
**General Council
10-12 and 20 December 2002**

MINUTES OF MEETING

Held in the Centre William Rappard
on 10-12 and 20 December 2002

Chairman: Mr. Sergio Marchi (Canada)

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1. Accession of Armenia – Report of the Working Party (WT/ACC/ARM/22 and 23 and Add.1 and 2)

1. The Chairman welcomed, on behalf of the Members, the delegation of the Republic of Armenia, and invited the Chairman of the Working Party on the Accession of Armenia to introduce the package of documentation relating to Armenia's accession.

2. Mr. Spencer (Australia), introducing the report on behalf of Mr. Kenyon (Australia), Chairman of the Working Party on the Accession of Armenia, expressed the latter's regret at being unable to be present to make his report. As Members were aware, the Government of the Republic of Armenia had applied for accession to the GATT 1947 in December 1993 pursuant to Article XXXIII of the GATT 1947. Subsequently, in accordance with the Decision of the General Council in January 1995, the existing Working Party on Accession to the GATT 1947 had been transformed into a regular WTO Accession Working Party. During the period 1996-2002 the Working Party held five formal meetings and a large number of informal meetings. The complete results of the negotiations constituting the accession package of Armenia were contained in the following documents: report of the Working Party (WT/ACC/ARM/23); Schedule of Concessions and Commitments on Goods (WT/ACC/ARM/23/Add.1); and Schedule of Concessions of Specific Commitments in Services (WT/ACC/ARM/23/Add.2).

3. This documentation had been adopted by the Working Party at its meeting on 21 November 2002 on an ad referendum basis, in accordance with usual procedures. In concluding its mandate, the Working Party had taken note of the communication from Armenia circulated in WT/ACC/ARM/22. The Working Party had proceeded on the understanding that this communication would be brought to the attention of the General Council on the occasion of its decision on the accession of Armenia.

4. He wished to place on record that members of the Working Party had consistently appreciated the efforts by Armenia to put into place the necessary legislation to implement the WTO Agreements by the time of its accession to the WTO. These initiatives had ensured that Armenia would become a full participant in the WTO immediately upon entry into force of its Protocol of Accession. The appendix to the report reproduced the draft Decision and the draft Protocol of Accession. In accordance with usual WTO practice, the Protocol of Accession incorporated the commitments undertaken by Armenia in relation to the matters negotiated in the Working Party. He wished to pay tribute to the Prime-Minister of Armenia, to his distinguished Cabinet of Ministers and to his team of committed negotiators who had dealt with the challenges of this accession process with total dedication and commitment. He also wished to express appreciation to the Members who had

participated in these negotiations, who had shown flexibility and goodwill in the traditional WTO spirit of compromise. The results spoke for themselves, and he wished to commend the report, its annexes and the texts of the draft Decision and Protocol of Accession for action by the General Council.

5. The representative of Armenia, speaking as an observer, said that from the beginning of the 1990s, the Republic of Armenia had adopted a policy of formulation and development of a market economy. For the realization of this objective, and especially for Armenia's integration into the world economy, accession to the WTO was an important step. Armenia was proud that mutual efforts had brought success to the process that had started in 1992. Armenia was now entering a qualitatively new framework of international legal commitments, and a qualitatively new economic and political relationship. Globalization and cultural diversity had grown rapidly throughout the world, making the importance of the multilateral trading system embodied in the WTO ever more significant. Accession to the WTO was an important historical event for Armenia. He expressed his country's gratitude to WTO Members and to the Secretariat for their constructive and continuous assistance and contribution to the development of Armenia's accession process and to its successful ending. He was convinced that the accession of Armenia to the WTO would provide a clear and predictable future for Armenia in the world, given its deep involvement in globalization, economic integration and liberalization of trade.

6. The General Council approved the text of the draft Protocol of Accession of Armenia as contained in the report of the Working Party and, in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the draft Decision on the Accession of Armenia as contained in the report of the Working Party. The General Council next adopted the report of the Working Party as a whole in document WT/ACC/ARM/23 and Add.1 and 2. In this context, the Chairman drew attention to the communication to the Director-General received from Armenia and circulated in document WT/ACC/ARM/22 and, on behalf of the General Council and all Members, welcomed the accession of Armenia.

