

**General Council  
18 December 2008**

**MINUTES OF MEETING**

Held in the Centre William Rappard  
on 18 December 2008

*Chairman: Mr Bruce Gosper (Australia)*

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<b>1.</b>	<b>China – Transitional Review Under Section 18.2 of the Protocol of Accession to the WTO Agreement (WT/GC/116, G/L/875, S/C/31, IP/C/50 and WT/BOP/R/89)</b>	

1. The Chairman recalled that Section 18.2 of the Protocol of Accession of China to the WTO Agreement provided that "[t]he General Council shall, within one year after accession, and in accordance with paragraph 4 of Section 18, review the implementation by China of the WTO Agreement and the provisions of this Protocol." Section 18.2 also provided that "[t]he General Council shall conduct such review in accordance with the framework set out in Annex 1B and in the light of the results of any reviews held pursuant to paragraph 1. China also can raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol. The General Council may make recommendations to China and to other Members in these respects." Paragraph 4 of Section 18 further provided that this review should take place after accession in each year for eight years, with a final review in the tenth year or at an earlier date decided by the General Council. The General Council's first review had been conducted in December 2002 and, under the periodicity provided in Section 18, the eighth review would therefore be held in 2009 with a final review in 2011 or an earlier date decided by the General Council.

2. The following issues were to be addressed by the General Council at the present meeting, in keeping with Annex 1B of China's Protocol of Accession: First, reports of subsidiary bodies on China's implementation of the WTO Agreement and of the related provisions of the Protocol; second, development of China's trade with WTO Members and other trading partners; and finally, recent developments and cross-sectoral issues regarding China's trade régime. He proposed that, in addressing this agenda item, China as well as other delegations address all three of these points in a single intervention. In connection with this review, he drew attention to a communication from China recently circulated in document WT/GC/116, which provided information required under Sections I and III of Annex 1A of the Protocol of Accession. The reports of the subsidiary bodies on their respective reviews of China's implementation of the WTO Agreement and of the related provisions of the Protocol of Accession were contained in the following documents: G/L/875, S/C/31, IP/C/50 and WT/BOP/R/89.

3. The representative of China said that 2008 had been an extremely unusual year for China and the whole world. Early in the year China had faced one of its most severe snow storms, and millions of migrant workers had been stranded at railway stations in coastal cities, with their annual spring festivals totally spoiled. In the middle of the year, the violent earthquake in Sichuan Province had claimed more than 88,000 lives, with more than 5 million people becoming homeless. In the last quarter of the year, the financial crisis had struck the whole world, and China had also been hit heavily. The Shanghai stock exchange index had fallen by two-thirds, from around 6,000 to less than 2,000. Millions of small investors had suffered heavy losses. China's exports had also fallen by 2.2 per cent in November compared to the same period in 2007. This was the first drop in the past ten years and a result of shrinking demand in major markets. The challenges and difficulties China had faced in 2008 were unprecedented. In spite of all the crises and challenges, the Government remained firm to its policies of opening and reform. People in the capital were currently celebrating the thirtieth anniversary of the reform and opening process started by Deng Xiaoping. The Government was fully committed to multilateralism, sustainable development, and building a harmonious society and world. China was fully aware that the generous support and assistance from around the world had helped it in overcoming the difficulties of the snow storm and the earthquake, and that the tremendous joint efforts from volunteers and athletes all over the world had helped China in hosting a very successful Olympic Games.

4. China was fully aware of its responsibility to contribute its share to overcome the current world financial and economic crisis. The recent announcement of the stimulus package was an important step in that direction. China would spend RMB4 trillion, equal to roughly US\$600 billion, over the next two years on national infrastructure projects, including railways and airports, welfare projects such as education, health care, social security net, and projects of environmental protection and reconstruction of areas afflicted by the earthquake. This package had been received very positively by the world community. Since China had joined the WTO, it had been working hard to open its market further and had made great contributions to the world economy. China's average tariff rate had dropped from 43.2 per cent before joining the WTO to 9.9 per cent. Its average tariff level on industrial goods had been cut down to 8.95 per cent and bound at that level – one of the lowest among developing-country Members. China's tariffs on agricultural products were now bound at 15.2 per cent, which was much lower than the world average of 62 per cent and even lower than some major developed-country Members. Export subsidies for agricultural products had long been totally removed in China, and the level of domestic support was limited to de minimis and green box levels. Trade in services had also achieved a high level of liberalization. Around 100 out of 160 sub-sectors had been opened to foreign investment, with foreign companies entitled to 100 per cent ownership in 54 sub-sectors. Full national treatment was provided to foreign service suppliers in most of the committed sub-sectors. China had strengthened IPR protection through more uniform legislation, more efficient law enforcement and deepening international co-operation. The "Outline of the National Intellectual Property Strategy" had been published in June 2008, which had greatly boosted morale for further strengthening IPR protection.

5. Transparency and public participation in China's trade policy decisions had been greatly improved. All trade-related laws and regulations were now published, as China had committed to do upon accession. Since the beginning of 2008, public opinion had been solicited for all drafts of administrative regulations of the State Council and departmental rules of relevant Ministries. This was a step further in China's commitments upon WTO accession to provide public-comment opportunities. Due to China's reform and opening policy, its economy had maintained a rapid and steady development, which in turn had contributed to the world economy. According to the World Bank, China's annual contribution to world economic growth had averaged 13 per cent since its accession to the WTO, which equaled US\$75 billion added each year to the world economy. During the period 2001-2007, China had imported roughly US\$4 trillion worth of goods from various countries, with an annual increase in its imports of 30 per cent. There has been a net increase of more than US\$100 billion in China's imports each year since 2001. Many Members, particularly

neighboring Asian countries, had benefited a great deal from China's fast-growing imports. The international financial crisis had not only negatively affected world trade flows, but had also entailed the risk of trade protectionism by some Members. His delegation had noted with great concern some abusive measures, such as trade remedies of anti-dumping and safeguards, and technical barriers to trade, which hampered the smooth flow of trade. China firmly believed that resorting to trade protectionism at a time of crisis was not the right approach. This could only dilute Members' joint efforts to save the world economy, and would not help resolve problems. Faced with the crisis, all Members should strengthen mutual trust and work together to weather the hard times. As his Trade Minister had stated at the Ministerial meeting in July, "[w]e are in the same lift going up and down together, not on a seesaw board with one rising at the other's expense." China attached great importance to the TRM and had made serious efforts in all the reviews in the 16 bodies under the General Council, answering more than 300 questions raised by Members. Representatives of relevant Chinese Ministries and agencies had participated in the process and had listened attentively to Members' concerns, with a view to identifying the necessary means to improve work in the future. He wished to thank the Chairs of the Councils, Committees and Sub-Committees, as well as the Secretariat for their hard work in the process. He wished also to thank all the Members who had participated actively and responsibly in the review process. China remained steadfast in its belief that trade was the source of economic vitality, and an open, vibrant and healthy multilateral trading system could make it better equipped to deal with the severe winter of the world economy. China was willing to work with all Members for an early conclusion of the Doha Round in order to realize a world of greater trade liberalization and to deliver the development Round commitments.

6. The representative of Nigeria said his delegation acknowledged that the TRM had been included in the China's Protocol of Accession as a special precautionary instrument, with the objective of monitoring and enforcing implementation of WTO commitments, as well as promoting transparency and the exchange of information in trade relations with China. Nigeria also noted that the TRM involved simultaneous annual reviews, first by all the 16 WTO subsidiary bodies, and then by the General Council, making use of the results of the reviews by the subsidiary bodies. This exercise was in addition to the Trade Policy Review Mechanism, which provided for a broad review of the trade regimes of all Members on a scheduled basis. To date, the TRM remained unique to China. Throughout the implementation of the TRM, some Members had always participated in the process by submitting written questions to China prior to the meetings of the 16 sub-bodies involved in the review. However, other delegations, including Nigeria, had also raised issues orally with China during those meetings. Nigeria wished to thank the Chinese delegation for the very comprehensive and detailed written replies and oral responses that it had consistently provided, both during the previous reviews and the current one. As one of the first Members to recognize the market-economy status of China, Nigeria shared the view that China was moving in the right direction and at the right pace, in spite of the enormous challenges and costs of the commitments it had undertaken. Nigeria also noted that by significantly addressing issues raised during the review, China had, once again, demonstrated its capacity to implement its WTO commitments in both letter and spirit. Nigeria encouraged China to remain steadfast in this endeavour and, in particular, to pay special attention to the enforcement of regulations relating to exports of substandard goods, including copyright and patent infringements. Nigeria wished China a successful conclusion of the TRM.

7. The representative of the United States said he first wished to thank the representative of China for highlighting some of the important changes that had taken place in China's economy during the past year. He also wished to thank the other Chinese officials, in both Geneva and Beijing, who had worked so hard to respond to the numerous questions that had been raised during these reviews. The United States recognized that a significant amount of time and effort was required, particularly by the Ministry of Commerce, which oversaw China's participation in the WTO. As all knew, the TRM had been created largely because China had been admitted to the WTO before it had revised all its trade-related laws and regulations to make them WTO-compliant, and also because China had been allowed a number of transition periods before it took on certain WTO obligations. Obviously, China

was no longer a new Member and thus, over the past years, the focus of these transitional reviews had changed. The scheduled phasing-in of the key commitments China had made in its Protocol of Accession had ended two years earlier, and the focus now was essentially on adherence to the range of WTO rules that obligated all Members. The TRM remained an important and useful mechanism, particularly by providing additional transparency for China's trade régime. A number of important questions had been raised at the current year's transitional review. Many, although not all, of the individual reviews had generated productive exchanges, and China had put a great deal of time and effort into reviewing and considering Members' questions and preparing responses. His delegation had noted that China had taken many impressive steps over the past seven years to reform its economy, and much of that reform had been tied to China's WTO membership. The implementation of these commitments, as China had just pointed out, had led to very substantial increases in trade, both exports and imports, and had helped deepen China's integration into the international trading system, and had also facilitated and strengthened the rule of law and the economic reforms China had begun thirty years earlier. In its statement China had mentioned this change, and how regulations would be reviewed and subject to public opinion, which was just one example of this.

8. The United States appreciated China's willingness to engage with it bilaterally in a number of formal and informal working groups, and had seen more progress through these channels in the past year than it had in 2007. That said, one issue involving an important WTO obligation where bilateral work had initially failed to address US concerns had to do with restrictions China had placed on suppliers of financial information services, where the United States and two other Members had pursued the Dispute Settlement Mechanism. He was pleased to report that China and the three Members involved had been able to reach a settlement without going through all of the dispute settlement procedures. That said, China's pursuit of a number of industrial policies involving substantial government intervention continued to be the root of many of the problems the United States faced in its economic and trade relations with China. Substantial government intervention was still evident in several areas, and he wished to mention a few examples that were most worrisome to his Government. As the Appellate Body had confirmed earlier that week, China had been applying auto-parts regulations that imposed prohibited local-content requirements for motor vehicles. The United States looked forward to China's prompt implementation of the Appellate Body's report once adopted. China also continued to deploy export quotas, export licence fees, minimum export prices, export duties and other export restrictions on a number of raw materials in which China was one of the world's largest producers. This enabled China to provide substantial artificial advantages to a wide range of its downstream producers who used those raw materials. China had also generated a vast number of central, provincial and local government programs that were designed to increase worldwide recognition and sales of famous brands of Chinese merchandise. While the United States did not object to promoting brand recognition, it appeared that these programs were being pursued through prohibited exported subsidies. The issue of national standards had been discussed in previous reviews. In a number of areas of high technology where there were existing international standards, China continued to pursue unique national standards. There were also pressures put on foreign companies seeking to participate in this standards-setting process to license their technology or their intellectual property on unfavourable terms. An example of an area where the United States had this concern, and had had it for some time, was in the so-called "3G Telecommunications Standards", where China's regulatory authorities, to date, had continued to promote a home-grown standard. His delegation understood that China had very recently announced that it would soon issue licenses that would allow people to use 3G Telecommunications Standards other than the Chinese home-grown standard. However, the United States was concerned that this appeared to be connected to conditions that would ensure first that the home-grown standard was competitive with these international standards. Finally, in the area of government intervention, China had also sought to protect many domestic industries through an increasingly restrictive investment regime which it intended to impose in so-called "pillar industries."

9. Nigeria had mentioned a concern about Intellectual Property Rights protection in China, which was clearly an area of continuing US concern. While his delegation welcomed the steps that had been taken, it still did not see significant reductions in IPR infringement levels in China. In Agriculture, the Chinese market remained one of the least transparent and predictable of the world's major markets for agricultural products, due primarily to selective intervention in the market by Chinese regulatory authorities. This often took the form of what appeared to be capricious customs and quarantine practices that delayed or halted shipments, and the imposition of SPS measures of questionable scientific bases. In Services, regulatory authorities in a number of areas such as banking, insurance, telecom and express delivery continued to frustrate foreign providers of those services. Again, this was effected primarily through opaque regulatory processes and overly burdensome licensing and operating requirements. In addition, China still did not allow foreign credit-card companies and other suppliers of electronic payments processing to provide those services for domestic currency transactions in China. The United States did recognize the difficulties China confronted as it sought to continue its transition from a planned economy to a more market-oriented economy. As China had mentioned and all had noted, it had now been 30 years that China had been proceeding down this path of economic reform, and the United States complimented China on that. It also recognized the important contribution China's economic progress had made to a global growth and development. Important work remained to be done, and the United States looked forward to continuing to work with China on these issues in the years ahead.

