of cases of sickness. With the entry into force of the AfCFTA, Africa is geared to expand intra-regional trade. However, we still face several challenges related to the application of non-tariff measures including SPS measures. With such a background, the African Union adopted the Sanitary and Phytosanitary Policy Framework for Africa in 2019 with a view to aligning the African SPS systems with international science-based standards. This continental Framework is guided by the WTO SPS Agreement and other international standards such as Codex, IPPC and OIE. The African Group has joined the list of co-sponsors of the draft Declaration as we believe that it can help us address our concerns and weaknesses on SPS issues. In this regard, we look forward to increasing our collaboration with Members in the context of the Work Programme provided for under in the draft Declaration.

14.15. The representative of Mongolia delivered the following statement:

14.16. WT/GC/W/835 and G/SPS/Gen/1758/Rev.9 have been circulated among the Members of the LLDC Group and internal discussion is expected to take place. Mongolia will work in a timely manner to deliver the responses of the Group on the proposed draft Declaration.

14.17. The representative of Ukraine delivered the following statement:

14.18. Ukraine is pleased to join the Declaration as a new co-sponsor and acknowledge the efforts of the co-sponsors in developing and moving forward this initiative. We announced our intention to join the Declaration at the last meeting of the SPS Committee which took place on 4 to 5 November. The Declaration reflects our priorities in conducting the effective system of agricultural production as an element of the global food safety system. Ukraine fully supports the goals of the Declaration and reaffirms its important role in serving as a forum for discussions and exchanges on SPS issues and, as a result, supporting Members' efforts in facilitating sustainable development of agricultural

production and international trade. We would welcome the adoption of the Declaration at MC12 and stand ready to work with all Members on issues of mutual interest.

14.19. The representative of Brazil delivered the following statement:

14.20. Brazil is proud to be one of the initial proponents of this Declaration which can be a positive response from the WTO to the emerging challenges affecting the agricultural landscape. We are encouraged to see the overwhelming degree of support this proposal is commanding. In addition to its 89 co-sponsors, it is undeniable that the topics contained in the work programme are of great importance to the entire Membership. The constructive discussions held on the SPS Declaration and its broad support have paved the way forward to its consideration by Ministers at MC12.

14.21. The representative of Nigeria delivered the following statement:

14.22. Nigeria is pleased to join as co-sponsor of the Declaration on SPS through the African Group. It is not a hidden fact that some of our exportable products have been faced with various challenges due to stringent SPS measures especially where some Members applied some standards above international standards requirements. This Declaration has taken into consideration the concerns of developing countries and modern SPS challenges. We therefore support it.

14.23. The representative of India delivered the following statement:

14.24. We thank the United States for their response to our questions. We are in consultation with the proponents of this Declaration to understand the objective better.

14.25. The representative of Chad, on behalf of the LDCs, delivered the following statement:

14.26. Several LDCs, including Chad, have co-sponsored this proposal. But the LDC Group, formally speaking, does not yet have a joint position on the matter. Consequently, the Group reserves the right to return to the co-sponsors when we do have more information from the Group.

14.27. The representative of the Russian Federation delivered the following statement:

14.28. This proposal welcomes the consistent efforts of Members to implement the SPS Agreement in an up-to-standard way. We underscore the importance of adopting the Work Programme to appropriately consider common challenges encountered while implementing the SPS Agreement. While expressing general support to the SPS Declaration drafted in the document WT/GC/W/835 – G/SPS/GEN/1758/Rev.9, the Russian Federation would like to propose some slight technical amendments to the text. First, the SPS Declaration could be more in the format of a WTO Ministerial document. For the moment, the document lacks common characteristics perceived by WTO declarations such as design of the mentioned document. Second, and that is more important, while drafting the SPS Declaration, legal wording of the SPS Agreement should be followed. In particular, we would like to propose to draft Paragraph 3 of the SPS Declaration in consistence with the SPS Agreement. We would like to express our readiness to work with the co-sponsors.

14.29. The representative of Ecuador delivered the following statement:

14.30. We welcome the Members who co-sponsored this proposal. We need a Work Programme through which we can express our concerns and come up with alternatives in the face of challenges such as emergence of and access to new technologies, innovation, and good, sustainable practices in the different geographical conditions particularly in tropical areas. Ecuador believes this Ministerial Declaration will strengthen the Committee thanks to good SPS measures.

14.31. The representative of the United States delivered the following statement:

14.32. The United States extends our appreciation to Canada for the introduction of the SPS Declaration on behalf of the 89 co-sponsors. We welcome the support of the African Group and the ACP which are published on the latest revision. As co-sponsors, we take note of the feedback from the European Union, the Russian Federation and others today and appreciate their continued engagement on this. We note that the latest draft includes updated text based on feedback from several Members including the European Union and on those received by the co-sponsors during the

most recent SPS Committee meeting. As co-sponsors, we are actively working with all interested Members. We appear very close to consensus. We look forward to this topic being considered by Ministers and to the opportunity for a multilateral SPS Declaration outcome at the MC12. To remind Members, as we have noted in the SPS Committee over the past two years, this proposal is for a series of discussions with no presupposed outcomes in order to help us collectively consider and address some of the pressing issues facing agricultural trade that are relevant to the SPS Committee. The issues of importance to the European Union and others can be part of this conversation.

14.33. The Chair thanked everyone for the useful discussion on the matter and understood that discussions would be continuing on this proposal.

14.34. The General Council took note of the statements.

15 PROCEDURAL GUIDELINES FOR WTO COUNCILS AND COMMITTEES ADDRESSING TRADE CONCERNS (WT/GC/W/777/REV.6) - UPDATE FROM ALBANIA; AUSTRALIA; CANADA; CHINA; EUROPEAN UNION; HONG KONG, CHINA; ICELAND; REPUBLIC OF KOREA; REPUBLIC OF MOLDOVA; NEW ZEALAND; NORTH MACEDONIA; NORWAY; PANAMA; QATAR; SINGAPORE; SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU; THAILAND; TURKEY AND UKRAINE

15.1. The Chair noted that the delegation of the European Union had requested the Secretariat to add this item in the agenda, together with the revised proposal in WT/GC/W/777/Rev.6, and invited the delegation of the European Union to introduce the item.

15.2. The representative of the European Union delivered the following statement:

15.3. Given that the proposal fits into the context of the reform agenda, it is timely to recall ahead of the upcoming Ministerial Conference that the WTO's monitoring and deliberative function is in need of change too. We hope that this proposal, which aims to improve how Members address each other's trade concerns in regular WTO bodies, including meeting arrangements, can inform our upcoming discussions on WTO Reform. We are pleased that several of our ideas on increasing efficiency of meeting arrangements have already been taken up and put into practice. We are hoping that other ideas from the proposal such as non-binding guidelines on certain cross-cutting issues when it comes to addressing trade concerns can also be taken aboard. To recall, the proposal does not suggest a "one size fits all" type of harmonization across the different Committees. It rather encourages the establishment of a common platform based on some core principles as a complement to the specificities of each WTO Committee. Co-sponsors would also like to draw attention to the elements that aim at facilitating real engagement, for example by providing non-binding guidance on how to handle written questions, while maintaining flexibilities to account of individual circumstances or by encouraging capital-based participation to make discussions more substantive. The co-sponsors reiterate that the proposal is voluntary in nature. It does not aim in any way to limit the Members' ability to raise trade concerns as they see fit. The co-sponsors look forward to discussions relating to WTO Reform at the Ministerial Conference and remain committed to advancing the objectives of this proposal as appropriate at MC12 and beyond.