7. The representative of Armenia, speaking as an observer, said that immediately after declaring its independence, Armenia, along with its political reforms, had undertaken to implement economic reforms. Liberal economic principles had been implemented consistently in almost every sector of the economy. As a result, Armenia had achieved macro-economic stability and sustainable economic growth, which had been possible due to the existing political stability and consistent work. He then presented a general review of Armenia's economic reforms and recent developments in the country. The current macro-economic situation in Armenia was considered to be stable and predictable. There had been further growth in the main macro-economic indicators and a stable fiscal and monetary situation had been maintained. At the same time, economic growth had been achieved at a low inflation rate. During ten months of 2002, there had been 12 per cent growth in GDP, 28 per cent in industrial output, 51 per cent in exports, and 26.3 per cent in foreign investments, including 12.1 per cent growth in foreign direct investment.

8. Owing to the increase in exports, the trade balance and the balance of payments of Armenia had significantly improved. In the current stage of the country's economic transition, the increase in foreign trade turnover, and especially in exports, had played an invaluable role in stabilizing the economy, as well as for securing further economic growth. These indicators made realistic Armenia's strivings to become, in the economic, trade and investment areas, a more stable, organized and predictable country in the region. The foreign economic and trade policy of Armenia had been directed towards integration into the world economy, stimulation of exports, attraction of investment and intensification of the cooperation with international economic and trade organizations. Currently Armenia had internationally-consistent economic legislation and a liberal economic basis to stimulate entrepreneurial activities. Armenia's accession to WTO was not just a goal. Rather, in this process

Armenia wanted to once again indicate that it had accepted and was practicing the rules of the world economy, and that it was a fully reliable partner.

9. All Members who spoke welcomed and congratulated Armenia on its accession, and looked forward to working constructively with Armenia in the WTO.

10. The representative of Indonesia, speaking on behalf of the ASEAN Members, said that his delegation wished to thank the Chairman of the Working Party for his hard work and professional guidance during the accession process. Since the establishment of the Working Party in 1993, Armenia had worked hard to pursue free-market reforms within a democratic framework. Despite the various economic difficulties and shortages faced by its people, the Government had stayed the course of reform, placing particular emphasis on liberalization, stabilization, and economic restructuring. In this light, ASEAN believed that Armenia's accession would contribute to accelerating the benefit to be reaped by the Armenian people from the reform programme. Armenia's accession to the WTO and its full adherence to WTO rules, objectives and principles would have important positive effects on Armenia's economy and would further contribute to the ongoing reform process and better facilitate the country's integration into the world trading system. Furthermore, ASEAN was of the view that the accession of Armenia would also further contribute to developing trade and strengthening economic stability in the region. At the same time, as a WTO Member Armenia would also reap the benefits of trading with other WTO Members. It was encouraging that two consecutive General Council meetings had welcomed new Members to the WTO. ASEAN reaffirmed its full support for a speedy conclusion of all accession processes, in particular those of least-developed countries. In this regard, ASEAN wished to draw the attention of the Council to the Doha Ministerial Declaration, in which Ministers stated their commitment to accelerating the accession processes of LDCs, which would greatly strengthen the multilateral trading system. In this connection, ASEAN noted with regret the fact that no LDC had acceded to the WTO since the Fourth Ministerial Conference, and wished to encourage the Council to be able to provide a positive report to Ministers on all accession processes, in particular those of LDCs, at the Fifth Ministerial Conference.