10. The representative of Japan said the China TRM was very significant process to facilitate Members' understanding of how China was implementing its accession commitments, as well how China was addressing its current trade-related issues. With a view to a fruitful outcome of the TRM process, Japan always submitted the points on which it wished to focus well in advance of each TRM session. As mentioned at the December 2007 General Council, Japan hoped for continuous efforts and cooperation by China with the aim of making the TRM process more effective. Although it fully understood that China was tasked with a heavy work load, Japan reiterated its hope that China would submit the required information as early as possible before each TRM session, and would provide clear and relevant answers in writing to the questions. In the current year's review, Japan wished to highlight the fact that many of the specific issues it had raised in the relevant committees and councils were also shared by many other Members. Japan hoped China would continue to establish relevant laws and regulations and would make further efforts to implement them properly with a view to improving transparency and strengthening consistency.

11. The representative of the European Communities thanked China for its statement and welcomed China's commitment to multilateralism and its readiness to play its part in overcoming the present economic and financial crisis. The EC recognised that the Chinese people had had to face a particularly difficult year in 2008. The present agenda item concerned transparency, which was an essential element of WTO membership, and the TRM had been approved by China as part of its Protocol of Accession. The EC looked forward to receiving further replies from China on the issues left unanswered in the TRM process, specifically the questions asked in the WTO bodies on TRIMS, TRIPS, TBT, Market Access, Trade in Financial Services and Trade in Services. The EC acknowledged the fulfilment by China of many of its WTO obligations, while some further clarifications and measures would be needed to bring China's policy into full compliance with WTO rules and principles. The EC looked forward to the achievement of this goal in the foreseeable future. Regarding the EC's specific concerns, a number of them were similar to those raised by the United States. The EC's concerns were the following: On TRIMS, the EC appreciated China's efforts to answer questions in the TRIMs Committee. Nonetheless, the EU requested China to review its position on joint venture ownership limitations. The EU appreciated China's concerns about a measured development of its economy, but such arguments should not be used for protectionist purposes. On TRIPS, the EC had not yet received satisfactory replies on internet piracy and customs enforcement, or on questions relating to legalisation and notarization for power of attorney and evidence. On SPS, the EC reiterated its concerns about limited market access for food products in

China, in particular concerning beef, plant health standards and microbiological criteria. Sound scientific analysis should be the basis of decisions on SPS issues. On TBT, the EC appreciated China's efforts to improve transparency and predictability in rule-making and administrative procedures. Participation of foreign-owned companies in standard-setting technical committees was still an issue of concern for the EC. Regrettably, China had not addressed this problem in its communication to the TBT Committee. The EC also wished to underline the administrative burdens faced by foreign companies under the current Compulsory Certification System. On market access, the EC had asked questions in the Market Access Committee on Chinese export restrictions, specifically on restrictions that were put in place for environmental reasons, and the reason why they were not applicable as well to domestic producers. On financial services, China had not yet replied to the EC's questions on qualification requirements and waiting periods for subsidiaries of foreign banks. The EC would be grateful to receive replies also on its questions on foreign ownership caps, high capital requirements and insurance licensing. In the Council for Trade in Services, the EC welcomed China's answers on postal and courier services, and was looking forward to receiving China's feedback on air transport services and distribution of refined oil and pharmaceutical products. The ongoing legislative process should not prevent China from answering questions on fundamental issues, such as postal services.

12. The General Council took note of the statements and of the reports submitted by the subsidiary bodies on the conduct of their respective reviews, and agreed that the seventh review by the General Council of China's implementation of the WTO Agreement and the provisions of its Protocol of Accession had been concluded.

## **2. Report by the Chairman of the Trade Negotiations Committee**

13. The Chairman, recalling that Members had had a long and substantive discussion on developments in the negotiations at a formal meeting of the TNC the previous day, urged Members, in the interests of efficiency and the good use of everyone's time, not to repeat that discussion in the General Council and to seek the floor under this Agenda item only if they felt they had something new to add to the views and positions expressed at the TNC meeting. While he recognized that some delegations might wish to comment on matters raised at the previous day's TNC meeting that went beyond the mandate of that body, he believed that on some of these matters Members might wish to reflect further. Following such reflection, Members would have an opportunity to discuss these matters at the next meeting of the General Council meeting if they so wished. He then invited the Director-General, as Chairman of the TNC, to report on the TNC's activities since his last report to the General Council.

14. The Director-General said that since he had last reported to the General Council in October, the TNC had held one formal meeting the previous day and which had marked the end of a period of very intensive work aimed at establishing modalities in Agriculture and NAMA. As he had reported to the TNC, Members were not far from achieving their goal, having made very good progress in both areas. However, they had ultimately had to recognize the reality that calling Ministers to try to finalize modalities by the year's end would be running too much of a risk of failure which could damage not only the Round but also the WTO system as a whole. His statement at the TNC had been circulated in document Job(08)/134, and he would not repeat all the points he had made. He had taken from the TNC discussion that there was a collective will to advance the Doha negotiations on all fronts. All Chairs had expressed their readiness to provide a forum where Members could resume negotiations across the board – on Agriculture and NAMA, and also on Services, Trade Facilitation, Rules, TRIPS-related issues and S&D treatment or Environment to name a few. He had also taken that the entire membership believed that a Doha Development Round that was better adapted to the new trading realities and that responded to the needs and aspirations of all Members, and in particular developing countries, was worth fighting for. This had been and remained Members' priority for 2009. He had also taken from the discussion that all believed the WTO was more than the Doha Round and

that one needed to ensure that the organisation remained relevant and attuned to the wider trading scene. At the TNC, Members had discussed a number of areas where the WTO could work in 2009, including on ensuring a better overview of developments in the international trading environment that were having an impact on the multilateral trading system, and this was also true for trade finance and Aid for Trade. All of this was in addition to Members' regular work in the committees and councils, which testified to the strong foundations of the rules-based multilateral trading system. At the TNC, many delegations had also urged holding the next regular Ministerial meeting in the course of 2009, in order to take a strategic look at the future and steps to advance the goals of the organization. Many had mentioned Sisyphus, the king cursed to roll a huge rock up a hill only to watch it roll down again and to repeat this throughout eternity. Even the most tenacious minds would be discouraged by the idea of rolling up and down through eternity. He believed that following the recent discussions and reflections, the future looked a bit brighter, and he suggested one think rather of the German poet Goethe when he said "[w]hat is not started today is never finished tomorrow." The present day began Members' work for 2009.

15. The Chairman recalled his urging at the outset that delegations seek the floor under this item only if they felt they had something new to add to the previous day's discussion in the TNC. All statements at the TNC meeting would be faithfully reflected in the records of that meeting, and did not need to be repeated in the General Council. On those matters in particular that went beyond the Doha negotiations to matters of wider interest and relevance to the WTO Agenda as a whole, he appreciated that Members might need to reflect, and there would be a further opportunity in the General Council to discuss those items. He sought all delegations' understanding and cooperation in the interests of the efficient conduct of business at the present meeting.

16. All delegations who spoke thanked the Director-General for his report.

17. The representative of India thanked the Director General for his efforts to ensure continuity of work in the negotiations in the next few weeks and months. The framework of engagement he had presented was appropriate and relevant to the situation in which Members found themselves. It was important that future work in Agriculture and NAMA was based on the considerable convergence that had been built on the majority of issues in the mandate. It was therefore essential that future discussions build on the understandings reflected in the two texts. Similarly, it was also essential to bear in mind that if Members were to conclude the negotiations in 2009, the Doha mandate had to remain unchanged. Any efforts to modify the mandate or dilute its development content would inevitably lead to a serious impasse. If Members based their further work on these understandings, the work of Sisyphus would become immeasurably easier. The other areas in the Single Undertaking now deserved equal attention. The much delayed text on Rules should be tabled at the earliest, to enable negotiations to begin on key issues like anti-dumping, subsidies and fisheries subsidies. For reasons obvious to all, these issues, especially industrial subsidies, had acquired fresh relevance in recent weeks. An effective outcome on Rules would be a strong antidote to protectionist tendencies. The Services negotiations also needed to be resumed early. Apart from the issue of LDC modalities, it was important to test the appetite for ambition in Services market-opening. The signaling exercise of July had provided some indications, but fell far short of India's expectations. Moreover, the signals that had been transmitted required revalidation in the changed global economic scenario. On domestic regulations, a revised text was required so that disciplines could be put in place before the end of the Round as mandated. The TRIPS issues required equal emphasis. The case for an ambitious outcome on the three TRIPS issues had already been made by more than a hundred Members. It was essential that Members begin substantive negotiations on these issues as a part of the Single Undertaking. Progress had been made in the Trade Facilitation negotiations, but this needed to be fast-tracked. An ambitious outcome in Trade Facilitation could arguably do more for global trade flows than any specific sectoral negotiation. The trade-offs in Trade Facilitation were within this area itself.



18. On many issues, developing countries could only be asked to undertake commitments if appropriate technical and capacity-building assistance was made available. The linkage between the two issues needed to be squarely recognized and dealt with. Several Members had spoken about early outcomes. The rationale for this was unexceptionable. Members clearly had to recognize that as far as the negotiations were concerned, there was a certain credibility deficit in the public mind. This could be partly bridged by ensuring early outcomes in key areas of the development mandate. DFQF, Cotton and Bananas were prime candidates for such an initiative. His delegation was pleased to note that there was now widespread acceptance of the view that there was more to the WTO than the current negotiations. It was equally important, for reasons of credibility and relevance of the WTO, to allow the real world to intrude occasionally into Members' efforts. Issues such as the impact of measures being taken by several countries on trade flows in the context of the current economic downturn needed to be discussed. Problems being faced, especially by developing countries, in accessing trade finance needed to be reviewed. Similarly, actual flows of aid for trade assistance needed to be monitored. There were other issues, such as food security, which also required a forum within the WTO. Members could not use their pre-occupation with the negotiations as a pretext to put their heads in the sand. Finally, with regard to Ministerial meetings, his delegation was pleased that the consultations of recent days were leading Members to the conclusion that Article IV of the Marrakesh Agreement needed to be honored. Ministerial Conferences needed to be held regularly, perhaps annually, to discuss various trends in global trade, including the progress in negotiations. Such conferences could not be linked to the negotiations alone. India urged the Director-General to consult further with Members so that they could take a final decision in this regard at the February General Council.

19. The representative of Nigeria thanked the Director-General, the General Council Chair and Chairs of the respective Negotiating Groups and the entire membership for the intensified efforts to keep the Doha Round alive and focused. Like others, Nigeria wished to place on record its deep disappointment over the failure to secure agreement on modalities in Agriculture and NAMA before the end of the year. Nevertheless, it wished to pay special tribute to the Agriculture and NAMA Chairs for their good work and the comprehensive revised texts that had been tabled on 6 December. Nigeria noted the prevailing political will among the membership to preserve the achievements made thus far, after seven years of tortuous negotiations. In view of the increasing deterioration in the global economy, Nigeria was encouraged by the present commitment by all Members to reaffirm and defend the basic values of the multilateral trading system. It therefore welcomed the initiatives aimed at the early resumption of negotiations in 2009. His country was convinced that if there were an early harvest in the DDA negotiations, priority needed to be given to the key issues of Cotton, Trade Facilitation and DFQF market access for LDCs.

20. At the present critical stage in the negotiations, it was very important that Members carefully reflect on a few aspects of the organization. First was the need to insulate the WTO and its overall mandate in respect of global economic governance from its responsibility as the forum for multilateral trade negotiations. This was even more imperative as Members' work went beyond trade negotiations, despite the fact that this remained crucial to a rules-based international trading system. In this regard, Nigeria welcomed and supported the Director-General's initiative regarding the internal task force to produce regular updates on country-specific developments and measures, as well as keep developments in the area of trade finance within the WTO's radar. Nigeria also agreed that a regular WTO Ministerial meeting in 2009 would assist in this endeavour. Second was the need to ensure that the mandate and work programmes of the organization were not held hostage by developments in Member countries. Nigeria was convinced that Members should always respond to their commitments and obligations in the organization, rather than the other way round. With a membership of 153 countries, Members could not afford to allow the future of the organization remain dependant on political dynamics in individual Members. Nigeria therefore shared the view that in spite of the present challenges, Members were now, much more than ever before, closer to concluding the DDA negotiations. Members therefore had to work strategically together by focusing

on the core areas needing work in 2009. Nigeria fully supported the statements by Cote d'Ivoire for the African Group, Mauritius for the ACP, and Tanzania for the LDCs. It also associated itself with the statements by Brazil for the G-20 on Agriculture and Indonesia for the G-33. He reaffirmed Nigeria's commitment to the principles of a rules-based multilateral trading system and the Doha mandate as reinforced in the July 2004 Framework Agreement, and as further enunciated in the Hong Kong Declaration. Nigeria assured the Director-General and Chairs of Negotiating Groups of its support and cooperation, and looked forward to working closely with them and all Members for the early conclusion of the Doha Round.