15.4. The representative of India delivered the following statement:

15.5. As iterated during previous General Council meetings, India supports the idea of improving the meeting arrangements of WTO bodies with a view to make them more efficient. We therefore support proposals for preparation of advance indicative yearly schedule of meetings, circulation of all documents to be discussed at a meeting at least 15 days prior to the meeting and timely circulation of the minutes of meetings of various WTO bodies. We also agree that it is in the interest of all Members to make full use of the WTO Councils and Committees to seek satisfactory outcomes of their trade concerns. However, while considering any changes in procedures to be followed for various WTO bodies, we need to ensure that such proposals, in effect, do 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 is the relevant Council or Committee dealing with the specific trade concern as per the scope of the relevant WTO Agreement. Therefore, while we are open to discuss all possible suggestions aimed at improving existing processes, we would not like to take away the role of such WTO bodies in finalizing such procedural guidelines.

15.6. The representative of South Africa delivered the following statement:

15.7. We recall our previous statements on the same communication including at the October General Council meeting. The horizontal application of this proposal remains of concern to us. As we stated previously, certain agreements already provide for the processing of specific trade concerns and still believe that these are better left to each regular body to consider in accordance with their respective rules and mandate.

15.8. The representative of Chad, on behalf of the LDCs, delivered the following statement:

15.9. The LDC Group takes note of the update from the co-sponsors. The 15-day rule is maintained instead of the 10-day rule which is not always easy for LDCs to respect. The LDC Group reiterates that any proposal for new procedures and processes must take into account the constraints of its Members and avoid overloading the system where not all Members are in a position to participate or contribute. We reserve the right to come back with further comments on this proposal.

15.10. The representative of Paraguay delivered the following statement:

15.11. Paraguay has already indicated its concerns on this proposal during previous General Council meetings and we again refer to them.

15.12. The representative of Chinese Taipei delivered the following statement:

15.13. As one of the co-sponsors of this proposal, we intend to find effective ways to promote the efficiency of the WTO's daily work in addressing Members' specific trade concerns. The non-binding and voluntary procedural guidelines can facilitate and complement each Committee's work. They are not meant to lay additional burden to Members. We also agree with the European Union that the proposal will be a concrete step to improve the WTO's monitoring and deliberative functions. We trust this is complementary to the future reform of the WTO.

15.14. The representative of the United States delivered the following statement:

15.15. As we noted in October, we share the proponents' objective – to rebuild norms for Members to respond to and address trade concerns raised by other Members. These norms have eroded, and the key culprit appears to be some Members' lack of interest and political will to address such concerns. Fundamentally, the problem is substantive, not procedural. We also recognize that, in some Committees, the procedures probably can be improved. For example, relevant documents for an agenda item should be shared by the moment that the agenda is circulated, and not after. It is difficult to have a meaningful discussion of a document that was circulated a few days before a meeting. However, we do not see a one-size-fits-all approach coming from the General Council. WTO Committees are quite diverse, and few solutions can be applied horizontally. Procedural changes that may help in one Committee may undermine what is already working in another Committee. This does not mean that Members must be silent about this issue, including at MC12. And rather than a horizontal approach to procedures for specific trade concerns, we would suggest an approach whereby Ministers could direct each Committee or body to review its rules of procedures and undertake appropriate actions with a view to improve its effectiveness and report back to the General Council by a certain date. Such an approach would allow for Committee-specific approaches, which will naturally reflect the diversity that is a real strength of the WTO's Committee system.

15.16. The representative of the European Union delivered the following statement:

15.17. The European Union thanks Members for the feedback. We have taken good note of the various comments and these will usefully inform the reflection as we consider tangible steps that could be taken as part of our reflection on WTO Reform.

15.18. The General Council took note of the statements.

16 REVIEW OF THE EXEMPTION PROVIDED UNDER PARAGRAPH 3 OF GATT 1994 (WT/L/1108, WT/L/1121)

16.1. The Chair recalled that Paragraph 3(a) of GATT 1994 provided an exemption from Part II of GATT 1994 for measures under specific mandatory legislation – enacted by a Member before it became a contracting party to GATT 1947 – which prohibited the use, sale or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or waters of an exclusive economic zone. In 1994, the United States had invoked this provision with respect to specific legislation that had met the requirements of that paragraph. Paragraph 3(b) of GATT 1994 called for a review of this exemption five years after the date of entry into force of the WTO Agreement – and thereafter every two years for as long as the exemption was in force – to examine whether the conditions for the exemption still prevailed. The General Council last considered this matter at its meeting in March. Statements, questions and responses from interested delegations and the United States, together with the annual reports provided by the United States, circulated in WT/L/1108 and WT/L/1121, would form the basis for this year's review. The General Council had also agreed that it would consider this matter again at the meeting, including taking note that the subsequent review would be held in 2023. This exemption was without prejudice to solutions concerning specific aspects of the legislation covered by this exemption negotiated in sectoral agreements or in other fora.

16.2. The representative of the United States delivered the following statement:

16.3. The United States welcomes the opportunity to participate in the review of the exemption under Paragraph 3 of GATT 1994. This exemption was agreed to by all Members to deal with non-conforming provisions of domestic legislation of a non-discretionary character in a specific area addressed by the exemption, and it is an integral part of the GATT 1994. In Paragraph 3(a), Members agreed that as long as the legislation that the United States notified prior to the date of entry into force of the WTO Agreement remained in force and was not modified to reduce its conformity with Part II of the GATT 1994, Part II would not apply to that legislation. Paragraph 3(b) specifies that Members shall review the exemption every two years to examine "whether the conditions which created the need for the exemption still prevail." The United States confirms that the conditions that created the need for this exemption continue to exist, including the US Navy's reliance on commercial shipyards for day-to-day maintenance of naval and surge-fleet vessels. It also remains critical for US shipbuilders to build commercial ships for trade in order to ensure the maintenance of a viable industrial base to meet future US naval requirements. In short, the United States has the same need as it had in 1994: to maintain its shipyards' readiness to build and maintain naval vessels. The United States has also continued to provide Members with annual statistical reports under Paragraph 3(c) of the GATT 1994, including the most recent report that was circulated on 12 November 2021. These reports provide detailed annual reporting of vessel orders and deliveries from US shipyards. We thank other Members for their interest in this issue. We stand ready to answer Members' questions on the topic as needed.