11. The representative of Georgia said it was remarkable to be witnessing the further strengthening of the multilateral trading system by the increase in the number of its Members. As a neighbor, a close trade and economic collaborator, and a party to the bilateral free-trade agreement with Armenia, Georgia was strongly committed to supporting Armenia's accession to the multilateral trading system. Besides the close bilateral trade and economic relations, Georgia had been effectively and extensively developing its multilateral economic cooperation with Armenia as a reliable neighboring partner country, within various regional and sub-regional organizations, including the Black Sea Economic Cooperation Organization and the Commonwealth of Independent States (CIS). Accordingly, Georgia attached great importance to Armenia's accession to the WTO, which would strengthen the multilateral trading system and would greatly facilitate the full integration of countries of the South Caucasus region into the world economy. Georgia also welcomed the expansion of WTO membership to the entire region of South Caucasus, and thus supported the speedy accession of neighboring Azerbaijan. This would inevitably result in economic prosperity and in ensuring sustainable development and economic growth in the whole South Caucasus region. He wished to congratulate the Chairman of the Working Party and the Accessions Division of the Secretariat for their efforts, leadership and guidance, which had greatly facilitated the successful accomplishment of a difficult task.

12. The representative of the Slovak Republic, also on behalf of Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovenia, said that these countries were aware of the huge amount of work undertaken by Armenia in regard to its WTO accession, liberalization of its foreign trade regime and application of the multilateral rules and procedures. This work was directly linked to the positive indicators of Armenia's economy – in 2001 the growth of GDP had been 9.6 per cent and was expected to reach 11 per cent in 2002, the balance

of trade and payments had improved considerably and the inflation rate was low. They also welcomed the implementation of an "open door" policy in respect of foreign investment and were convinced that these were steps in the right direction.

13. The representative of the European Communities said that Armenia had demonstrated remarkable resolve to finalize its accession negotiations over the past few months. Between July and November 2002, significant efforts had been made to complete the alignment of Armenia's national legislation with WTO rules in such important areas as VAT, customs, excise taxes and the protection of intellectual property. Overall, Armenia had been able to offer its WTO partners commitments both for the implementation of WTO rules and for market access that were balanced and in line with its economic capacities. His delegation was confident that accession to the WTO would help Armenia reap the benefits of the multilateral trading system while facilitating the consolidation of the trade reforms it had already undertaken. This accession was a clear sign that another country had chosen the path of trade and development to satisfy the demands of its citizens. The Community hoped that this would be an encouraging example for all other countries that were currently at the beginning of the WTO accession process, in which it would support them as much as possible.

14. The representative of the United States strongly supported approval of Armenia's accession package. The WTO accession process represented for all countries an invaluable opportunity to help acceding countries adopt a proven system of rules and commitments that would facilitate economic growth and promote foreign investment. Armenia was especially to be commended for its diligence in adopting WTO-consistent laws and for the commitments and concessions it had undertaken as a WTO Member. In completing the WTO accession process, Armenia had substantially revised the legal basis for its trade regime in order to bring it into conformity with WTO provisions, for example in the areas of tax policy, customs fees, IPRs, customs valuation, technical barriers to trade, and import licensing. In addition, Armenia had undertaken market-access commitments that locked in liberal tariff and services terms and confirmed elimination of agricultural export subsidies. With these commitments, virtually all of which came into force upon accession, Armenia had reconfirmed its commitment to a market-based economic system, and its intent to participate in the WTO system as an equal partner with current Members. Participation in the WTO on this basis would support Armenia's ongoing economic reforms and further economic development. The United States was especially proud of the role its delegation had played in shaping the commitments ultimately negotiated, both through bilateral contacts and active participation in the Working Party process, and joined other delegations in thanking the Working Party Chairman and the Secretariat for their constant efforts to bring this negotiation to a close.

15. The representative of Paraguay, speaking on behalf of GRULAC, said that they were very pleased at Armenia's accession, due in part to the fact that many of its citizens lived in these countries. They were convinced that this accession would further consolidate their relations with Armenia and would allow for freer and more profitable trade for all parties, and they were willing to work to further consolidate this trade. These countries were aware of the extraordinary efforts Armenia had made in the accession process.