21. The representative of Bangladesh thanked the Director-General for his leadership, which had been manifest in pushing from behind rather than pulling from in front. Hemingway had once said that courage was grace under pressure, and all of his colleagues had shown courage and he had learned greatly from them. At the TNC the previous day the Director-General had laid out the basic premises of the current state of affairs, the critical part in moving forward, the flanking measures and possible intermediate outcome. Bangladesh largely agreed with those elements. The Director-General had also referred to three points of departure while taking stock and reflecting on the way forward, and had mentioned the mandates, texts and new guidelines that were the future points of reference. His delegation wished to add to those that the system as a whole remained one of the points of reference. This was because low-income, vulnerable, marginalized economies had joined this open, multilateral rule-based system in anticipation of getting fairer treatment in trade negotiations as well as in trade dealings. During the present decade in the WTO, the LDCs had, although marginally, improved their trade performance, but their share of global trade remained less than one per cent, and the LDCs' terms of trade had yet to reach the level of the 1980s. The recent growth in LDC trade, as well as marginal improvement in their terms of trade had been largely due to high commodity prices and particularly petroleum product exports from certain LDCs. Export and import figures showed that the LDCs had in fact given more effective market access to the developing and developed countries than they had gained. This was a matter of empirical evidence. Most of the LDCs today remained much more open, and in that sense more aspiring, to integrating into the global economy than many of the developing and developed countries. Bangladesh, for example, currently had an import-weighted tariff rate of only 15 per cent, which spoke for itself in terms of how open the economy was, with no quantitative restrictions and no banned items as such. His country remained committed even to binding some of its tariff lines if a substantial and balanced outcome of the Doha negotiation was on the table. Thus, protecting the systemic value in favour of the marginalized and the vulnerable also remained one of his country's points of departure. While in the WTO countries might not get what they deserved, the organization should at least deliver on what they had negotiated. If the systemic value was not preserved, the feeble but positive developments seen by the LDCs might vanish overnight. With the financial crisis looming large, these apprehensions remained very real, and thousands of people who had come out of poverty in the recent decade, due in part to the contribution of trade, might vanish and these countries might again sink below the poverty line. Thus, his first point to the membership, the Secretariat, the Director-General and the Chairs, was the need to preserve the systemic value, which was one of the WTO's precious achievements.

22. His second point related to the mandate, which needed to be protected both from insiders and from outsiders. His delegation had noticed that certain insiders had, or would have liked to have selectively, conveniently and sometimes creatively interpreted the mandate. The integrity of the mandate from Doha needed to be protected. Conversely, certain outsiders, driven by different motivations, might raise various contingent issues which they could not tackle. Members needed to be vigilant regarding both these onslaughts. Regarding the texts, Bangladesh welcomed the documents prepared by the Agriculture and NAMA Chairs through very hard labour. These represented a very good lock-in or consolidation of what Members had achieved in July. However, having said this, he recalled that, as Plato had said, just or right meant nothing but what was in the interests of the stronger party. A "balanced" or "right" text should not be in the interest only of the stronger party. The texts needed to be improved in some well-known areas. The Chairs would alert

Members to the remaining outstanding issues in these areas, whether preference erosion, special products or SSM. Bangladesh remained engaged in this work, taking the texts as a basis to move forward. It had accepted the sequence of resolving Agriculture and NAMA earlier, but there was now a certain amount of critical mass allowing Members to move on other issues. These issues particularly related to the areas of interest of the LDCs. One was the area of Services and the LDC modalities in Services, or whether putting a moratorium on anti-dumping duties against the LDCs. This work needed to be taken up at an early stage. There was also the issue of an early outcome, where he had three points. First was that this issue seemed to come and go in the WTO. Whenever there was a crisis, a credibility gap or a confidence deficit, Members had talked about early harvest, which they had conveniently forgotten when better times came. He hoped this time it had come to stay. This early harvest or early understanding was something Members would see in the future. The second point was whether it should, after eight years, and possibly more, of negotiations, be called "early", or whether it should rather be called an intermediate outcome or first approximation. The third point related to what would be included. Cotton was essential, as it remained the human face of the Doha Round. Bananas could also be included, as in many ways it was a key issue, and there was also duty-free quota-free treatment for LDCs, which was the jewel in the crown of the Doha Round. Without the delivery of this jewel, Members could not address the credibility or confidence gap of the LDCs. He recalled that Members had moved a long way since Ministers had talked about duty-free quota-free at the Hong Kong Ministerial. A number of Members – the EC, Canada, Australia, New Zealand, Switzerland and Japan – had come out concretely and effectively in favour of giving duty-free quota-free treatment to LDCs. In addition, the number of developing countries in a position to provide this treatment had increased significantly since then – India, Turkey, China, Brazil and many others were giving strong signals to this effect, on a universal, transparent and effective basis. His delegation failed to understand how, if textile exports from Cambodia and Bangladesh could enter duty-free quota-free into Turkey or India, they could not enter into other stronger economies without jeopardizing the latter's industrial potential. Thus, duty-free quota-free had to be one of the major elements of any intermediate outcome. Regarding the need to make progress on the non-Doha activities, his delegation was pleased that trade protectionism was being monitored, that trade finance was being examined, and that Aid for Trade was also being attended to. It was very important that while doing these things, Members looked at the specific impact on the LDCs. When one talked about LDC exports, one was talking not only about goods but also services, and as all knew, income from services played a big role in these countries. At the same time there was a need to see whether basic financial resources remained buoyant in this respect. The present year had been a tough but very instructive one, and by all early indications 2009 would be more challenging, but multilateral trade had to be the solution to those problems. Bangladesh remained optimistic. In the 19<sup>th</sup> century Don Marquis had said that an optimist was a fellow with very little experience. He looked forward to gathering more experience in 2009.

23. The representative of Peru said that the frustration of the July Ministerial meeting was the bitter epilogue to two years of continuous effort to achieve a consensus that would bring Members closer to the repeatedly postponed conclusion of the Doha Round. Unfortunately, given the high-level imprimatur attached to the decisions adopted by the G-20 and the APEC countries, and the urgency of the global economic crisis that had given rise to those decisions, international public opinion had judged harshly the fact that in Geneva, Members had been unable to agree on the technical principles that would enable this important commitment to be translated into action. It would be disappointing if governments did not analyse the reasons for this untimely failure, but it would be even more serious if they did not face up to those reasons in an objective and realistic manner. Although it was true that Members had managed to complete the longest part of the journey, it was also true that the progress made did not in any way diminish the magnitude of the political obstacles, pockets of resistance, fears and mistrust that stood in the way of a basic consensus on modalities in Agriculture and NAMA. Despite the powerful resuscitating effect the Doha Round would have on the world economy, it could legitimately be questioned whether, in the midst of the increase in political pressures characteristically associated with critical economic circumstances, it would be possible to overcome those factors which

so negatively shaped the positions of the trading partners most seriously affected by the recession – one which, in most people's view, might worsen and continue into the future. In such a situation, and given the reaction of the specialized press to the decision not to convene a Ministerial meeting if there was no chance of it being a success, it was vital not to create any more unfounded expectations and to exercise sober discretion when disseminating information on the Doha negotiations, which were to resume in January. A cautious approach to providing information would help safeguard the well deserved credibility of the multilateral trading system embodied by the WTO, which comprised not only an important body of rules regulating international trade, but a respected dispute settlement system for their enforcement.

24. Peru welcomed the work programme proposed at the TNC meeting the previous day by the Director-General. It hoped that the new impetus Members were to inject into all areas of the DDA would enrich the negotiations on Agriculture and NAMA and improve the overall balance of Members' efforts. Peru also welcomed the emphasis that was to be placed on monitoring the trade impact of the measures adopted by Members to deal with the crisis, and on the priority that deserved to be given to funding Aid for Trade. On the other hand, although the ideas aimed at achieving an early harvest in areas such as trade facilitation seemed attractive, it should be recognized that they might conflict with the principle of a Single Undertaking which, for better or worse, governed these negotiations, particularly if Members were determined to preserve scrupulously the mandate and parameters agreed in Doha and Hong Kong. In the current circumstances, Members had to bear in mind how frequently the WTO was erroneously judged on the basis of the elusive Doha process. Such judgments unfairly ignored the current rules and mechanisms that had kept protectionism at bay for the past few decades, and the fact that it was these rules and mechanisms that could prevent protectionism from resurfacing like a baneful reaction that would only aggravate and prolong the current economic crisis. There could therefore be no better time to reaffirm Members' faith in and commitment to free trade and the opening up of markets, the two cornerstones of the WTO system.

25. The representative of Bolivia said her delegation wished to comment on issues that had not been discussed in the recent TNC meeting, specifically two issues of importance to Bolivia. The first was the adoption or otherwise of the report on Services in document TN/S/34 and its annex. As all knew, Bolivia, Cuba, Nicaragua and Venezuela had some problems with the format of this document, as it failed to take sufficient account of their concerns. Bolivia could not accept, for example, the way in which they had been treated as second-class countries in the document's annex, "Elements Required for the Completion of the Services Negotiations", where they had been mentioned merely in a footnote, while the body of the text concerned all other Members. It was as if these countries did not have the same rights or were less important than the rest of the membership. The footnote in question read as follows: "At the meeting of the Special Session on 23 July 2008, the delegations of Bolivia, Cuba, Nicaragua and Venezuela expressed their disagreement with this annex and requested that their position be registered. For that purpose, the following text has been provided by the delegation of Venezuela on behalf of Bolivia, Cuba and Nicaragua, with the request that it appear in this Annex. It has not been subject to any discussion by other delegations at the Special Session ... ." Her delegation wished to note that this text had not been discussed as a result of lack of time. The footnote went on to say that "[t]here is no consensus on a new text on services. Various delegations consider that there is no mandate to agree on elements that go beyond the points agreed by all Members in the Hong Kong Ministerial Declaration and that there is no obligation to make commitments at the highest possible level. Any language that modifies Members' current obligations has no binding force. However, there is total agreement on immediate implementation of any treatment in favour of the least developed countries and the small and vulnerable economies." This paragraph had been carried in a footnote, but it should form an integral part of both the document itself and, of course, the annex. Neither Bolivia nor any of the delegations concerned could ever agree to this document or its annex being considered as adopted or taken note of, until the appropriate amendments were made, since there was no consensus on them as provided for under Article IX of the WTO Agreement. She was raising this issue in the General Council since at the TNC meeting the previous day when her

delegation had asked for a clarification before the Director-General's concluding remarks, her delegation had not been given the floor again. She had therefore been obliged to make this clarification before the General Council at the present meeting. In this respect, Bolivia sought the Chair's confirmation that the TNC's taking note of the oral report to it by the Chair of the Council for Trade in Services in Special Session did not imply the adoption, approval or taking note of document TN/S/34, which did not have the consensus of the membership.

26. The second issue concerned the proposal at the TNC that the Trade Policy Review mechanism be used to address issues relating to the current financial crisis. Bolivia understood that the mechanism in question had not been created for that purpose, given that there had been no financial crisis at the time, but that the Director-General sought Members' mandate to use it in the present circumstances. Bolivia was not against this initiative per se, but found it hard to accept this proposed use of the TPR mechanism without further discussion and information. The reasons for this were as follows: the previous day's TNC meeting had been the first time Bolivia had heard about this initiative and, as far as her delegation knew, the only proper information Members had received in this respect had come from three paragraphs in the statement by the Director-General at that meeting and a few other statements that seemed to refer to this issue. Up to the present, the matter had never been discussed multilaterally, and her delegation did not therefore have enough information at present to give the initiative the green light. This did not mean that Bolivia was against the initiative. It was simply asking for more time in order to examine it. One of the questions Bolivia wished to ask was whether the initiative fully included the development aspect. Were developing countries afforded special and differential treatment? Would the initiative differentiate between internal and external considerations that had nothing to do with the financial crisis, but which could lead to changes in trade policy? In 2006 and 2007, for example, Bolivia had experienced flooding and had received support from the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), while in 2008 it had been hit by drought. All this had been a result of the worsening climatic conditions and the change in the world climate caused by unsustainable economic production in the developed countries. In the light of these disasters, Bolivia had been obliged to impose export restrictions, since the price of comestible oil had tripled to three dollars, whereas 60 per cent of its population lived on an income of less than two dollars a day. This situation was unsustainable not only from the point of view of development and the right to food and health, but simply for humanitarian reasons, as it was affecting the most vulnerable Bolivian families. Bolivia had not been able to allow things continue in this way and had been unable to stop applying restrictions simply to satisfy the WTO or the markets, while overlooking the most fundamental and basic human rights of the most vulnerable sector of its population. Bolivia should not be put between a rock and hard place in this way and be made to make these choices, and wondered whether the above circumstances would be taken into consideration if the exercise in question was carried out within the TPRB. She asked if, for example, the United Nations, the WHO in the event of health problems, OCHA, UNDP, UNEP, UNCTAD or other bodies would be included, and whether information from these bodies would be taken into consideration. Above all, however, Bolivia believed that a preliminary exercise should be carried out. Members should first assess all the policies implemented by the developed countries since the beginning of this crisis that were inconsistent with WTO rules. These should be the first policies Members reviewed in order to determine the limits within which the organization was operating. Her delegation understood that the limit was approximately US\$4.1 billion, which was what developed countries had given their bankers who had caused the crisis currently affecting all. These countries were causing severe market distortion and, as Venezuela had said at the TNC meeting, were responsible for a high level of protectionism based on subsidies to their bankers, bringing about forced nationalization and socializing the losses without having previously distributed the gains. Bolivia could not make an informed decision until there had been an in-depth multilateral discussion that gave it enough time to address these doubts, and until the terms of reference for this new use of the TPR mechanism had been established. Her delegation therefore requested more time so that multilateral discussions could be held before it took a decision. Such discussion would enable it to improve this initiative – one that, as her delegation had said before, it did not oppose – and make the best possible decision. She asked

that her delegation's statement at the 17 December TNC meeting be included in the records of the present meeting.<sup>1</sup>

27. The Chairman, in responding to Bolivia, said that on the first point, he could confirm that taking note of a statement or report did not imply approval or adoption in the present or any other case. It did not mean there was a consensus on the issue, but was a purely neutral act that was standard practice in all WTO bodies. It simply registered that the matter had been heard by the body in question, and nothing more. He appreciated the clarification Bolivia had offered at the present meeting of its position, which would of course be part of the formal record of the present meeting. On the second point, as he had indicated at the outset of the meeting, he appreciated that on matters pertaining to the overall business of the WTO – more than simply the Doha negotiations, which were a matter for the TNC – Members might need to reflect further, and there would be a further opportunity to discuss these matters in the General Council. He looked forward to consulting with Members in the interim on these issues and had noted the perspectives Bolivia had offered.