16.4. The representative of Norway delivered the following statement:

16.5. This exemption from the GATT 1994 rules is an important subject to Norway. We would like to thank the United States for once again having invited us to informal consultations on the Jones Act. We have voiced our concerns as in previous reviews. Our focus is as always on the salient point of paragraph 3(b) of the GATT agreement, whether the conditions, which created the need for the exemption, still exist. This question seems even more relevant when considering the fact that the Jones Act has been in effect for more than 101 years. We note the US emphasis in the consultations on national security and humanitarian emergency reasons, that Jones Act is critical for US shipbuilding, not least of military vessels, and for maintaining enough qualified American mariners. It is, however, not clear whether the US has considered alternative measures for stimulating activity in the US ship building sector.

16.6. The representative of the Republic of Korea delivered the following statement:

16.7. Korea thanks the United States for the informal consultations it hosted on the Jones Act earlier this month and the information it provided as part of the review. My delegation has voiced its systemic concerns over the US exemption under paragraph 3(a) of the GATT 1994. The exemption, which has been maintained since the entry into force of the WTO, is a major derogation from the fundamental principle of the WTO. It undermines fair competition in shipbuilding and maritime

transport services as well. While recognizing particular sensitivities for the United States in terms of cabotage and coastal shipping, Korea would like to encourage the United States to consider potential economic benefits to US businesses and consumers alike by liberalizing this sector. I would like to note certain studies showing negative unintended consequences from this practice. For example, the absence of competition has discouraged shipbuilders from innovating, and higher costs imposed on shippers are passed on to their consumers. In this regard, Korea hopes that the United States will look into the possibility of modifying its implementation of the Jones Act in the next review.

16.8. The representative of Japan delivered the following statement:

16.9. Japan attaches great importance to the review process and this exemption is a deviation from the fundamental principles of the WTO. Japan expects the United States to not only share relevant data but also conduct a substantial examination in order to address whether this exemption is still necessary. In recent years, in response to unforeseen events, the US government has approved waivers from the Jones Act. However, we believe it is necessary to review the way in which the Jones Act itself is operated, rather than responding with temporary waivers.

16.10. The representative of Panama delivered the following statement:

16.11. My delegation would like to thank the United States for its statement, the information provided and the consultations organized with interested Members. This issue is of particular importance to Panama, and we would be grateful for being kept abreast of any meetings, consultations and information that may be provided in the future.

16.12. The representative of the European Union delivered the following statement:

16.13. As we have stated back in 2019 and before, the European Union follows this review process carefully. The European Union underlines once again our concerns with this exemption considering the negative economic consequences for the European Union's and other countries' shipbuilding, logistics, dredging and energy industries. We sincerely hope that the 2021 review is consequential. We hope it will be the starting point to look into how to remedy a situation that we believe is neither justified nor satisfactory.

16.14. The representative of China delivered the following statement:

16.15. We thank the United States for organizing informal consultations recently and providing more information on this issue. The Jones Act was established more than 100 years ago in 1920 and the exemption on this Act has also been reviewed in the WTO for more than 20 years since 1999. But unfortunately, we have not seen much positive outcome yet in the review. As stated in the previous meetings, we believe that the exemption is a deviation from the fundamental principles of the WTO and restricts fair competition in shipbuilding and shipping markets. We also take note that reports made by US experts indicated that the Jones Act caused environmental costs of more than 8 billion USD per year, because the high shipping costs driven by this Act have incentivized more cargos to be transported by trucks, which generate much more emissions than marine transport. We hope the 2021 review could deliver results instead of being another recurring point on the agenda. We look forward to further discussion with the United States on this issue.

16.16. The representative of the United States delivered the following statement:

16.17. I just want to acknowledge and thank the delegations of Norway, the Republic of Korea, Japan, Panama, the European Union and China for their continued engagement on this issue and thank them for working with us throughout the review process.

16.18. The General Council took note of the statements made in the course of the review in 2021, and that the subsequent review, under the two-yearly cycle provided in Paragraph 3(b) of GATT 1994, would be held in 2023.

17 PROCEDURE FOR THE INTRODUCTION OF HS 2022 CHANGES TO SCHEDULES OF CONCESSIONS USING THE TARIFF SCHEDULES (CTS) DATABASE – DRAFT DECISION (G/C/W/802)

17.1. The Chair drew attention to the Draft Decision on the Procedure for the Introduction of HS 2022 Changes to Schedules of Concessions using the Tariff Schedule Database contained in document G/C/W/802 which, after consideration by the Council for Trade in Goods at its November meeting, had been forwarded to the General Council for adoption. Unless there were comments, he proposed that the General Council adopted the draft decision contained in the document he had just referred to.

17.2. The General Council so agreed.¹⁷

18 WAIVERS UNDER ARTICLE IX OF THE WTO AGREEMENT¹⁸

18.1 Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions – Draft Decision (G/C/W/796)

18.2 Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions – Draft Decision (G/C/W/797)

18.3 Introduction of Harmonized System 2012 Changes into WTO Schedules of Tariff Concessions – Draft Decision (G/C/W/798)

18.4 Introduction of Harmonized System 2017 Changes into WTO Schedules of Tariff Concessions – Draft Decision (G/C/W/799)

18.5 Cuba – Article XV:6 – Extension of Waiver – Draft Decision (G/C/W/803)

18.1. The Chair recalled that, under this agenda item, the draft waiver decisions for the matters listed in the agenda had been taken up for consideration by the Council for Trade in Goods at its meeting on 1-2 November.

18.2. Ambassador Lundeg Purevsuren (Mongolia), Chair of the Goods Council, provided the following report:

18.3. I would like to report that, at its meeting of 1 and 2 November 2021, the Council for Trade in Goods considered five waiver requests. The first four are collective waiver requests relating to the introduction of Harmonized System changes into WTO Schedules of Concessions, which are based on similar waivers currently in force that will expire on 31 December 2021. These four collective waiver requests were previously discussed at the Market Access Committee meeting in October and forwarded to the Council for Trade in Goods for its consideration. The fifth waiver request is by Cuba to extend the current waiver from Article XVI:6 of the GATT. The current waiver, contained in document WT/L/1003, will expire on 31 December 2021. The five draft decisions that are being put forward today for consideration by the General Council have followed the procedures provided for in Article IX (b) of the Marrakesh Agreement and are contained in the documents listed in the agenda of today's meeting. At its November meeting, the Council for Trade in Goods recommended that the five draft waiver decisions contained in these waiver requests be forwarded to the General Council for adoption. This concludes the report by the CTG Chair.

18.4. The Chair noted that, unless delegations wished to comment, he proposed that the General Council adopted the five draft waiver decisions, which related to the Introduction of Harmonized System 2002, 2007, 2012 and 2017 changes into WTO Schedules of Tariff Concessions and to the Extension of Waiver "Cuba – Article XV:6".

¹⁷ The decision was subsequently circulated in document WT/L/1123.

¹⁸ In connection with this Item, the attention of Members is drawn to the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council on 15 November 1995 (WT/L/93).