16. The representative of the Kyrgyz Republic fully supported Armenia's accession. As a member of the CIS, to which Armenia was also a signatory, and a partner to the bilateral FTA, the Kyrgyz Republic welcomed Armenia's accession to the WTO, the process for which had been initiated more than seven years earlier, and noted the commitments Armenia had undertaken on horizontal issues, including but not limited to trade in agricultural products, a more liberal regime on importation of non-agricultural goods, the abolishment of a state monopoly and assurances that as from the date of accession Armenia would bring its legislation into compliance with the WTO Agreements, especially regarding Articles VIII, XI and III of the GATT 1994. His delegation was further pleased by Armenia's extensive commitments on trade in services, and believed that this decision would facilitate further growth of this sector of the national economy. He noted that the

judicial system in Armenia had undergone serious changes equalizing the trading rights for Armenian nationals and for foreigners by providing an equal playing field for businessmen, irrespective of their origin. All these policies were unambiguous evidence of the aspiration of the Government of Armenia towards open and mutually advantageous trade. He noted that in the past there had been a long-lasting conflict involving Armenia and Azerbaijan, and said that Armenia's accession and the successful conclusion of the on-going accession process for Azerbaijan would ameliorate bilateral relations and eventually bring peace and wealth to both Caucasian nations.

17. The representative of Lesotho said that his country wished to extend to Armenia the support it would need to fulfil its obligations and to actively participate in the WTO.

18. The representative of Japan said that his country attached great importance to the WTO as the embodiment of international trading rules, and expressed appreciation to all those who had worked hard to complete this accession process.

19. The representative of India complimented Armenia for the reform measures it had already undertaken and for its deep commitment to what the WTO stood for. India looked forward to close collaboration with Armenia in the task of making the WTO a strong and effective organization and in ensuring that the multilateral trading system contributed both to increased world trade and to global development.

20. The representative of Cyprus said that his Government maintained strong and long-lasting friendly relations with Armenia.

21. The representative of Australia noted that Armenia had acceded on the basis of no special safeguards, no agricultural export subsidies and very low tariffs, and said that on that basis it would be a very acceptable Member of the CAIRNS Group.

22. The General Council took note of the statements and of the expressions of welcome and support.

2. Iran – Request for Accession (WT/ACC/IRN/1)

23. The Chairman drew attention to the communication from Iran in WT/ACC/IRN/1 requesting accession to the WTO Agreement pursuant to Article XII. He recalled that the General Council had last considered this matter at its meeting in October, and had agreed to revert to it at the present meeting.

24. The representative of the United States said that the issue of Iran's accession to the WTO continued to be under review by her Government, and her delegation had nothing to add to its statement at the October meeting of the General Council.

25. The representative of Malaysia, speaking on behalf of the Informal Group of Developing Countries, said that these countries took note of the statement by the United States. Iran's request for accession had been on the agenda of the General Council for some time, and it was important for the membership to come to a decision on this matter. They hoped that the United States would complete its review soon and would be able to reach a consensus on the establishment of a working party on this accession request, and again urged the United States to provide a positive response on this issue at the next meeting of the General Council.

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

3. China – Transitional review under Section 18.2 of the Protocol of Accession to the WTO Agreement (WT/GC/68, G/L/596, S/C/15, IP/C/26, WT/BOP/R/68)

27. The Chairman recalled that Section 18.2 of the Protocol on Accession of China to the WTO Agreement required that: "The 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. The General Council shall conduct such review in accordance with the framework set out in Annex 1B and in light of the results of any reviews held pursuant to paragraph 1. China can also 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." In accordance with Annex 1B of China's Protocol of Accession, the following issues were to be addressed by the General Council: 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 third, recent developments and cross-sectoral issues regarding China's trade regime. He proposed that delegations address all three of these points in a single intervention. He recalled that under paragraph 4 of Section 18, this review should take place subsequently in each of the eight years following the first review, with a final review in the tenth year, or at an earlier date decided by the General Council. In connection with the present review, he drew attention to a communication from China in WT/GC/68, which provided information required in 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 were contained in documents G/L/596, S/C/15, IP/C/26, WT/BOP/R/68.