28. The representative of Norway said that in listening to the statements at the TNC meeting the previous day, a few points had struck her. Members had done a lot of work in the autumn. They had texts that had earned strong support from a wide majority of the membership, not only in certain quarters but within a number of groups and among a great number of Members with different focuses, interests and views. Obviously, most Members were worried that the points where their particular national interests lay would not be stabilized enough in 2009. This had been thoroughly reflected at the TNC meeting the previous day. However, overall a vast majority seemed to have been able to accept what could have been a package, had it been finalized. Only a few Members had not – for legitimate and understandable reasons – been able to agree on a number of, for them, crucial issues at present. The most positive and important message the previous day had been the strong commitment throughout the membership to the DDA, to the mandate and to the multilateral trading system. This was what Members should focus on when looking ahead. All knew that in multilateral trade negotiations, timing was of the essence – one could have the right solution at the wrong time, or the wrong solution at the right time, and the moment was lost. Members should not fool themselves into believing that the Round could be fixed by 2 January. This was perhaps the most important factor in the months to come – Members needed to keep cool, preserve and build on what had been achieved, monitor the situation even more carefully than previously, and pick the right moment to re-engage and strike a deal. The need to fight protectionism had been mentioned by a majority of Members at the TNC. This was an important task. The monitoring mechanism under the Trade Policy Review Body proposed by the Director-General was a constructive and expeditious measure to this effect. The financial crisis was recent, and Members did not know where it was taking them and what it would imply for the DDA. On the other hand, this was not 1930s. There was a viable multilateral trading system that had ensured growth and prosperity based on agreed trade rules for decades. So far, countries had not closed their borders to trade and reverted to isolationism. While Members were temporarily stuck in the multilateral negotiations, they were seeking new areas for liberalization through bilateral and regional deals. The EU was expanding. EFTA had met with India in regional trade negotiations the previous day. Not everything in trade was happening in the WTO. While bilateral deals could pose a threat to the multilateral system if they became the preferred system and WTO rules were put on the backburner, these should also be seen as a positive indication that the will to liberalize trade was still there. Hopefully, this will prevail and bring Members back to the WTO when the time was right.

29. The representative of China thanked the Director-General for his consistent and conscientious efforts in guiding Members in the negotiations, against the backdrop of the ongoing deteriorating global financial and economic crisis, the Agriculture and NAMA Chairs for tabling the revised texts,

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<sup>1</sup> The statement by Bolivia at the meeting of the TNC on 17 December, which is reflected in the records of that meeting in document TN/C/M/29, is incorporated by reference into the present records.

as well as all other Chairs for their reports. China supported the statements by Brazil for the G-20, Indonesia for the G-33, and those by other developing-country groups. Since China had invested hugely in this process over the past seven years, it supported the idea of preserving the existing progress with the appropriate treatment by the General Council of the Agriculture and NAMA Chairs' texts, and supported the road map the Director-General had described for the negotiations in 2009. At the same time, China urged Members to keep bearing in mind two important principles: First, they should stick to the various Ministerial mandates that they had agreed to, and which reflected the delicate balance among different interests. To reopen any of them would increase difficulties for the Round to be concluded. Second, Members should remain committed to the developmental objective, which was not only unique to this Round, but also epoch-making for the multilateral trading system. Obviously, there were still many development issues that remained to be resolved, such as cotton, and duty-free-quota-free treatment for LDCs. China wished to reiterate its firm commitment to working with all Members for a successful conclusion of the Doha Development Round.

30. The representative of Sri Lanka thanked the Agriculture and NAMA Chairs for their tireless and diligent efforts to address the difficult work before them, as well as other Chairs for the considerable work carried out in their respective negotiating groups. He reiterated Sri Lanka's firm commitment to the conclusion of the Round, whose central development mandate was of importance to many countries engaged in these negotiations. The Director-General and many Members had underlined the current difficult financial and economic environment and its adverse and negative impact on developing countries. Sri Lanka, as a net-food and net-energy importing vulnerable economy which largely depended on external factors, had been badly hit by this state of affairs, coming hard on the heels of the global food and energy crisis. His country was highly dependent on exports of goods and services for the development of its economy, and conclusion of the Round would provide much-needed improved market access for its key exports in critical markets. Sri Lanka was also struggling to achieve some level of sustainability in its agricultural production in order to minimize its dependence on food imports. Such sustainability would not only assure food security while easing the financial burden, but would also provide livelihood security for a large segment of the rural farming community which engaged in subsistence farming. Sri Lanka had interests in all areas of the current negotiations, but there were certain issues of paramount importance that had a substantial impact on the development of its economy. In NAMA, Sri Lanka would undertake to bind up to 80 per cent of its tariff lines at an average of 30 per cent. With a view to participating constructively in the negotiations and to integrating successfully into the trade liberalization environment foreseen under the framework of the WTO, Sri Lanka had agreed to undertake this commitment, despite the fact that this would constrain the terms of policy space available to it to develop its industries. At the same time, Sri Lanka's successful integration into this rule-based trading environment required comparable market access for its export interests. In this way, Sri Lanka hoped that the Round would provide meaningful market access in the form of reduction of high tariffs and tariff peaks on products of export interest to it.

31. At the present time of economic slowdown, growth in Sri Lanka was severely hampered both by external and internal constraints. Sri Lanka's garment industry remained the backbone of its economy and the only industry that could inject reasonable impetus into the Sri Lankan economy to diversify and develop other sectors. A delayed Round, coupled with any proposal to further delay tariff reductions on sensitive products other than what was currently on the table, would leave Sri Lanka with nothing. Amidst the concerns expressed by other Members, he wished to reiterate that this industry in Sri Lanka did not pose any threat to other trading partners. Sri Lanka in fact had an insignificant share in world trade, which was declining overall. Nevertheless, within Sri Lanka's economy, it remained the most important sector, providing employment, particularly for the rural women, and generating income unsurpassed by any other industry. He repeated that further delays would prove to be the death knell for this industry, at a time when its strength was required to address the development needs of vulnerable segments of the population for development and employment generation. In agriculture, his delegation wished to align itself with the statement by Indonesia for the

G-33, and to stress the importance of adequate flexibilities in agriculture for Sri Lanka. His country had bound almost all of its agricultural tariffs at a low tariff average of 50 per cent, which would be subject to further reductions in the Round. Therefore, the flexibilities provided through the Special Products and Special Safeguard Mechanism were a must, and these in turn should be simple and effective, and not burdensome, in their operation. Sri Lanka was not an agricultural exporter and did not foresee using these mechanisms in a protectionist way. As he had already noted, his country was a net food importer. However, at the same time, agricultural livelihood security was vital for a large segment of the rural population, and such flexibilities were required, particularly in view of the low tariff bindings. He repeated that further delay of the Round would be detrimental to Sri Lanka, and it appreciated the urgency expressed by many to reach a successful conclusion. At the same time, like other Members, Sri Lanka believed that time constraints should not push the Round to a premature conclusion that would not allow Members to engage fully and adequately to address their development needs.

32. The representative of Brazil asked that his delegation's statement at the 17 December TNC meeting be included in the records of the present meeting.<sup>2</sup>

33. The Chairman said that some delegations had suggested that he consult on the question of a Ministerial Conference and indeed on some other issues. While he was willing to do this, he suspected that some delegations might find it difficult to do this in the next week or two, and towards the end of January many would have other preoccupations. He could therefore suggest tentatively the weeks of 12 and 19 January for such consultations.

34. The General Council took note of the Director-General's report and of the statements.

### **3. Work Programme on Small Economies – Report by the Chairman of the Dedicated Session of the Committee on Trade and Development**

35. The Chairman recalled that at its meeting in February and March 2002, the General Council had taken note of a framework and procedures for the conduct of the Work Programme on Small Economies, under which this Work Programme would be a standing item on the General Council's agenda. The framework and procedures also provided that the Committee on Trade and Development should report regularly to the General Council on the progress of work in its Dedicated Sessions on this subject. Ministers at Hong Kong had instructed the CTD, under the overall responsibility of the General Council, to continue the work in the Dedicated Session and to monitor progress of the small economies' proposals in the negotiating and other bodies. In December 2006, on the basis of a report by the Chair of the CTD in Dedicated Session, the General Council had taken note that Members in that body would be pursuing the substantive work under the Small Economies Work Programme. In the absence of the Chairman of the Dedicated Session of the CTD, and on his request and behalf, he invited Mr Faizel Ismail (South Africa), the previous Chair of the CTD, to read his report on developments in this area since the October Council.

36. In the absence of the Chairman of the Dedicated Session of the CTD, and on his request and behalf, Mr. Ismail (South Africa), the previous Chair of the CTD, reported that the Dedicated Session had met on 3 December and had considered an updated version of a Secretariat paper which compiled all the proposals made so far by SVEs in the various negotiating groups and other WTO bodies. This document had been circulated as WT/COMTD/SE/W/22/Rev.2. At the meeting, several delegations had welcomed the revised compilation and had requested the Secretariat to keep updating it so as to reflect the latest developments concerning SVEs in the negotiations and in the WTO committees. The updates would also include the latest modifications made in the 6 December texts on draft modalities

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<sup>2</sup> The statement by Brazil at the meeting of the TNC on 17 December, which is reflected in the records of that meeting in document TN/C/M/29, is incorporated by reference into the present records.



for Agriculture and NAMA. During the meeting, there had also been suggestions by some of the SVE proponents that one new area for study and elaboration in the Dedicated Session could be the impact the financial crisis was having on small and vulnerable economies, especially on the demand for goods and services from SVEs, the implications for key sectors such as tourism, financial services, fisheries, textiles, light manufacturing and primary agriculture production, as well as the impact on the ability of SVEs to access export financing. Accordingly, the Chair had requested the Secretariat to consult and to report back to the next Dedicated Session.

37. The representative of Barbados, on behalf of the small, vulnerable economies, acknowledged the tireless efforts of the Dedicated Session Chair and of the Chairs of the Agriculture and NAMA negotiations towards bridging differences and continuing the progress towards final modalities. Regrettably, despite significant efforts on the part of all Chairs, and declarations from the G-20 and other groupings, Members were not there yet. While it might be easy to focus on what Members had not achieved, it was preferable to focus on where they were now, how far they had come and how they were going to complete the task. The revised texts in Agriculture and NAMA, although still containing some areas of concern, reflected progress and were good bases on which to continue negotiations early in 2009. In the revised text on Agriculture, some of the proposed modalities on the SSM remained of concern, and the SVEs supported the statement by Indonesia for the G-33. Within a Development Round, with clear development mandates, and with the upheaval in the world trading system, instruments such as the SSM would be important for developing countries to safeguard food and livelihood security. Since July there had been no discussion on SSM flexibilities for SVEs. The SVEs looked forward to constructive engagement early in 2009 on the SSM for developing countries, including the required flexibilities for SVEs. One had to be careful to preserve the gains achieved thus far. It was critically important that all Members, and in particular those in leadership positions, made the requisite efforts to ensure that the significant progress achieved thus far would, in 2009, be consolidated into final modalities as part of the Single Undertaking. The year 2009 would be very difficult for many economies. The challenges posed by the financial crisis and the slowdown in growth and productive output would continue, with particularly acute difficulties for SVEs. The WTO had to play its part in stabilizing the global economy by way of continuous improvements in the rules-based trading system. A successful, development-oriented conclusion to the Doha Development Round would be an important contribution to such an endeavour. The SVEs supported the procedure the Director-General had outlined with respect to the process to be followed in 2009, in particular the continuation of the work in all of the negotiating areas under the Single Undertaking. As always, the SVEs stood ready to play their part in achieving this end.

38. The General Council took note of the report by the Chairman of the Dedicated Session of the Committee on Trade and Development and of the statement.