18.5. The General Council so agreed.¹⁹

18.6 Review of Waivers Pursuant to Article IX:4 of the WTO Agreement

18.6.1 Preferential treatment in favour of services and service suppliers of least-developed countries, granted on 17 December 2011 until 31 December 2030 (WT/L/847, WT/L/982)

18.6.2 Preferential tariff treatment for least-developed countries, granted on 16 October 2019 until 30 June 2029 (WT/L/1069)

18.6.3 European Union – Application of autonomous preferential treatment to the Western Balkans (WT/L/1116)

18.6.4 United States – African Growth and Opportunity Act, granted on 30 November 2015 until 30 September 2025 (WT/L/970, WT/L/1117)

18.6.5 United States – Caribbean Basin Economic Recovery Act, granted on 16 October 2019 until 30 September 2025 (WT/L/1070, WT/L/1115)

18.6.6 United States – Former trust territory of the Pacific Islands, granted on 7 December 2016 until 31 December 2026 (WT/L/1000, WT/L/1118)

18.6.7 United States – Trade preferences granted to Nepal, granted on 7 December 2016 until 31 December 2025 (WT/L/1001, WT/L/1119)

18.6. The Chair noted that, concerning the review of waivers in sub-item (f), in accordance with paragraph 4 of Article IX of the WTO Agreement, "any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates." There were seven waivers before the General Council for review, and they were listed in the proposed Agenda. He stressed that those waivers had already been agreed by the General Council and that they were in force. The General Council was not expected to take any new decision on their renewal or otherwise at the meeting. Five of the waivers under review provided that an annual report should be submitted by the Member concerned regarding the operation or implementation of the waiver with a view to facilitating its annual review by the General Council. The reports from the European Union and the United States had been circulated in documents WT/L/1116 and WT/L/1115, 1117, 1118 and 1119, respectively.

18.7. The representative of Antigua and Barbuda, on behalf of OECS, delivered the following statement:

18.8. I am intervening on behalf of the WTO Members of the OECS. We also support the statement on behalf of the CARICOM Group. The OECS also thanks the United States for its report on the Caribbean Basin Economic Recovery Act. The United States remains the single most important trading partner for OECS WTO Members. The preferential access to the US market under CBERA for a wide variety of goods plays a major role in driving our trading relationship with the United States. Continued access to the US market, under preferential terms, will be even more critical as we seek to build back better post-COVID-19 as well as in the context of our inherent vulnerabilities. OECS Member States are actively focusing on economic and trade diversification. Based on the report presented by the United States, it is evident that in the last year, energy-related products and textiles and apparel accounted for 84% of US imports under CBERA. This suggests that there is enormous scope for export diversification. We note with concern that the export performance of 5 of the 6 OECS WTO Members under CBERA has drastically declined. This is a sign of the negative impact of not just the COVID-19 pandemic but also our longstanding vulnerabilities. Notwithstanding this, the CBERA waiver provides legal comfort to our economic operators and as our economic and trade diversification efforts intensify, it is important to have recourse to the duty-free treatment

¹⁹ The waiver decisions were subsequently circulated in documents WT/L/1124, WT/L/1125, WT/L/1126, WT/L/1127 and WT/L/1128, respectively.

guarantees under CBERA. Once again, we renew our thanks to the United States for its report. We also renew our interest in continuing to benefit from trade preferences under CBERA.

18.9. The representative of Barbados, on behalf of CARICOM, delivered the following statement:

18.10. The CARICOM Group wishes to thank the United States for its report as it relates to the Caribbean Basin Economic Recovery Act. The United States continues to be an important trading partner for the Small, Vulnerable Economies in CARICOM. While we recognize that trade is not an end in itself, it does serve as an engine for growth and sustainable development. For CARICOM, the Caribbean Basin Economic Recovery Act serves to provide our countries with an additional avenue for development through the creation of enhanced prospects for CARICOM products into the market of the United States. CBERA continues to be beneficial to CARICOM. We therefore wish to reiterate our gratitude to the United States for extending the waiver of the Caribbean Basin Economic Recovery Act and its report to today's General Council meeting.

18.11. The representative of Mauritius, on behalf of the African Group, delivered the following statement:

18.12. I would like to make the statement regarding the AGOA granted until 30th September 2025. For more than 20 years, majority of African countries have been benefitting from AGOA trade preferences. It is today a cornerstone of African-US trade linkages and has proven to be very beneficial to African countries. That said, it does not mean that African countries are able to fully avail of the advantages granted by the AGOA as many exporters still do not meet all the export requirements to access the US market. The African private sector would immensely benefit from capacity building programmes aimed at developing their export potential to the United States. At the same time, it would be beneficial to build the competence of the public sector so as to create an overall environment that is more conducive to trade with the United States. In view of generating development in the region, Africa and the United States could look into ways to increase investment as these usually also carry transfer of knowledge and technology. We would also like to seize this opportunity to speak of the highly ambitious achievements of the continent through the establishment of the African Continental Free Trade Area. The agreement will play a significant role in the development and regional integration of Africa and look forward to finding ways to relate the CFTA with the AGOA. As unanimously agreed by African countries, we support the future extension of the AGOA post-2025 in view of assuring trade predictability between the United States and Africa.

18.13. The representative of Jamaica, on behalf of the ACP Group, delivered the following statement:

18.14. We align ourselves with the statement made by Barbados on behalf of the CARICOM Group. Jamaica, like other Caribbean countries, has been a beneficiary of CBERA since its inception and we continue to attach high importance to the arrangement. The scope of coverage of the Act has facilitated a vibrant flow of trade in agricultural manufactured products between our countries and has assisted with the diversification of our exports. CBERA continues to be of immense value to our country on the trade and economic fronts. Moreover, CBERA significantly complements Jamaica's national export strategy and the national development plan, Vision 2030. My delegation therefore wishes to reaffirm its sincere gratitude to the United States for the maintenance of CBERA under its waiver coverage, which we view as a clear demonstration of the affirmed commitment to a partnership for trade and development with its Caribbean neighbours. We look forward to continuing positive engagement to deepen our bilateral trade relations following from that. We also thank Members for the support that has been given for the waiver, enabling these arrangements over the years, and we look forward to the continuation of that support for our renewal request.

18.15. The General Council took note of the reports contained in documents WT/L/1115, WT/L/1116, WT/L/1117, WT/L/1118 and WT/L/1119, and of the statements.

19 REVIEW OF WTO ACTIVITIES

19.1 General Council (WT/GC/W/834), Dispute Settlement Body (WT/DSB/83) and Trade Policy Review Body (WT/TPR/471)

19.2 Sectoral Councils (G/L/1418, S/C/62, and IP/C/92), SPS Committee (G/L/1413/Rev.1), TBT Committee (G/L/1420) and Committee on Agriculture (G/L/1421)

19.3 Committees on Trade and Development (WT/COMTD/101), Trade and Environment (WT/CTE/28), Balance-of-Payments Restrictions (WT/BOP/R/119), Budget, Finance and Administration (WT/BFA/201), and Regional Trade Agreements (WT/REG/32)

19.4 Working Group on Trade, Debt and Finance (WT/WGTDF/20), Working Group on Trade and Transfer of Technology (WT/WGTTT/23)

19.5 Committees under the Plurilateral Trade Agreements (GPA/AR/4, WT/L/1120 – TCA/18)

19.1. The Chair took up the reports under Item 20 which had been prepared in line with the Decision concerning procedures for an annual overview of WTO activities and for reporting under the WTO in document WT/L/105. Those reports were listed in the agenda of the meeting. Delegations had already had a substantive discussion on those reports in the respective bodies where they had been adopted, and he would therefore suggest that they did not repeat those discussions in the General Council. In line with the reporting obligations, as he had said earlier, all reports from the respective bodies would be forwarded to the Ministerial Conference for the consideration of Ministers. He also proposed that the Chairs of the various bodies refrained from introducing their respective reports during the meeting, as they had already been thoroughly discussed in the respective WTO Bodies. With those words, he proposed that, in accordance with practice, the General Council took action on those reports. He therefore invited the General Council to adopt the report of the Committee on Trade and Development in document WT/COMTD/101, and to take note of the reports of the other WTO bodies, including the reports of the Committees under the Plurilateral Trade Agreements, listed in the Proposed Agenda.