28. The representative of China thanked the Chairpersons of the subsidiary bodies for their reports. The following day would be the one-year anniversary of China's accession to the WTO, and there would be many seminars, reports and comments in China's news media to mark the event. In China there was still unabating interest in learning about WTO rules and in discussing the impact of China's WTO membership on its economic and social life. More and more people had come to see that accession had brought China great opportunities as well as huge challenges. During the accession negotiations, China had made extensive and wide-ranging commitments in line with its economic reform and open policy, and at the requests of other Members. Although the implementation of these commitments entailed enormous difficulties, China had made its utmost efforts to meet its obligations. These efforts were reflected in a whole series of measures, including amending legislation to strengthen the legal framework, heightening the transparency of its trade policies, lowering tariffs, trimming down various trade restrictions, expanding market-access opportunities and improving the investment environment. Positive results had been achieved in these areas to bring China's trade regime into line with WTO rules and accession commitments, which, he believed, were evident to all WTO Members.

29. His Government had devoted considerable resources and time to this review. Since the beginning of 2002, China had started to collect the relevant information and to prepare for the review. Seventeen delegations, with more than 100 people from various ministries and departments, with an average of seven experts in each, had been sent to Geneva from the capital since September. They had done their utmost to provide relevant information in accordance with paragraph 18 of China's Protocol of Accession, and to respond to questions raised by other delegations. He was proud of the marvelous job they had done and of the highly professional and qualified responses provided by the experts. From this information and these replies, Members could see the tremendous efforts his Government had made to implement its commitments. In the context of the review, he wished to mention particularly the following points. First, regarding fulfilment of transparency obligations, in accordance with Annex 1A of China's Accession Protocol, relevant economic data and information had been provided to the General Council in a timely manner as required. During this first year after China's accession, its notification obligations had been fulfilled with more than 300 notifications

made according to various WTO agreements. A large amount of information had also been submitted in advance of reviews held by subsidiary bodies. In line with its accession commitments, the China WTO Notification and Enquiry Center had been set up by his Government immediately after accession in order to provide an enquiry service on trade-related information for all Members, enterprises and individuals. The establishment of this enquiry point had been notified to the WTO. The Chinese Government had also designated the Foreign Economic and Trade Gazette as the official journal for the laws, regulations and other measures relating to or affecting trade in goods, trade in services, TRIPS or TRIMS, as these laws, regulations and measures could not be enforced before their publication.

30. Second, regarding streamlining of laws and regulations, to meet the needs of WTO accession, his Government, in accordance with its commitments, had launched a massive program regarding the enactment, amendment and repeal of laws, regulations, and administrative rules, policies and measures which were relevant to or affected trade in goods, trade in services, trade-related intellectual property rights and assurance of transparency and uniform application of the trade regime. In September 2001, the State Council had issued a special circular requesting the local governments to review local regulations, administrative rules, policies and measures in line with the principles of uniform application, non-discrimination and transparency. This work had been basically finished. Third, regarding uniform implementation of trade policy, to implement China's commitments, a relatively sophisticated legal system had already been put in place to ensure the uniform implementation of trade policy. According to existing legislation in China, any enterprise or individual could bring cases of non-uniform application of laws, regulations, administrative rules, policies and measures to the attention of a relevant authority. The governmental administration and institutional reform undertaken by China had formed a solid basis for the implementation of this system. Fourth, regarding recent developments and cross-sectoral issues of the trading regime, a sound and effective legal and regulatory system on trade administration had been set up according to WTO rules and China's accession commitments. The pre-WTO administrative regime, which had been mostly regulated by internal instruments like internal administrative rules and circulars, had been reformed to ensure conformity with WTO rules and disciplines. This reform had greatly improved the uniformity, predictability, fairness and non-discrimination of the foreign trade administration.