#### **4. Work Programme on Special and Differential Treatment - Report by the Chairman of the Special Session of the Committee on Trade and Development (TN/CTD/23)**

39. The Chairman recalled that Ministers at Hong Kong had instructed the Committee on Trade and Development in Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and to report to the General Council – with clear recommendations for a decision – by December 2006. Regarding the Category II proposals that had been referred to other WTO bodies and negotiating groups, Ministers had also instructed that these bodies expeditiously complete the consideration of these proposals and report periodically to the General Council, with the objective of ensuring that clear recommendations for a decision were made not later than December 2006. Ministers had further instructed the Special Session to coordinate its efforts with these bodies, so as to ensure that this work was completed on time. Furthermore, the Special Session had been mandated to resume work on all other outstanding issues – including on the cross-cutting issues, the monitoring mechanism, and the incorporation of S&D treatment into the architecture of WTO rules – and to report on a regular basis to the General Council. In December 2006, it had been

agreed that Members would continue their consideration of the outstanding Agreement-specific proposals in the Special Session of the CTD as well as in the other WTO bodies to which the Category II proposals had been referred. He invited Mr Sophastienphong (Thailand), Chairman of the CTD in Special Session, to report on the progress of work in this area, including the status of work on the "Category II" proposals, i.e. those referred to other WTO bodies.

40. In the absence of the Chairman of the Dedicated Session of the CTD, and on his request and behalf, Mr. Ismail (South Africa), the previous Chair of the CTD, said that the Chair's report in document TN/CTD/23 was factual, highlighting the work the Special Session had carried out in 2008 as well as indicating how he proposed the Special Session continue its work in 2009. In 2008 the work of the Special Session had continued in line with the mandate contained in the Hong Kong Declaration and had focused on the Agreement-specific proposals and the Monitoring Mechanism. On the Agreement-specific proposals, text-based discussions had focused on six of the 16 remaining Agreement-specific proposals on the basis of the language contained in Annex I of his report. While Members had been able to make some progress in terms of clarifying certain elements of the various proposals, they were yet to make any textual amendments to the language currently on the table. More recently, the discussions had been focusing on those proposals where the divergences appeared to be more significant, such as those relating to the SPS Agreement. This was not to say that agreement had been reached on any of the other proposals, but the Chair hoped Members would concentrate their efforts on closing the gaps on those issues that were presently more problematic. With respect to the remaining ten Agreement-specific proposals, these would continue to be set aside until such time that Members put forward new language or ideas. On the Category II proposals, the Chairs of the different bodies to which these proposals had been referred had continued to provide updates on the status of the work. As had been reported in the past, there had not been much progress on these proposals. The Chair had also been informed that issues raised in some of the proposals formed an integral part of the ongoing negotiations or work in a number of these bodies. In this respect, the Secretariat was in the process of identifying those proposals that could be deemed to have been addressed as part of the ongoing negotiations. This would help the Special Session focus and ensure that progress was expedited on the outstanding proposals.

41. With respect to the Monitoring Mechanism, discussions had been continuing on the basis of three non-papers. The first was the Chair's own non-paper contained in Annex II of the report in TN/CTD/23; the second was a submission tabled by a group of developing countries in February 2008; and the third was an informal non-paper recently tabled by another developing-country Member. While there were still a number of elements in the non-papers that required further clarification, the discussions, as well as Members suggestions, were enabling Members to provide more substance to the elements of the Monitoring Mechanism. In terms of future work, this would continue in line with the mandate contained in the Hong Kong Declaration. The idea was to conclude this work as soon as possible and certainly no later than the conclusion of the Doha Round. On the Agreement-specific proposals, text-based discussions would continue on the basis of the language currently on the table with the hope of building on the progress already made and coming up with recommendations for a decision as soon as possible. Those proposals that had been set aside would be addressed only if the proponents tabled new language or ideas. On the Category II proposals, the Chair would continue to coordinate efforts with the relevant Chairs to ensure that progress was expedited on these proposals, particularly those that had not been considered as part of the ongoing negotiations. The Special Session would also continue to fine-tune the elements of the Monitoring Mechanism with the intention of reaching an agreement on its scope, structure and terms of reference. This work would continue on the basis of the Chair's non-paper, as well as the two submissions tabled by Members.

42. The General Council took note of the report by the Chairman of the CTD in Special Session.

**5. Follow-up to the 1 August 2004 General Council Decision and the Hong Kong Ministerial Declaration on the Doha Work Programme – Statement by the Director-General on the Development Assistance Aspects of Cotton**

43. The Chairman recalled that the mandates for the treatment of this item were contained in paragraph 1(b) of the Decision adopted by the General Council on 1 August 2004, paragraph 5 of Annex A of that Decision, and paragraph 12 of the Hong Kong Declaration. At Hong Kong, Ministers had reaffirmed the 2004 mandate and had welcomed the efforts of the Director-General in the implementation of that mandate, pursuant to the 1 August 2004 Decision. They had welcomed in particular the process of the Consultative Framework Mechanism initiated by the Director-General, and had taken note of the Director-General's Second Periodic Report and the assessment of the positive evolution of development assistance geared to the cotton sector. In inviting the Director-General to furnish them with a Third Periodic Report at their next Session, Ministers had asked the Director-General to "keep the Sub-Committee on Cotton fully informed of progress", and to provide "updates, at appropriate intervals ... to the General Council". In carrying out this mandate, the Director-General had last reported on this matter to the Council in December 2007. Against this background, he invited the Director-General to update the General Council on the work being undertaken in regard to these matters.

44. The Director-General said he believed that important progress had been made in the area of cotton development assistance, as reflected in the fifth edition of the Evolving Table that had recently been circulated. Of course, cotton development assistance was only one aspect of the cotton dossier as a whole; the other being the trade-related aspects that were part of the negotiations under the DDA. There was no doubt that progress had to continue to be made on both fronts. As he had repeatedly stated, cotton remained a litmus test of the development dimension of the Doha Round. The fifth edition of the Evolving Table showed improvements in the amount of development assistance committed to the cotton sector, as well as in the actual disbursements. Cotton development assistance had now reached US\$550 million. Similarly, development assistance for cotton within the broader framework of infrastructure-related projects had now reached US\$2 billion. Both areas had witnessed an important increase in actual disbursements. There was a need for continued engagement on the development assistance aspects of cotton by all players, and notably by the donor community. In addition, there was a need for continued domestic cotton-sector reform to give credibility to the overall exercise being conducted. He wished to commend Brazil, China and India for continuing to drive the dialogue on South-South cooperation in the cotton sector.

45. The representative of Burkina Faso thanked the Director-General for his report on the development assistance aspects of cotton and for all his efforts to convene meetings on this matter and to encourage the participation of development partners. As a beneficiary country, Burkina Faso also wished to thank the development partners for their contributions to the development aspects of cotton. As all knew, African cotton industries were currently experiencing enormous difficulties and, at the present stage, such involvement was of course welcome. His delegation also wished to thank Brazil, China and India, which were continuing to intensify their South-South cooperation in the cotton sector and to step up their technical assistance and capacity-building efforts in countries like his. Burkina Faso reiterated its support for all that was being done in this area.

46. The General Council took note of the statements.

**6. Non-recognition of rights under Article XXIV:6 and Article XXVIII of GATT 1994 – Communications from Honduras and Guatemala (WT/GC/85, WT/GC/90 and Corr.1, WT/GC/100, WT/Min(05)/9) – Statement by the Chairman**

47. The Chairman recalled that this matter had first been raised by the delegations of Honduras and Guatemala at the General Council meeting in December 2004. It had subsequently been

considered by the Council at each of its regular meetings since then, without resolution. In the light of the views expressed at these meetings, and the requests for consultations made by Honduras and Guatemala and other delegations, his predecessors as Chair and he had held consultations regularly in order to assist in finding a way forward. He recalled that the matter referred to the General Council concerned the non-recognition of claims of substantial interest submitted by Honduras and Guatemala in the very specific context of the EC's modification of its concessions as a result of enlargement from 15 to 25 members, and the modification of its concession on bananas in its move to a tariff-only regime as from 1 January 2006. This matter had been brought to the General Council in keeping with Paragraph 4 of the 1980 Procedures for Negotiations under Article XXVIII, under which, when a Member renegotiating its Schedule did not recognize a claim of principal or substantial supplying interest, the Member making the claim "may refer the matter to the Council."

48. He informed delegations that on 17 December he had held further consultations to allow delegations to be updated on the further contacts that might have taken place among the parties directly concerned since October with regard to the broader issues involved, and of any further developments regarding the negotiated settlement on this issue that the parties had been pursuing over the past year. He had invited to the consultations all the delegations who had spoken on this issue at previous meetings of the Council, and had made clear that the consultations were without prejudice to any Member's rights under the WTO. He had to report that regrettably the issue remained unresolved. This situation clearly continued to be quite unsatisfactory from the point of view of the delegations which had brought this matter to the Council's attention. He had nevertheless been encouraged to hear that the EC intended to organize further discussions with the parties concerned the previous evening, and looked forward to hearing of the progress of these discussions. He stood ready to offer his good offices in this process as, he was sure, would his successor. That being said, he wished to emphasize that consultations at the level of the General Council could not be allowed to become just a routine matter without any discernible progress over such a long period of time. He therefore strongly exhorted the delegations primarily concerned to reconsider positions and reinvigorate their discussions with a view to finalizing this matter at the earliest opportunity.

49. The representative of Honduras said this matter was already in its fourth year in the General Council, and the parties had still not been able to resolve it. At this last General Council meeting for 2008, Honduras wished to summarize its concerns regarding the EC's refusal to recognize Honduras' interests as a substantial supplier. He wished to place on record that the EC was in breach of Articles XXIV:6 and XXVIII of the GATT 1994, for the following reasons. Substantial interest was to be calculated on the basis of trade levels that would have existed in a market free from discriminatory quantitative restrictions, and therefore an illegal time-frame could not form the basis of a rules-consistent calculation. His country had the right to use the years 1989-1991 in order to calculate its share of the EC market. Moreover, according to considerations stemming from two dispute settlement panels, Honduras had been one of the EC's main banana suppliers during that period. The Understanding on the Interpretation of Article XXVIII specified that rights deriving from market share should be determined in a flexible manner in the case of small and medium-sized developing countries that had been adversely affected by the withdrawal of a tariff concession. In addition to denying recognition of Honduras' interests, the EC had refused to honour the agreement on bananas that had been reached on 27 July, and under which eight annual cuts to the EC's banana tariff had been foreseen, starting on 1 January 2009. His delegation failed to understand why the EC had decided to turn its back on an agreement that entailed obvious concessions on the part of Latin America. Since 1 January 2006, the EC had been under the obligation to establish a significantly lower, non-discriminatory tariff, as had been determined in Ecuador's Article 21.5 case. In addition, the obligation to make adjustments further to the EC's enlargements dated back much farther than 1 January 2006. Equally important was the fact that in almost all new EC member States, bananas were subject to either zero or very low tariffs, and none of those States were granting tariff preferences to the ACP countries. It was unthinkable for Latin America to accept that the EC refused to comply with the July agreement, postpone its entry into effect or envisage modifications that

entailed a major sacrifice. On the contrary, as of 1 January 2009, when the agreement had been scheduled to enter into force, these countries would have ample justification for putting conditions on the table aimed at securing compensation for the millions of dollars lost as a result of the delay. If the EC implemented the July agreement according to the agreed terms and on the appointed date, the banana issue would be comprehensively and definitively resolved. In so doing, the EC would also be settling Honduras' claim for recognition as a substantial supplier of bananas to the EC market. His delegation trusted that under the Chair's leadership, the EC would recognize the rights claimed by Honduras in respect of bananas, as well as the compensation the EC owed it as a result of its enlargement to 25 members in regard to products for which Honduras' rights as a principal and substantial supplier had already been recognized.

50. The representative of Guatemala thanked the Chairman for his efforts throughout the year to move this issue forward. However, as one could see, no progress was being made, and the previous day's meeting had yielded absolutely nothing, contrary to what might have been hoped. Guatemala agreed entirely with the statement by Honduras. Nevertheless, it felt compelled to repeat what it had been saying in the General Council for four years now, which was that it had a twofold interest in this matter – from a trade standpoint and from a systemic standpoint. Guatemala had also repeatedly stated that its trade interest was not limited to bananas alone. However, a comprehensive solution to the banana issue was key to facilitating the settlement of the matter before the Council. The ability to resolve the problem lay in the EC's hands. As the entire membership was aware, the leading MFN banana-producing and exporting countries and the EC had reached an agreement on trade in bananas on 27 July. The chief characteristic of this agreement had been that it was not locked into modalities or Doha Round negotiations. In other words, it had been a stand-alone, independent agreement. This was specified in the actual text of the agreement. One of the major consequences of this agreement, the outcome of which primarily benefited the EC, was that its entry into force and strict implementation would bring to a final close all ongoing disputes and legal proceedings against the EC in respect of the banana issue, including the current claims under Articles XXIV and XXVIII. This showed beyond a doubt the goodwill with which the MFN producers had participated in the discussions, driven as they had been by the desire to reach a satisfactory solution for all parties and ultimately put an end to disputes that had been running for years. The agreement had been the result of successful negotiations. In other words, whatever success might be achieved in multilateral negotiations depended, in the long term, on the moral integrity of those engaged in them, which was to say that all Members were responsible for the consequences of the decisions they took. Members' capacity to conclude agreements resided first in the trust they had in the trading partner with whom they negotiated and, second, in their confidence in the multilateral trading system and its rules that applied equally to all. His delegation therefore repeated that the ability to finally resolve the question of non-recognition of Guatemala's rights under Articles XXIV:6 and XXVIII of the GATT 1994 regarding the banana issue lay in the EC's hands. All the EC needed to do was implement the July agreement on trade in bananas within the time-frames and under the terms set forth in that agreement. He recalled that his delegation's mandate was to monitor Guatemala's trade and systemic interests. Guatemala would therefore continue to exercise its rights in the General Council and any other relevant body in the organization until the EC had actually implemented the July agreement.