19.2. The General Council so agreed.

19.3. The Chair then proposed that the General Council adopted the draft Report of the General Council contained in document WT/GC/W/834, on the understanding that the Secretariat would make the necessary adjustments to that Report to include matters that had been considered at that meeting. The General Council's Report would then be circulated and forwarded to the Ministerial Conference.

19.4. The General Council so agreed.²⁰

20 COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION - REPORTS ON MEETINGS OF SEPTEMBER, OCTOBER AND NOVEMBER 2021 (WT/BFA/198, WT/BFA/198/CORR.1, WT/BFA/199 AND WT/BFA/200)

20.1. The Chair drew attention to the reports of the Budget Committee in documents WT/BFA/198, WT/BFA/199 and WT/BFA/200, including WT/BFA/198/Corr.1.

20.1. Ambassador Bettina Waldmann (Germany), Chair of the CBFA, provided the following statement:

20.2. Since my last report to the General Council, the CBFA has met on several occasions. I would like to present to you the CBFA report for the meetings that took place in September, October and November. My remarks today will focus on the meetings of the CBFA held on 23 September and

²⁰ The 2021 Annual Report of the General Council was subsequently circulated in document WT/GC/242. An addendum was also circulated in WT/GC/242/Add.1 to reflect the special meeting of the General Council on 15 December.

4 November 2021 and the items recommended for approval by the General Council. The report of those meetings can be found in the following documents: WT/BFA/198 as well as the related corrigendum bearing the reference WT/BFA/198/Corr.1, WT/BFA/199 and WT/BFA/200. As a personal remark, I would like to thank WTO Members for the flexibility and commitment they have demonstrated working together on budgetary matters in support of this organization and the Secretariat. I would also like to acknowledge my colleagues and to thank them for their active participation and support at the CBFA. I hope that this spirit of constructive engagement is also reflected in the larger context of MC12 and beyond.

20.3. I am pleased to report that the CBFA endorsed at its meeting of the 23rd of September the WTO Audited Financial Statements for the year ended 31 December 2020. The Committee also endorsed the transfers between budgetary sections, outlined in paragraph 2.33 of document WT/BFA/W/560/Rev.1. With respect to these items, the CBFA is submitting the following recommendations to the General Council for approval and, for procedural reasons, I will have to read the full text of all the recommendations and there are four, so please excuse the lengthy statement. Coming to the first recommendation: the Committee recommends that the General Council approve the transfers between budgetary sections as outlined in paragraph 2.33 of the document WT/BFA/W/560/Rev.1. The Committee further recommends that the General Council approve the WTO Audited Financial Statements for the year ended 31 December 2020.

20.4. I am also pleased to report that the CBFA has endorsed the Director General's proposal regarding the 2020 budgetary surplus. The CBFA discussed the proposal over the course of several meetings, the discussions were constructive and helped clarify the context for the proposal, including the long-term pension and after service house insurance liabilities of the WTO, which are significant, and which will be subject to further conversations next year. With respect to this matter, the CBFA is submitting the following recommendation to the General Council: "The Committee on Budget, Finance and Administration recommends to the General Council that the WTO budgetary surplus as at 31 December 2020 amounting to CHF 11,771,979 will be utilised as follows: 9.8 million to be applied against Members contributions for 2020 and CHF 1,971,979 to be transferred to the working capital fund. The recommendation is linked to the pandemic and does not create a precedent for future recommendations pertaining to the budgetary surplus and is not a *de facto* lowering of future assessed contributions."

20.5. With respect to the ITC 2022/2023 budget proposal, the CBFA first discussed the proposal during its meeting of the 1st of July 2021. Following these discussions, the CBFA endorsed the ITC 2021 budget proposal at its meeting held on 23 September. The Committee is, therefore, submitting the following recommendation to the General Council for approval: "The Committee recommends to the General Council that the budget for 2022/2023 for the International Trade Centre be approved in the amount of CHF 36,686,250 with miscellaneous income being estimated at CHF 200,000, the amount to be provided by the WTO to the International Trade Centre budget for 2022 and 2023 shall be CHF 18,243,125 per year."

20.6. Now, I will be coming to the final recommendation, that is the WTO budget. The WTO budget for 2022/2023 was formally presented through the CBFA in June and it was discussed by Members over the course of several meetings. I am very pleased to inform delegations that following these discussions the Committee endorsed the WTO 2022/2023 budget proposal at its meeting held on 4 November and is submitting the following recommendation to the General Council for approval: "The General Council, having considered the guidelines on biannual budgeting in WT/BFA/W/105/Rev.1, approved by the General Council through document WT/GC/M/82 and the 2022/2023 WTO consolidated budget, which amounts to CHF 197,203,900 for 2022 and 2023, respectively, as set forth in tables 1, 2, and 3 annexed to this report, resolves that the 2022/2023 WTO consolidated budget be financed as follows: a) contributions from Members in the amount of CHF 195,500,000 and miscellaneous income of CHF 1,703,900."

20.7. In addition, the CBFA has endorsed specific recommendations for the approval of the budgetary aspects of the biannual technical assistance plan for 2022/2023. The recommendation reads as follows: "Pursuant to paragraph 40(1) of the Ministerial Declaration adopted at the 4th session of the WTO's Ministerial Conference, the Committee recommends to the General Council that:

- a. Secure and predictable financing be provided for the implementation of the 2022/2023 biannual technical assistance and training plan as to prove by the Committee on Trade and Development.
- b. The target level of extra budgetary resources intended to fund the TA plan include CHF 13,992,000 for 2022 and CHF 13,992,000 for 2023 to come from the Doha Development Agenda Global Trust Fund, and CHF 2,554,000 for 2022 and CHF 2,554,000 for 2023 from other trust funds.
- c. Members be reminded that, on 19-20 December 2001, the General Council approved the following periodic benchmarks for contribution receipts to the DDAGTF: (i) by December of the year preceding the funds revolving annual target period, 25 per cent of the annual total should be in the bank; (ii) by the 31st of March another 50 per cent for an overall 75 per cent of the total; (iii) by 30th of June, 100 per cent of the funds.
- d. In this context, Members be informed that the projected year-end balance of the Fund is likely to be sufficient to cover the 25 per cent of the target amount.
- e. Governments be urged to make financial contributions in a manner which preserves the global nature of the program and facilitates the management and reporting with the view to greater transparency (i.e. making un-earmarked contributions) and pledge multi-year contributions to create more predictability in terms of financing."