51. The representative of Panama associated his delegation with the statements by Honduras and Guatemala. Panama, like Honduras and Guatemala, was a major supplier of bananas to the European Communities and obviously had fundamental interests in this matter. The Latin American banana-supplying countries relied on banana exports to the EC to support their developing economies and to sustain the many rural communities whose livelihoods depended on this product. The tariff of €176/mt applied by the EC to MFN exports of bananas, and the zero-tariff treatment applied to the ACP countries, were undermining the Latin American countries' efforts to combat poverty, especially at a time such as the present when their economies were going through a difficult stage. On 27 July, the EC and a number of Latin American countries, including Panama, had concluded in Geneva the agreement on trade in bananas, under which the EC had agreed to reduce progressively the tariff in its

WTO Schedule from €148/mt on 1 January 2009 to €14/mt on 1 January 2016, with a view to putting an end to all the proceedings and complaints that remained pending before the WTO. Although the Banana Agreement was to have been implemented immediately, irrespective of the success or failure of the Doha Round, the EC had chosen not to honour it when the Doha negotiations on Agriculture and NAMA modalities had been suspended in July. Moreover, on 26 November, the Appellate Body had confirmed that the tariff of €176/mt applied by the EC since January 2006, was inconsistent with its WTO obligations and had to be reduced. The time had come for the EC to bring its unlawful banana import regime into line with WTO rules once and for all. The July agreement on bananas was the most appropriate way to end this long-standing dispute amicably. His Government still accepted the bound reductions and other legal conditions established in that agreement, but would not accept any amendments that further reduced these reductions or modified the legal obligations. It therefore called upon the EC not to delay in honouring its commitment to end this dispute, under the terms and conditions of the July Agreement on bananas, in accordance with its WTO compliance obligations and its pledge within the G-20 framework to reject protectionism.

52. The representative of Ecuador said this matter was a systemic one that was critical for the recognition of the rights of small exporters under Articles XXIV:6 and XXVIII of the GATT 1994, and needed to be resolved. His delegation reiterated that the whole banana problem and the question of possible flexibilities for countries in respect of tropical products and preference erosion under the Round could be settled if the EC signed the agreement on bananas of 27 July, which would, moreover, put an end to the longest running legal dispute in the history of the WTO. Ecuador was extremely frustrated at the EC's failure to follow up on a commitment negotiated in good faith by Ecuador in a lengthy process conducted by the Director-General. The July agreement on bananas was completely independent of any agreement on modalities in the Doha Round. A reading of the text, and of paragraphs 4 and 5 in particular, showed that Ecuador and other Latin American countries were right in that this was unquestionably true. Yet again – most recently the previous evening in a meeting with the main MFN suppliers – the EC had reiterated its refusal to implement the agreement for internal reasons that were entirely without foundation, since the object of this agreement was compliance with the recommendations of the Dispute Settlement Body and payment of compensation pursuant to Article XXVIII of the GATT 1994 in respect of the successive EU expansions of 2004 and 2007. As had already been stated by others, the EC held the key to the settlement of this long-standing dispute, as it did to obviating the need for Ecuador to use cross-retaliatory trade measures or bring new claims against the EPAs between the EC and the ACP countries and the subsidies granted to European producers. His delegation asked both the General Council Chair and the Director-General to urge the European Communities to sign the July agreement and put an end to a chapter that had become a constant irritant in the history of the GATT and WTO.

53. The representative of Costa Rica said that since 1992 the EC's banana régime had been examined in many different bodies, and its inconsistency with the rules of the multilateral trading system had always been confirmed. This long-standing dispute comprised, *inter alia*, seven panel proceedings, including four compliance panels, five arbitration procedures – including two under the Annex to the Doha Waiver on the ACP-EC Partnership Agreement – three appeal proceedings, and two requests for the good offices of the Director-General, not to mention the proceedings under Articles XXVIII and XXIV of the GATT 1994 in connection with the EC's expansions from 15 to 25 members, and subsequently to 27 members. These proceedings also encompassed the claims submitted by Honduras and Guatemala under the present agenda item. On 27 July, the Latin American MFN banana-exporting countries had reached an agreement with the EC, known as the Geneva agreement on trade in bananas. In a surprising turn of events, the EC had linked compliance with that agreement, which put an end to years of dispute, to an agreement on negotiating modalities under the Doha Round. This unilateral position of the EC had no support in the agreement reached, which specified its independence from the Round, both in its negotiating history and its purpose, which was to seek to settle all disputes and claims brought in the WTO in relation to the banana issue. Costa Rica reiterated its call to the EC to respect the rights and obligations that existed between

Members, regardless of their size, and urged it to let good sense, good faith and the letter and spirit of what had been agreed prevail in this case, and therefore to comply with the agreement of 27 July.

54. The representative of Mexico said he would confine his statement to reiterating what he had said at the last General Council meeting, but more explicitly. To start, his delegation wished to thank the Chairman for all his efforts on this issue. Mexico had various interests in this matter, starting with a systemic interest in the recognition of negotiating rights, a systemic interest in compliance with the results of the dispute settlement system, and an export interest as well. Mexico had participated in the consultations the previous day, and simply wished to reiterate its support for what Guatemala and Honduras had stated under this agenda item. It urged the Community to settle the problem of the non-recognition of rights – above all, the right to market access – in a way that was acceptable to all of the countries involved.

55. The representative of Paraguay thanked the Chairman for his efforts to resolve this issue, which had been on the Council's agenda for quite some time. His country did not have a direct interest in this matter, but was always interested in issues that could be of interest to small exporters, since what was happening to Honduras and Guatemala now could very well happen to Paraguay in the future. WTO rules generally tended to be tailored to the large economies, so that in the dispute settlement system, rulings and decisions generally favoured the large economies. Only when Members were faced with cases such as this one, was it possible to start thinking about matters of concern to the small countries. Consequently, it was necessary to address the systemic issues raised by the involvement of small exporters. In addition, the large economies should implement their decisions fairly, particularly when it was their actions that had caused the difficulties at issue.

56. The representative of Argentina said that as some delegations had noted, this issue had been under consideration in the Council for several years without resolution, and it was a matter that affected small and vulnerable economies and banana-producing and exporting countries. As had rightly been emphasized, it was a question that had been the subject of several rulings by the Dispute Settlement Body as well as several arbitration decisions, and Argentina considered that at the present stage this matter had a systemic impact not only on the organization, but also on the Round. His delegation therefore encouraged all interested parties to adopt the measures necessary to facilitate the settlement of this matter, and in so doing help reach a solution that would contribute to the conclusion of the Doha Round.

57. The representative of the European Communities said that on the specific issue of negotiating rights raised by Honduras and Guatemala, he wished to reiterate that the EC had based itself on WTO law and well-established practice when recognizing and rejecting claims for recognition of such rights. The EC would have no interest in doing otherwise, because it attached enormous importance to the respect for and correct application of WTO agreements. It had been precisely for this reason that during the Article XXIV:6 exercise following the EC's enlargement in 2004, the EC had recognized negotiating rights for those claims that did fulfil the criteria, including with regard to bananas. The same approach had been followed in the more recent Article XXIV:6 discussions following EC enlargement to include Romania and Bulgaria. In this context, the EC had recognized the negotiating rights of Ecuador and Costa Rica for bananas. No other Member had claimed any rights with respect to bananas. That being said, the EC recognized that there might be a systemic issue in this case and had indicated that it was ready to look into this systemic issue and to discuss solutions and reviews of these problems, either in the General Council or in the Council for Trade in Goods, but would encourage Guatemala and others to present concrete ideas so they could be discussed on a solid basis.

58. On the wider issue of bananas, his delegation had listened carefully to the statements by a number of MFN suppliers and fully understood their concerns and their sense of frustration that this long-standing issue had not yet been definitively settled. The EC and the exporting countries had been working hard until very recently with the aim of developing a comprehensive agreement on

bananas that could be inserted into the DDA modalities on Agriculture, which would also have addressed the issue of negotiating rights in the particular case of bananas. Prior to the July Ministerial, the EC would have been ready to agree to a free-standing agreement which had been put forward by the Director-General in his good offices exercise. Unfortunately, apart from the EC, only one Latin American banana supplier had been ready to accept that agreement. At that time, the Latin American MFN suppliers had wished to negotiate further in the framework of the Ministerial meeting – they had wished to squeeze the lemon further and had successfully done so, as the deal had been slightly improved. However, this had been in the context of the Ministerial meeting, and while the parties had come very close to an agreement, the EC had made it very clear – which some were now contesting – that the deal then being discussed was in the context of Agriculture modalities. It was quite obvious that there had been no initialled agreement or deal, and that therefore there was no formal approved agreement. There was the outline of a deal, but it was not a formally initialled agreement. This being so, as no modalities had been agreed in July, it had not been possible to reach an agreement on bananas. His delegation had reiterated in the run-up to that week's possible Ministerial meeting, that if modalities were agreed, the EC would again be ready to put the deal of 27 July on the table and to put it into the modalities context and approve it. However, and the EC regretted this very much, Members had not achieved modalities, and therefore the parties were again in a situation where they had to find other possibilities of settling this long-standing issue. It was exactly for this reason that his delegation had asked the MFN suppliers the previous night for a meeting, with a view to finding a solution to the banana issue. He wished to make it very clear in this context that the EC was willing to respect its obligations resulting from the recent Appellate Body outcome which required it to rebind its tariff on bananas. However, it would prefer not to do this unilaterally, but in the framework of an overall agreement which *inter alia* would also resolve the issue of negotiating rights under Articles XXIV:6 and XXVIII, which was the subject of the present agenda item.

59. The representative of Honduras said that as a small country, Honduras was extremely serious in respect of the justifications it had presented to the Council in documents WT/GC/90 and WT/MIN(05)/9. These proceedings came within the scope of the 1980 Procedures for Negotiations under Article XXVIII, and until such time as this matter was resolved, this item would remain on the Council's agenda. On another matter, his delegation had noted the European Communities' words in regard to the search for a solution to the specific problem of bananas. In this connection, his delegation was somewhat confused, because in July the EC had been speaking of a stand-alone agreement, only to tell Honduras later that this agreement was contingent on modalities. This had been the case until a week earlier, and now the EC was speaking of another option. His delegation did know how the EC intended to act on its stated interest to resolve this problem. Members should give this issue serious attention in the face of a situation that deserved to be addressed as a matter of priority.

60. The representative of Guatemala said he wished to emphasize that the July agreement on trade in bananas was not, and never had been, linked to the outcomes of the negotiations on modalities or those of the Doha Round. The agreement itself was sufficiently clear. This was confirmed by its negotiating history. There was no room for interpretation. Whatever apparent confusion or possible difference of interpretation that might have arisen was mystification on the part of the EC in order to mask its intention not to fulfil its obligations and honour its commitments. By denying the existence of a stand-alone agreement on bananas with the MFN producers, the EC not only belittled the good faith and flexibility of those producers, but also disregarded its commitments *vis-à-vis* the entire WTO membership. If the EC decided not to fulfil the commitments it had undertaken in the organization and *vis-à-vis* the membership, it also had the obligation to assume the consequences of its decisions. Therefore, and again for the record, Guatemala did not accept any of the EC's arguments concerning the linkage it attempted to make between the agreement on bananas and the modalities. These arguments were entirely groundless. In particular, his delegation wished to clarify a point recently made by the EC supposedly in support of its flawed interpretation of the link between the agreement on bananas and the modalities. All had heard that the link between the agreement and the modalities



was confirmed by the fact that the parties had not accepted the agreement reached in July regarding most tropical products and products subject to preference erosion. This could not, on any account, be interpreted as the agreement on bananas being locked into the modalities. The agreement concerning tropical products and products subject to preference erosion was part of the parties' commitments deriving from the agreement on bananas itself. Therefore, as long as the EC did not honour its commitment in respect of that agreement, he asked why Guatemala should fulfil its part of the undertaking. His delegation had also listened closely and with interest to the Director-General's suggestion to consider the bananas matter as an early harvest. While Guatemala was agreeable and open to the idea of it being regarded as an early harvest, this did not mean it agreed that there existed, or had existed, a link between the agreement on bananas and the modalities. On the contrary, it should be recalled that the 27 July agreement on bananas represented a delicate balance of interests among all the negotiating parties and that it was not confined to the Doha negotiations. It involved other rights as well, including those under Articles XXIV:6 and XXVIII of the GATT. Settlement of the banana issue therefore depended on the EC and the EC alone, and in order to achieve this, the EC had to implement the agreement on trade in bananas within the time-frames and under the terms laid down therein, which had been agreed by all the negotiating parties, including the EC. The EC's failure to implement the agreement on bananas stemmed from problems within the EC itself and not from any misunderstanding on Guatemala's part. Although it was hard to see any viable solution other than the delicate equilibrium arrived at in the July agreement, Guatemala stood ready to cooperate with the EC in exploring and finding solutions with a view to resolving the EC's internal political problems with regard to bananas.