20.8. The Chair noted that, unless any delegation wished to speak at that point, he proposed that the General Council took action on the reports and recommendations as referred to by the Chair of the Budget Committee.

20.9. The General Council approved the Budget Committee's specific recommendations in paragraph 4.4 of WT/BFA/198 on transfers between budgetary sections and the approval the WTO Audited Financial Statements for the year ended 31 December 2020; paragraph 9.3 of WT/BFA/198 on the approval of the budget for 2022-2023 of the International Trade Centre UNCTAD/WTO; paragraph 3.5 of WT/BFA/200 on the utilization of the 2020 budgetary surplus; and, paragraphs 4.9 to 4.12 on the approval of the budget for 2022-2023 of the WTO; took note of the CBFA Chair's statement and adopted the reports in WT/BFA/198, WT/BFA/198/Corr.1, WT/BFA/199 and WT/BFA/200.

21 APPOINTMENT OF OFFICERS TO WTO BODIES

21.1 Report by the Chair

21.1. The Chair recalled that, at the last meeting of the General Council in October, he had reported on his consultations on the overall process of the appointment of officers to WTO bodies, and this report had been issued in JOB/GC/277. Since his last report, consultations and discussions on this matter had continued, and he would like to provide Members with an update that day. His report that day built on the discussions on this matter at meetings of the General Council in 2021, and on the consultations that he had undertaken at the request of delegations since September. The report should be read in conjunction with his earlier report in JOB/GC/277.

21.2. Since his last report in October, he had convened his consultations, including with two Informal Open-Ended Meetings – on 8 and 17 November, respectively. At the 8 November meeting, he had walked delegations through the main suggestions that group coordinators and delegations had made so far on this matter, and he had posed five questions to facilitate the discussion. The intention had been to get a better understanding of, and identify to the extent possible, potential elements of convergence. The five questions had evolved around (i) when and how to start the appointment cycles; (ii) how to strengthen transparency in the appointment process; (iii) the manner in which the principle of rotation ought to be applied; (iv) how to ensure representation; and (v) if there were other improvements and clarifications that Members deemed appropriate to avoid a repetition of the issues faced in recent years. It had been evident from the discussion that Members had attached great importance to ensuring that the forthcoming and future appointment cycles would run smoothly.

21.3. Based on what he had heard on 8 November and in his conversations with delegations, the next step and question to sound out had been, whether Members would wish to consider initial "common elements" of a practical nature and apply those already to the forthcoming appointment cycle, on the understanding that consultations would continue on a number of other important matters, such as 'representation' and 'rotation', which would require further time, consideration and discussion. Taking into account of what he had heard from Members on 8 November and his preceding consultations, such initial elements could include: (i) launching the process early, with consultations on the actual slate of names starting before the end of the year; (ii) starting consultations on both Tiers 1 and 2 at the same time, while conducting them in separate, independent tracks; (iii) drawing up a clear time-defined calendar; and (iv) further enhancing transparency and inclusiveness through regular updates to the entire Membership at every stage of the process, through regular communications. As part of enhancing transparency and communication, any side agreements could be communicated in a transparent and timely manner, indicating clearly if they had a bearing on future appointment cycles.

21.4. At the 17 November meeting, delegations that intervened had welcomed those possible common elements, which he had identified based on what he had heard from Members, as a good and helpful starting point. At the same time, delegations had found that those initial elements would not suffice to address the shortcomings and problems experienced in recent appointment cycles, and they had felt that it had been necessary to continue this useful discussion and ensure that all concerns and points raised were addressed. He had taken good note of the issues that had been specifically mentioned again, and that delegations had considered to merit further attention and consideration, such as: rotation; transparency; hand-over of appointment processes by outgoing/incoming Chairs; specific communication to all Members of, and transparency on, any side-agreements; recusal by group coordinators or members of their delegation(s) as possible candidates because of a possible conflict of interest or lack of impartiality; early start of consultations; and, the possibility of vice-chairmanships and a 2-year slate. At that meeting, he had also heard that other delegations had found that the overall balance of the 2002 guidelines had been right and would require only slight improvements. Broadly and positively, He acknowledged the readiness and willingness among Members to continue engaging and talking to each other with a view to further strengthening and improving the overall process on the appointment of officers.

21.5. Guided by this, he therefore proposed that he continued his consultations and discussion on the overall process on the Appointment of Officers to WTO Bodies after the Ministerial Conference, and he would count on Members' continued good will and active participation. He thanked all group coordinators and delegations for their contributions and efforts. Members had frequently heard the reference to this being a "housekeeping matter", and he agreed with that. It was a "housekeeping matter" – but one that had a direct bearing on ensuring the smooth functioning of WTO bodies, and that was their shared responsibility. In 2021, Members had faced great difficulties in the appointment cycles, which had carried all the way into mid-2021. In the end, they had found a mutually acceptable and workable solution. They had all agreed that such a situation should be avoided at all costs. They all knew how that reflected on them and on the organization. He therefore called on all Members, and group coordinators, to engage in this forthcoming appointment cycle in good faith and in a constructive manner so that they avoided a repetition of what they had faced in 2021.

21.6. The General Council took note of the Chair's report.²¹

21.2 Announcement by the Chair Pursuant to Paragraph 7.1(A) of the Guidelines (WT/L/510)

21.7. The Chair drew attention to the Guidelines for the Appointment of Officers to WTO bodies in document WT/L/510. Those Guidelines provided that the outgoing Chair of the General Council would conduct consultations on the appointment of chairpersons to the WTO bodies in Groups 1, 2, 4 and 5 of the Annex to the Guidelines. The Guidelines also provided that to promote transparency, the selection process should start with an announcement by the Chair at the General Council meeting. In accordance with the Guidelines, he should be assisted in the selection process by the serving Chair of the Dispute Settlement Body, Ambassador Chambovey (Switzerland). A list of past Chairs of major bodies was available to provide some structure on discussions on the possible distribution of Chairs based on past practice and the need for balance. In keeping with the Guidelines, representatives of Members in financial arrears for over one full year could not be considered for

²¹ The Chair's report was subsequently circulated in document JOB/GC/285.

appointment. He recalled that the practical steps to improve the implementation of the Guidelines in document JOB/GC/22, provided that groups, namely the developed countries, Latin America and the Caribbean, Asia and the Pacific and Africa, had a role in putting forward names of candidates for the slots available to them. Therefore, Ambassador Chambovey and he would be meeting with group coordinators first. Relevant communications concerning the consultations on the process were going to be sent out in due course. He intended to start consultations early, immediately after the Ministerial Conference, and he counted on delegations' positive engagement.

21.8. The representative of India delivered the following statement:

21.9. Thank you, Chair, for your report and for your efforts to streamline the existing guidelines on appointment of officers. During the consultations, we had conveyed our concerns on how the current process is arbitrary and lacks transparency. It also does not ensure proper rotation of Chairs and does not always achieve balanced representation of Membership from different groups. The lack of clear-cut guidelines had also allowed side deals among the facilitators/office bearers, which the rest of the Membership are not aware of. During the consultations, we had therefore provided you with some suggestions and ideas, both orally and through written submission and we are happy to note from your statement today that some of those suggestions have been considered by you. However, on the current system of rotation, we had suggested that the Chairmanship of each Committee should sequentially rotate between different groups. The current practice of the Developed Group alternating with the other regional groups should be done away with. This amounts to reverse S&DT for developed countries. This issue has not been addressed. On transparency, we had requested at every stage of the selection process a clear-cut communication process both by the Chairs of concerned bodies and the Regional Coordinators. We had requested that the Regional Coordinators shall provide the initial slates of vacancies available to the group, the nominations received, the internal process on handling multiple nominations within the group. Once the negotiations are completed within the Group and the list of nominations is finalized, then only the Regional Coordinators shall provide the nominations to respective office bearers for finalization. The Regional Coordinators shall initiate a similar round of consultations within the Group for vacancies not filled in the first round due to non-receipt of nominations, and has been offered to the Group in the second subsequent rounds. While we note from your report the need for ensuring transparency, we do not see the details of how it will be ensured.

21.10. We had also suggested that there should be a clear process for handing over of the selection process matter between incoming and outgoing Chairs of different bodies, under the supervision of the General Council Chair. If there are any understandings, agreements reached between Members during the selection process in a given year, either within their regional groups or between groups, for future years, the same should be brought to the attention of the Members in a clear and transparent manner, with the cognizance of the Chair. Otherwise, such understandings are deemed to be null and void. We had also requested that to avoid conflict of interest. The Regional Coordinators should not be nominating either themselves or their country delegates for Chairmanship of any Committees during their role as Regional Coordinator. If they wish to nominate themselves or their country delegates for Chairmanship/s during a particular year, then they need to recuse themselves of the Regional Coordinator role during that period. While we see your report as a positive step forward, it still falls short of our expectations and does not address all the concerns that we had raised over the issues that we had experienced during the selection process earlier this year. Therefore, we request that these consultations may be carried forward and more detailed guidelines be put forward to make the system more transparent and efficient. We are willing to work on this, post MC12, to reach a common understanding.

21.11. The representative of the Russian Federation delivered the following statement:

21.12. The Russian Federation thanks the Chair for his efforts in this process and considers the suggestions he had summarized as a step in the right direction which we support. Our only remark refers to the suggestion regarding the so-called side-agreements. Our delegation's view is that we should either abandon the practice of such arrangements or to treat them in a more formalized and comprehensive way, since such practice, as currently applied, provides privileges for some Members while other Members are deprived of them. However, it seems that the proposed arrangements can just mitigate some problematic issues of the appointment process rather than fix them. To come up with solutions addressing root causes of the problems we encounter every year, we welcome the Chair's statement that his consultations will continue.

21.13. In the meantime, we expect that in the next election cycle, all WTO Members will strictly follow the principles and provisions of the actual "Guidelines for Appointment of Officers to WTO Bodies" (document WT/L/510), in particular: the appointments exercise should be regarded as a relatively routine annual "housekeeping" matter (Item 1.1 of the Guidelines), rather than a politically driven process, and be approached in a way conducive to the smooth conduct of ongoing business (Item 1.1 of the Guidelines); the choice of a Chairperson should primarily reflect the capacity and the availability of that person to undertake the required special responsibilities (Item 2.3 of the Guidelines). In addition, the Chair's consultations clearly demonstrated that, in general, the Membership gives its consent to the principle, as expressed in the Chair's statement of this matter on 27 July 2012 in document JOB/GC/22 that "the Members should exercise restraint in blocking consensus on a candidate and should explain to the selection committee the reasons why, if they are doing so". I sincerely hope that all Members will follow this principle. Otherwise, the repetition of the problems experienced in the recent years is unavoidable.

21.14. The General Council took note of the Chair's statement and of the other statements.

22 OTHER BUSINESS

22.1 Ministerial Meeting of the Landlocked Developing Countries – Statement by Mongolia on behalf of the Landlocked Developing Countries

22.1. The representative of Mongolia, on behalf of the LLDCs, under "Other Business", provided the following statement:

22.2. On 4 November, the delegation of Mongolia in collaboration with the delegation of Kazakhstan held the LLDCs Ministerial Meeting at the margins of the upcoming MC12. A total of 14 Ministers highlighted the worsening situation for LLDCs due to the pandemic. They underscored the essential role that international trade can play in supporting LLDCs' economic recovery and the importance of the tools available at the WTO for developing countries. Director-General Dr. Ngozi Okonjo-Iweala participated in the meeting in-person and underscored in her address the challenges faced by LLDCs and reiterated her commitment to promoting a more inclusive multilateral trading system. Ministers adopted the LLDCs Ministerial Declaration which was circulated among the WTO Members on 5 November as document WT/GC/237 and which will be included in the MC12 Package. The declaration calls for discussions on establishing a work programme for LLDCs in the WTO to monitor their needs, challenges and vulnerabilities and to develop strategies to boost their participation in the multilateral trading system. In addition to the challenges of high trade costs and dependence on transit countries to trade internationally, LLDCs are facing new challenges, such as container shortages, high shipping costs, climate change vulnerability and limited access to COVID-19 vaccines, the declaration notes.

22.3. More than half of LLDCs are LDCs and are unable to benefit from the granted preferential tariffs due to uncertainly defined rules of origin. In this regard, the Committee on Rules of Origin needs to explore the issue of how rules of origin affect the ability of LLDCs to take advantage of preferential access to markets given the particularities of their trade. In view of the impact of SPS and TBT measures imposed by transit countries on transit goods, it is important to develop more specific and simplified requirements to be applied to goods in transit, as well as notification of all proposed SPS and TBT measures to enable early consultations with affected countries, prior to the adoption of the measure. To be clear on this point, let me emphasize that the same tight SPS and TBT measures for imported goods are being implemented for transit goods and this is very critical for LLDCs, main exported goods of which are agriculture products. The LLDC Group has proposed to include a paragraph on a Work Programme on Transit in the outcome document of MC12. This programme is aimed at making the relevant rules and regulations of the WTO clearer and detailed. The consultations on this proposal are being held, and we do hope that the proposal will gain necessary support from the WTO Members. By defining transit rules clearer and detailed, we do believe that not only LLDCs but also the entire Membership of the WTO will benefit from it, and it would be our contribution to the strengthening of the rules-based multilateral trading system.

22.4. The General Council took note of the statement.

22.2 Virtual Meeting of the Arab Trade Ministers – Statement by the Kingdom of Saudi Arabia

22.5. The representative of the Kingdom of Saudi Arabia, under "Other Business", provided the following statement:

22.6. I would like to share brief remarks today on the recent preparatory meeting of the Arab Trade Ministers which was hosted by the Kingdom of Saudi Arabia, in its capacity as the coordinator of the Arab Group in the WTO, via video conference on 31 October 2021. The aim of the meeting was to discuss a number of common issues for the Arab Countries in preparation for the Twelfth WTO Ministerial Conference. And, to coordinate positions and to identify the common interests of Arab countries within the framework of the WTO. The meeting was chaired by H.E. Dr. Majid Al Qasabi, the Kingdom of Saudi Arabia's Minister of Commerce. Deputy Director-General Angela Ellard participated in the meeting on behalf of Director-General Dr. Ngozi Okonjo-Iweala. In her statement, DDG Ellard called on Ministers to fully and proactively engage in the process to ensure a successful Twelfth Ministerial Conference. We thank DDG Ellard for her constructive contribution. During the meeting, Trade Ministers discussed issues of common interest to Arab countries within the WTO, including the WTO Response to the COVID-19 Pandemic, multilateral negotiations, including fisheries subsidies, agriculture negotiations, special and differential treatment for developing and least-developed countries as well as WTO Reform. Ministers also touched on common issues related to accession, observer status to countries and IGOs and in introducing the Arabic language as a WTO official language.