61. The representative of the Dominican Republic said his delegation had noted the statement by the European Communities that in seeking a resolution to this dispute it did not wish to unilaterally bind its tariff on bananas in the WTO, and wished to conduct negotiations with all of the interested parties. He reiterated that in any negotiations that took place on this subject, the interests of the ACP banana-exporting countries had to be taken into account.

62. The General Council took note of the statements and agreed to revert to this matter at its next meeting.

#### **7. Transparency for Preferential Trade Arrangements – Statement by the Chairman of the Committee on Trade and Development**

63. The Chairman recalled that in December 2006, the Council had adopted a Decision with regard to Transparency for Preferential Trade Arrangements, under which the Committee on Trade and Development had been asked to consider transparency for preferential arrangements under paragraph 2 of the Enabling Clause – other than RTAs – and to report back within six months for appropriate action by the General Council (WT/L/672). The Decision had been adopted without prejudice to the results of the deliberations the CTD would be called upon to undertake. Subsequently, in July and December 2007, and again in July 2008, on the basis of reports from the Chairman of the CTD, the General Council had agreed to extend the deadline for the CTD to consider this matter and to report back for appropriate action by successive six-month periods, i.e. until December 2008.

64. In the absence of the Chairman of the Dedicated Session of the CTD, and on his request and behalf, Mr. Ismail (South Africa), the previous Chair of the CTD, reported that immediately following the summer break, the Chair had continued with his small-group informal consultations on this matter. This had allowed the proponents – Brazil, China, India and the United States – to further refine their draft proposal on a Transparency Mechanism for Preferential Trade Arrangements, and eventually circulate it as document JOB(08)/103 in October. The draft proposal had been introduced by the proponents at the October 2008 meeting of the CTD. The Chair had hoped to be in a position to call an informal open-ended CTD meeting soon after to consider the draft proposal in some detail and subsequently to have it considered by the CTD its next meeting. To that end, after the October CTD

meeting the Chair had held further small-group informal consultations to try to iron out as many outstanding issues as possible. The delegations present at the most recent small-group consultations had been the four proponents plus Barbados, Canada, the EC, El Salvador, Chile, Japan, New Zealand and St. Lucia. The Chair had held a number of rounds of informal consultations in the small-group format, which had been useful in moving the process forward. That being said, there remained some issues to be settled, including some issues relating to the procedures that would be used to consider a preferential trade arrangement in the context of the proposed Transparency Mechanism. While the Chair was optimistic that Members would be able to sort out these and other outstanding issues, it was clear that more time would be required before this could be achieved. As the Chair had informed the Committee at its December meeting, he intended to continue working with Members on this matter. In particular, he would continue his informal consultations early in 2009, with the intention of having the proponents' draft proposal considered at an informal open-ended CTD meeting as soon as possible. The matter would also be taken up again by the CTD at its next formal meeting scheduled for March 2009. On this basis, the CTD had agreed at its December meeting that a request for more time to deal with this matter should be made to the General Council. Therefore, he wished to request that the General Council allow the CTD until July 2009 to consider this matter and report back for appropriate action.

65. The Council took note of the report by the Chairman of the CTD, and agreed that the deadline for the CTD to consider this matter and to report back for appropriate action be extended to July 2009.

## **8. WTO Pension Plan**

(a) Annual Report of the Management Board for 2007 (WT/L/736)

66. The Chairman drew attention to the annual report of the Management Board for 2007 contained in document WT/L/736. The annual report of the Management Board had been submitted to the General Council in accordance with Article 5(d) of the Regulations of the WTO Pension Plan. This was the eighth report of the Management Board since the establishment of the Pension Plan on 1 January 1999.

67. Mr Niggli (Switzerland), Chairman of the Management Board of the Pension Plan, said that 2007 had been the calm before the storm as far as the Pension Plan was concerned. A fifth consecutive year of positive investment returns had been recorded, with the strategy yielding a nominal return of over 4 per cent. The real rate of return achieved by the investment strategy since the launching of the Plan in 1999 still fell short of the target of 3.5 per cent. The Management Board would undertake a thorough review of the investment strategy in 2009, since it had now been in place for four years. Apart from continuing to monitor the performance of the Plan's investments, the Management Board had also pursued its consideration of the funding position of the Plan, on the basis of specific recommendations by an expert working group to modify certain assumptions used in the long-term actuarial valuation of the Plan. He would revert to this matter in his subsequent statement concerning the actuarial position of the Plan. The Management Board had also turned its attention in 2007 to the possible impact on the Plan of management decisions taken in the context of a restructuring exercise. The Board was concerned lest recourse to early retirement arrangements as a means of reorganizing the staffing of the Secretariat adversely affect the actuarial balance of the Plan. The Board had been pleased to note that the recent restructuring exercise undertaken by the Director-General had included a provision to protect the interests of the Plan in this regard. He recalled that the Plan was now in its tenth year of existence. During that period, the number of active participants had increased from 509 to 710. The number of beneficiaries stood at 129 at the end of 2007. The value of the assets under management had increased from Sw F 145.5 million in January 1999 to Sw F 365.9 million in December 2007.

68. The General Council took note of the statement and of the Annual Report of the Management Board for 2007 in document WT/L/736.

(b) Actuarial position of the Pension Plan – Statement by the Chairman of the Management Board

69. The Chairman invited Mr. Niggli (Switzerland), Chairman of the Management Board, to introduce this matter.

70. Mr Niggli (Switzerland), Chairman of the Management Board of the Pension Plan, said that as indicated in the annual report for 2007, the actuarial position of the Pension Plan had been the subject of a regular triennial review in December 2007. Prior to the conduct of the actuarial valuation, the Management Board had set up an expert working group to review the actuarial assumptions underpinning the valuation. On the basis of the report submitted by the working group, the Management Board had decided to modify two key assumptions concerning the allowance for future mortality improvements and future general salary inflation. Principally as a result of those two changes, the actuarial valuation at 31 December 2007 had showed that the contribution rate required to keep the Plan in balance in the long term had increased from 23.1 per cent to 27.0 per cent of pensionable remuneration. The current rate of contribution was 22.5 per cent. The Plan was thus currently in a position of actuarial deficit. As required under Article 9 of the Plan Regulations, the Management Board had considered at length the options for corrective action to redress the actuarial deficit. As provided for under the Plan Regulations, the Management Board had examined possible adjustments both to contributions and to benefits, with a view to identifying a solution that would both secure consensus support in the Board and promptly and effectively address the emerging deficit. The Management Board had finally agreed to recommend a balanced approach to the correction of the deficit, combining an adjustment to benefits with an adjustment to contributions. On the one hand, the normal retirement age would be increased from 62 to 65. On the other hand, the overall contribution rate would be increased from 22.5 per cent to 24.3 per cent. With those two adjustments, the long-term actuarial balance of the Plan would be restored. As required under Article 9(c) of the Plan Regulations, the above recommendation had been submitted to the Committee on Budget, Finance and Administration in the course of its mid-term review of the 2008-2009 biennium budgets. The Committee had unfortunately not been in a position to endorse that recommendation in 2008 and would resume its consideration of the item early in 2009. The Management Board was extremely conscious of its fiduciary responsibility for the management and administration of the Plan, and more particularly for its actuarial balance. It was also anxious that the current actuarial deficit be redressed as soon as possible through the application of corrective measures which had the support of both sets of Plan stakeholders, Members and participants alike. With that goal in mind, the Management Board looked to the Budget Committee to take up this question as an urgent item of business in 2009.

71. The General Council took note of the statement.

## **9. Committee on Budget, Finance and Administration**

(a) Report of the Committee on its meeting of 9 October 2008 (WT/BFA/105)

72. The Chairman drew attention to the report of the Budget Committee on its meeting of 9 October in document WT/BFA/105.

73. Mr Stirø (Norway), Chairman of the Committee on Budget, Finance and Administration, said that the agenda of this meeting had included (i) various administrative up-dates and progress reports, (ii) the status of extra-budgetary activities, (iii) a progress report on the building projects of the WTO, (iv) the Director General's Budgetary and Financial Report for 2007 and the report of the External Auditor thereon, as well as the Report on Extra-Budgetary Funds for 2007 and Report of the External

Auditor thereon, (v) an oral report on Secretariat Version.3, and (vi) the presentation of the new Office of Internal Audit. On the issue of the Building Projects of the WTO, it had been reported that the architectural competition had been launched and posted on the WTO website. Furthermore, the renovation works were on schedule and by February, the south wing of the CWR building would be in full renovation mode. With respect to the revised cost estimates for the removal to CDM, it had been explained that the difference with respect to the May estimates amounting to Sw F 1.4 million was mainly due to the fact that no exact figures had been available at the time. The extra costs for IT, electricity, structural modifications and security could, however, be absorbed by the existing budget for 2008. With respect to the Director-General's Budgetary and Financial Report for 2007, the Committee had been informed that the year 2007 had ended with an accumulated surplus of Sw F 12 million. This amount was composed of a budgetary saving of Sw F 8 million, a decrease of provisions in arrears of Sw F 2.3 million, contributions from two new Members (Tonga and Viet Nam) of Sw F 0.5 million, and an excess of miscellaneous income over expenditure of Sw F 1.4 million. He drew attention to the recommendation of the Committee contained in Paragraph 23 of WT/BFA/105 with respect to the Director-General's Budgetary and Financial Report for 2007, on which Council action was required.

74. The General Council took note of the statement, approved the Budget Committee's specific recommendations in paragraph 23 of its report in document WT/BFA/105, and adopted the report.

(b) Report of the Committee on its meeting of 23 October 2008 (WT/BFA/106)

75. The Chairman drew attention to the report of the Budget Committee on its meeting of 23 October in document WT/BFA/106.

76. Mr Stirø (Norway), Chairman of the Committee on Budget, Finance and Administration, said the agenda of this meeting included a report by the Director-General on Secretariat Version.3. With respect to grading and classification, the Committee had been informed that it had been decided to keep the current structure, with the exception of the introduction of new entry-level grades for professionals (grade 6) and support staff (grades 1-2), as well as the opening-up of grade 11 for a very limited number of non-Directors. The Committee had also noted that the Director-General had decided to terminate the current financial bonus system as from 2009 and to replace it by a new system of rewards, both financial and non-financial, such as scholarship grants for high-performing staff. Regarding career development, training and mobility, it had been pointed out that the training budget had been significantly increased in the biennium 2008-2009. With regard to the streamlining of the Secretariat structure, the Committee had noted that the Trade Facilitation and Trade and Finance Division would be discontinued as of 1 January 2009 with its activities re-distributed to other divisions. The DDA Special Duties Division would also be discontinued, and the External Relations Division would join the Information and Media Relations Division. In addition, the Procurement Unit would be transformed into a new Procurement Section, and a temporary Renovation Project Logistics Office would be created. The Budget and Finance Sections would be consolidated, and the Technical Assistance Logistics Unit transferred to the Institute for Training and Technical Cooperation. The Committee had also been informed that several early retirement packages had been negotiated, generating long-term savings, as the respective posts would be filled at lower grades and two Director posts would not be re-filled. The report in WT/BFA/106 was a descriptive report and contained no recommendations.

77. The General Council took note of the statement and adopted the Budget Committee's report in document WT/BFA/106.

(c) Report of the Committee on its meetings of November and December 2008 (WT/BFA/107)

78. The Chairman drew attention to the report of the Budget Committee on its meetings of November and December 2008 in document WT/BFA/107.

79. Mr Stirø (Norway), Chairman of the Committee on Budget, Finance and Administration, said the agenda of these meetings had included (i) various administrative up-dates and progress reports, (ii) the status of extra-budgetary activities, (iii) the ITC Mid-term Review for the Biennium 2008-2009, (iv) the Revision of the 2009 Budget, (v) the utilization of the Surplus 2007, and (vi) a report on the actuarial situation of the WTO Pension Plan. On this last item, the Committee had noted the recommendations proposed by the Chairman of the WTO Pension Plan Management Board to restore the Plan's actuarial balance. Several Members had considered the time frame too short to take a decision on such an item and had asked to revert to this matter as a priority issue at the beginning of 2009. The Committee had agreed to resume its consideration of the matter in early 2009. The recommendations following from these meetings of the Committee could be found in paragraphs 13, 18, 21 and 22 of the report in document WT/BFA/107. Briefly, these recommendations related to the Mid-term Revision of the ITC with a budgetary charge of Sw F 16.9 million for the WTO, the revision of the 2009 budget of the WTO with an amount of Sw F 183.7 million for the WTO Secretariat and an amount of Sw F 5.5 million for the Appellate Body and its Secretariat, and the Utilization of the Surplus 2007, i.e. Sw F 4 million in application as income against the budget for 2009, thereby reducing Members' contributions and the remaining Sw F 8 million to establish a Members' transition operating fund. These recommendations were before the Council for action.