22.7. At the end of the meeting, a joint Ministerial Communiqué was endorsed containing consensual and common visions of the Arab countries on various common and negotiating issues within the framework of the World Trade Organization, and that was circulated as a WTO document in WT/GC/236. In the Joint Communiqué, the Arab Trade Ministers, among other several topics, expressed their strong commitment to their active participation in MC12, to ensure its success and to reach meaningful outcomes for the entire Membership, and to further enhance the role of the WTO in establishing rules that support a free, fair, stable, inclusive, non-discriminatory, transparent, and open trade and investment environment. In addition, Trade Ministers emphasized the significant role that the WTO can play in tackling the impacts of the COVID-19 pandemic and in enabling strong global economic recovery. Furthermore, Ministers stressed the need at this critical juncture to strengthen the global cooperation and coordination to take all the necessary measures to overcome the consequences of the COVID-19 pandemic, and build a more inclusive, sustainable and resilient future. Finally, I would like to thank all Arab countries, regional and international organizations, and the business community for their participation and contribution in the meeting.

22.8. The General Council took note of the statement.

22.3 Next Steps on WTO Response to the Pandemic – Statement by Pakistan on behalf of the Co-Sponsors of JOB/GC/278

22.9. The representative of Pakistan asked the Chair if it was still possible to take the floor under "Other Business" on behalf of the co-sponsors of JOB/GC/278. Pakistan wished to address the ongoing process to develop a document for the WTO Response to the Pandemic. Members had already heard Ambassador Walker's report and had had the chance to initially study the draft Facilitator's Text in document JOB/GC/281.

22.10. The Chair noted that the point had not been raised as an additional item under "Other Business" when the agenda was adopted. He opened the floor for Members' consideration by putting forward Pakistan's request and asking if anyone opposed to it. After a brief pause, the Chair noted that, as no one had opposed, he would give the floor to Pakistan to speak on this matter under "Other Business".

22.11. The General Council so agreed.

22.12. The representative of Pakistan, under "Other Business", provided the following statement.

22.13. We have heard Ambassador Walker's report yesterday and we are happy to note that the document has progressed from its version on 25 October and that our substantive, constructive

engagement has borne some fruit and the text appears to have accommodated some of our concerns. However, we also note that there are some very important issues which still need to be addressed including the placeholder on the TRIPS Waiver placed now in the Preamble which will be in the Declaration. Additionally, more engagement with certain IP issues and transparency, such as that in contractual terms, is required for the text to take us closer to a landing zone. Similarly, there are other small areas which need to be worked on. Now, the last matter we wish to request is that in order to allow the Member-driven process to take its due course, the item must be kept open and that there should be sufficient time provided for Members to continue to work with the text to make a consolidated text which is useful for Ministers to reflect on. We need clarity from the Chair on what the next steps on this will be.

22.14. The Chair noted that, as expressed earlier under agenda item 7, he would be in contact with the delegations and also with the Facilitator to discuss how to take this work forward to MC12.

22.15. The General Council took note of the statement.

22.4 Statement by the Chair in connection with Administrative Measures for Members in arrears

22.16. The Chair recalled that the General Council Procedures for Members and Observers subject to Administrative Measures 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 would provide information with regard to which Members and Observers were under Administrative Measures.

22.17. Ambassador Bettina Waldmann (Germany), Chair of the CBFA, provided the following statement:

22.18. The administrative measures applicable to Members and observers with arrears in contributions have been in place since 1 March 2013. In accordance with the decision of the General Council, I shall state all Members and Observers under categories of administrative measures. As of 22 November 2021, there are 17 Members and 8 Observers under administrative measures. The following seven Members are in Category 1: Belize, Djibouti, Gabon, Mauritania, Papua New Guinea, Suriname and Yemen. The following two Members are in Category 2: Cuba and Guinea. The following eight Members are in Category 3: Antigua and Barbuda, Burundi, Central African Republic, Chad, Congo, Democratic Republic of Congo, Guinea Bissau and Bolivarian Republic of Venezuela. Burundi, Central African Republic, Chad and Guinea Bissau are not in compliance with the payment plan terms. Now, I will move to Observers. There are four Observers in Category 1: Comoros, Iran, Iraq and Sudan. There is only one Observer in Category 2: Syrian Arab Republic. The following three Observers are in Category 3: Libya, Sao Tome and Principe and Somalia. With regard to this matter, the Committee on Budget, Finance and Administration makes 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." This concludes my report.

22.19. The Chair noted that, as also required by the General Council Procedures, he requested Members and Observers in Categories 2 and 3 of the measures to inform the Secretariat as to when their payment of arrears would be expected.

22.20. The General Council took note of the statement.

ANNEX 1

**STATEMENT BY H.E. MR. TIMUR SULEIMENOV,
CHAIR OF THE TWELFTH SESSION OF THE MINISTERIAL CONFERENCE,
AT THE FORMAL MEETING OF THE GENERAL COUNCIL ON 22 NOVEMBER**

Allow me to express our deep gratitude for the trust that Members have placed on Kazakhstan to chair and co-host the Twelfth Ministerial Conference. As you are aware, Kazakhstan was planning to hold MC12 in Nur-Sultan in June 2020. However, the COVID-19 pandemic imposed constraints and adjustments on all of us, and did not allow us to carry out the Conference as planned. I am honoured to chair the Twelfth Ministerial Conference and assure you that I will spare no efforts to guarantee its success.

For this, I intend to keep up with the developments in Geneva and the preparatory process closely. This week, I will be meeting with the General Council Chair and the Chairs of various negotiating groups on the issues which are likely to be discussed at the Ministerial Conference. I also will be in close contact with the Director-General and her dedicated team. Let me thank the General Council Chair, the Director-General, the Chairs and Facilitators for their tireless efforts in advancing the discussions in all areas. I extend my gratitude to all the delegations for their active and constructive engagement, their strong commitment to the system, flexibility and focus they have shown.

I look forward to working with all of you. I can assure you that you can count on my personal and continued support and assistance. And I count on you, because with your able hands, the discussions will move forward. I hope we can build convergence and collectively deliver meaningful results at MC12. I know that the issues which should still be resolved, namely on fisheries subsidies, the WTO's response to the pandemic, agriculture and other issues, are of a very serious nature and very important, particularly during the current days. I very much look forward to working with you all, with the Chairman of the General Council, the Director-General and her team, and each one of the delegations.