80. The General Council took note of the statement, approved the Budget Committee's specific recommendations contained in paragraphs 13, 18, 21 and 22 of its report, including the draft Resolution referred to in paragraph 18, adopted the draft Resolution on the Revised Expenditure of the WTO in 2009 and the Ways and Means to Meet Such Expenditure contained in paragraph 18 of the report, and adopted the Budget Committee's report in document WT/BFA/107 as a whole.

81. The General Council so agreed.

**10. Review under 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 Corr.1) – Report of the Council for TRIPS (IP/C/49 and Corr.1)**

82. The Chairman 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. Paragraph 8 of that Decision provided that the TRIPS Council shall review annually the functioning of the system set out in the Decision with a view to ensuring its effective operation, and shall annually report on its operation to the General Council. The Decision also provided that the review by the TRIPS Council shall be deemed to fulfil the review requirements of Article IX.4 of the WTO Agreement. The report by the TRIPS Council on its review under paragraph 8 of the General Council Decision was before Members in document IP/C/49 and Corr.1.

83. Mr Francis (Trinidad and Tobago), Chairman of the TRIPS Council, said that at its meeting of 28 October, the TRIPS Council had taken up the annual review pursuant to paragraph 8 of the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. The TRIPS Council's report in IP/C/49 and Corr.1 set out factual information regarding the implementation and use of the system established under the Decision. In addition, it provided an update on the status of notifications of acceptance of the Protocol Amending the TRIPS Agreement, as adopted by the General Council on 6 December 2005, which was open for acceptance by Members until 31 December 2009 or such later date as might be decided by the Ministerial Conference. The TRIPS Council's report also contained, in an annex, the record of the discussion that

had taken place during the TRIPS Council's review of the waiver decision under that agenda item. He drew attention to the fact that, when the TRIPS Council had reviewed the Decision in October, only eighteen notifications regarding the acceptance of the Amendment had been submitted. Since then, Brazil had notified its instrument of acceptance on 13 November 2008 (WT/Let/636). Given the importance of this matter and that the present time-frame for acceptance of the Protocol lasted until 31 December 2009, he called upon all Members to carry out promptly the necessary internal procedures so that they could deposit their instruments of acceptance as soon as possible.

84. The General Council took note of the statement and of the report of the TRIPS Council in IP/C/49 and Corr.1.

## **11. Waivers under Article IX of the WTO Agreement**

85. The Chairman noted that the draft waiver decisions for the matters listed in sub-items 11(a) and (b) below had been taken up for consideration by the Council for Trade in Goods at its meeting on 18 November, and were matters on which the Chair of the Goods Council had to report to the General Council. He would therefore invite the Goods Council Chair to report on that Council's consideration of these matters in a single intervention, and the General Council would then take up each draft decision for action separately.

86. Ms Tan (Singapore), Chair of the Council for Trade in Goods, said that with respect to sub-item 11(a), the Goods Council had approved the draft waiver decision in connection with the introduction of HS2002 changes into WTO schedules of tariff concessions (G/C/W/601/Rev.1), and had recommended that the draft decision be forwarded to the General Council for adoption. With respect to sub-item 11(b), the Goods Council had also approved the draft decision in connection with the introduction of HS2007 changes into WTO schedules of tariff concessions (G/C/W/602), and had recommended that the draft decision also be forwarded to the General Council for adoption. Since the Goods Council had approved this draft decision, she had been informed that two additional Members had requested to be included in the Annex to the decision listing the Members covered by the waiver decision, and therefore suggested that the General Council consider for adoption the draft decision in G/C/W/602 with the addition of the Dominican Republic and Israel to the Annex.

87. The General Council took note of the statements.

(b) Introduction of Harmonized System 2002 changes into WTO schedules of tariff concessions – Draft decision (G/C/W/601/Rev.1)

88. The Chairman drew attention to the draft decision in G/C/W/601/Rev.1 which provided for a waiver from the application of Article II of GATT 1994 until 31 December 2009. He proposed that, in the light of the report made above by the Chair of the Goods Council, and in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), the General Council adopt the draft decision in G/C/W/601/Rev.1.

89. The General Council so agreed.<sup>3</sup>

(c) Introduction of Harmonized System 2007 changes into WTO schedules of tariff concessions – Draft decision (G/C/W/602)

90. The Chairman drew attention to the draft decision in document G/C/W/602 which provided for a waiver from the application of Article II of GATT 1994 until 31 December 2009. He proposed that, in the light of the report made above by the Chair of the Goods Council, and in accordance with

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<sup>3</sup> The Decision was subsequently circulated as WT/L/744.

the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), the General Council adopt the draft decision in G/C/W/602 with the addition of the Dominican Republic and Israel to the Annex.

91. The General Council so agreed.<sup>4</sup>

(d) Review of waivers pursuant to Article IX:4 of the WTO Agreement

(i) *Kimberley Process Certification Scheme for rough diamonds, granted on 15 December 2006 until 31 December 2012 (WT/L/676)*

(ii) *Canada – CARIBCAN, granted on 15 December 2006, from 1 January 2007 until 31 December 2011 (WT/L/677, WT/L/741)*

(iii) *Cuba – Article XV:6 of GATT 1994, granted on 15 December 2006 until 31 December 2011 (WT/L/678, WT/L/742)*

92. The Chairman recalled that in accordance with paragraph 4 of Article IX of the WTO Agreement, "any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates." There were three waivers before the General Council for review. The waivers in sub-items 11(d)(ii) and (iii) provided for an annual report to be submitted by the Members concerned regarding the operation or implementation of those waivers with a view to facilitating their annual review by the General Council under paragraph 4 of Article IX. The reports from these Members had been circulated in documents WT/L/741 and 742.

93. The General Council took note of the reports in documents WT/L/741 and 742.

## **12. Appointment of officers to WTO bodies – Announcement by the Chairman pursuant to paragraph 7.1(a) of the Guidelines (WT/L/510)**

94. The Chairman recalled that the Guidelines for the Appointment of Officers to WTO bodies (WT/L/510) provided that the outgoing Chair of the General Council would conduct consultations on the appointment of chairpersons to the WTO bodies outlined in Groups 1, 2, 4 and 5 of the Annex to the Guidelines. The Guidelines also provided, in paragraph 7.1(a), that in order to promote transparency, the selection process should be started with an announcement by the Chairman at the General Council meeting held in December each year. Accordingly, he wished to inform the Council that he would be starting the selection process for the appointment of chairpersons to the WTO bodies outlined in Groups 1, 2, 4 and 5 of the Annex to the Guidelines. In accordance with Paragraph 7.1(b) of the Guidelines, he would be assisted in the selection process by the serving Chairman of the Dispute Settlement Body, Mr Matus (Chile), and any former Chair of the General Council still serving in Geneva as Permanent Representatives, in this case Mr Noor (Malaysia). In keeping with paragraph 7.1(d), his colleagues and he would communicate, as early as possible, a specified time-period in which they would be available to hear the views and suggestions, if any, of Members, individually and/or in groups. Furthermore, as provided for in Paragraph 7.1(c) of the Guidelines, he would request the Secretariat to distribute to delegations in the meeting Room a list of past Chairs of major bodies in order to provide some structure for Members' subsequent deliberations on the possible distribution of chairs based on past practice and the need for balance. He wished to note that, in accordance with paragraph 2.1 of the Guidelines, representatives of Members in financial arrears for over one full year could not be considered for appointment.

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<sup>4</sup> The Decision was subsequently circulated as WT/L/745.

95. The General Council took note of the statement.

### 13. Review of WTO activities

Reports of:

- (a) General Council (WT/GC/W/595), Dispute Settlement Body (WT/DSB/47 and Add.1), and Trade Policy Review Body (WT/TPR/232)
- (b) Sectoral Councils (G/L/876, S/C/30 and IP/C/51)
- (c) Committees on Trade and Development (WT/COMTD/69), Trade and Environment (WT/CTE/15), Balance-of-Payments Restrictions (WT/BOP/R/90), Budget, Finance and Administration (WT/BFA/108), and Regional Trade Agreements (WT/REG/19)
- (d) Working Groups on Trade, Debt and Finance (WT/WGTDF/7) and Trade and Transfer of Technology (WT/WGTTT/10)
- (e) Committees under the Plurilateral Trade Agreements (GPA/95, WT/L/743)

96. The Chairman drew attention to the annual reports of the various Councils and Committees in the documents referred to under this Agenda item, which had been drawn up in pursuance of the Decision concerning procedures for an annual overview of WTO activities and for reporting under the WTO (WT/L/105). In the interests of moving the meeting along in a smooth and efficient way, he proposed that the Chairpersons of the various bodies not introduce their respective reports at this meeting. He would, of course, invite any Chairpersons who wished to draw particular attention to some aspect of the work carried out in their bodies, or to add anything to their reports, to take the floor.

97. Mr Niggli (Switzerland), Chairman of the Committee on Government Procurement, said that with regard to the main GPA negotiations, while the successful conclusion of the coverage negotiations under the Agreement desired by all participants had so far eluded the Committee, Members had made clear their continued commitment to the negotiations, and the tone of the discussions had been very positive, particularly during the second half of the year. Delegations had also made clear that they were continuing to work together intensively to seek solutions to the outstanding issues in those negotiations. In these circumstances, he continued to hope that a way would be found to enable the Committee to conclude the coverage negotiations in the coming year. This would have the important benefit of also enabling the revised text of the Agreement, which had been provisionally adopted in December 2006, to ultimately come into effect. With regard to accessions to the Agreement, he wished to congratulate Chinese Taipei for the Committee's positive decision on 9 December regarding its accession to the Agreement. Accession to the GPA, for which Chinese Taipei had first applied in March 1995, was a historic and path-breaking step of which Chinese Taipei should be proud. Chinese Taipei's accession was also an important milestone for the Committee and the Agreement on Government Procurement. He thanked all the Parties and observers to the GPA for their co-operation on this matter. Lastly, he wished to draw attention to the important work that had been done during the year with regard to the accession of China – which had applied for accession to the GPA one year earlier – and also with regard to the accession of Jordan. The Parties had expressed the hope that Jordan's accession might be concluded early in 2009. Apart from those just mentioned, six other Members were in the process of negotiating their accession to the Agreement, and a further six had provisions regarding accession to the Agreement in their respective Protocols of Accession to the WTO.

98. The representative of Chinese Taipei recalled that, as all knew, in the course of its accession to the WTO, Chinese Taipei had committed itself to acceding to the Agreement on Government



Procurement. Since becoming a Member in 2002, it had made continued efforts to honour this commitment. During the lengthy process of its negotiation to join this Committee, it had highlighted the fact that it had already invested great time and effort to overcome the many obstacles in order to reach the present point. He wished to thank all, particularly the Director-General and the Committee Chair, who had facilitated Chinese Taipei's accession to the Agreement on Government Procurement, and assured them that his delegation would play an active role in the future activities of this Committee.

99. The General Council took note of the statements, adopted the report of the Committee on Trade and Development in document WT/COMTD/69, and took note of the reports of the other WTO bodies, including the reports of the Committees under the Plurilateral Trade Agreements, in documents WT/DSB/47 and Add.1, WT/TPR/232, G/L/876, S/C/30, IP/C/51, WT/COMTD/69, WT/CTE/15, WT/BOP/R/90, WT/BFA/108, WT/REG/19, WT/WGTDF/7, WT/WGTTT/10, GPA/95 and WT/L/743.

100. The General Council then adopted the draft report of the General Council contained in document WT/GC/W/595, on the understanding that the Secretariat would make the necessary adjustments to that draft report to include matters that had been considered at the present meeting.<sup>5</sup>

#### **14. Administrative measures for Members in arrears**

101. The Chairman, speaking under "Other Business", recalled that at its meeting in May 2006, the General Council had approved a recommendation from the Committee on Budget, Finance and Administration regarding revised Administrative Measures for Members in arrears. Among these Administrative Measures was a requirement that, at each meeting of the General Council, the Chairman of the Committee on Budget, Finance and Administration should provide information with regard to which Members were under Administrative Measures in Categories II through IV.

102. Mr Stirø (Norway), Chairman of the Committee on Budget, Finance and Administration, said that in pursuance of the revised Administrative Measures, he wished to inform the General Council that the Members under Categories II through IV of the Administrative Measures as at 17 December were as follows: Mali, Nicaragua and Paraguay in Category II; Senegal in Category III; and the following Members in Category IV: Burundi, Central African Republic, Chad, Commonwealth of Dominica, Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Gabon, Gambia, Guinea, Guinea-Bissau, Malawi, Mauritania, Niger, Republic of Congo, Sierra Leone and Togo. He wished to emphasize that the General Council had also authorized the Budget Committee to waive the application of the Measures for Members in Category IV who agreed to, and abided by, a schedule of instalment payments aimed at liquidating all arrears. In this context, he invited the Members concerned to contact the Secretariat to discuss modalities for establishing such instalment plans.

103. The Chairman then recalled that under the revised Administrative Measures, he was also required at each Council meeting to request those Members in Categories III and IV of the Measures to inform him, before the next meeting of the General Council, as to when their payment of arrears might be expected. In keeping with the Administrative Measures, he would report on Members' replies to the next meeting of the General Council. Since the October General Council meeting, he had not received any replies from the Members concerned.

104. The General Council took note of the statements.

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<sup>5</sup> The Annual Report of the General Council was subsequently circulated in document WT/GC/117.