31. China had lowered its average tariff level, reduced the number of non-tariff measures and realized the gradual transition from administrative methods to a transparent and WTO rule-based import administration. At present, China set out to expand the market access for service sectors according to its commitments. A series of new laws and regulations on foreign investment had been promulgated for sectors including insurance, finance, marketing, telecom and professional services, with other legislation in the process of being drafted. The industrial policies for foreign investment, after this extensive amendment, fully reflected the commitment China had made upon accession, and would serve as an impetus for a greater inflow of investment. Implementation of the WTO accession commitments was an indispensable step in China's striving to deepen economic reform and expand the opening up of its market. During 2002, despite daunting difficulties, a wide range of effective measures had been taken to fully implement China's WTO commitments, which had strengthened its economic partnership with other Members on a mutually beneficial basis. Up to October 2002, China had realized a 20 per cent increase in actual foreign direct investment at US\$44.72 billion and an 18.7 per cent increase in import volume. These were the best testimony to China's achievement in implementation. China would continue to enforce these laws, regulations and policies drafted in conformity with WTO rules, and would faithfully fulfill its obligations. He wished to thank Members for their positive contributions, understanding and support during the review process, and the Secretariat and all the Chairpersons for their tireless efforts for the smooth conduct of the review process.

32. The representative of the United States said that her delegation recognized the time and effort spent by the delegation from China on the Transitional Review Mechanism (TRM) this year. She

welcomed the work of the subsidiary bodies in playing their role in this process and believed that their reports were a good reflection of Members' views. She could thus be brief. Substantively, the United States believed that the collective reports of the 16 subsidiary bodies on the TRM served as a useful point of reference for China as it moved forward in implementing its WTO commitments. The United States hoped that China would review these reports closely and would take steps to address the issues raised therein. It looked forward to an even more useful TRM in 2003, and hoped to build upon the results of the present year's effort in order to develop a more streamlined process for future TRM exercises, to ease misunderstandings and to save all Members, especially China, time, so that it could focus on implementing commitments rather than merely reviewing progress to date.

33. The representative of the European Communities said that China's statement was proof of China's deep commitment to the WTO and the world trading system. The Community appreciated the important efforts made both by capital-based officials and the Chinese mission in Geneva, and by the Chinese Government as a whole. It also appreciated the huge efforts undertaken in China in familiarizing the business community and the public at large with the WTO. If all WTO governments would make similar efforts the WTO would win any popularity contest amongst international organizations. He wished to make two points: one on substance, i.e. the implementation by China of WTO commitments in its first year of membership; and the other on process, i.e. the way the TRM exercise had worked this year and how it should be improved to fully play its role in the years to come. On the implementation side, the Community recognized and welcomed the huge efforts made by China in 2002, which indicated that China was generally willing to abide by the letter of its WTO obligations. In particular, the Community was impressed by the extremely substantial work that had been carried out in terms of legislation to date in the field of intellectual property, trade defense instruments, etc. In other areas, however, the legislative framework would need some improvements, for example in the area of investment in the telecommunications sector, or the lack of legislation regarding internal branching in the insurance field. In the Community's view, the remaining problems were mainly linked to transparency, in particular regarding the management of quotas and tariff-rate quotas, to specific straightforward issues, such as the tariff area, and to the absence of a "commenting period" before the promulgation of some laws and regulations, notably in the services areas. One issue his delegation was particularly concerned about related to the appearance of new non-trade barriers, where it saw a risk of a certain neutralization of the liberalization brought by WTO accession.

34. On process, the Community considered the 2002 TRM as an extremely useful exercise. The Community had been very careful to adopt a balanced position, highlighting the main areas where it thought WTO implementation was problematic, but also acknowledging the tremendous efforts made by China, taking into account the exceptional circumstances under which this first exercise was taking place – in particular, the lack of experience, the very heavy strain on resources and the absence of sufficient time for preparation by China. His delegation regretted that it had not been possible to put in place an agreed timetable for the transmission of questions and replies, as this could have facilitated the exercise and contributed to more fruitful results. While the Community appreciated the good-faith efforts of the Chinese experts present at the committee meetings to reply orally to questions during the meetings, an effort should be made to improve the process for the coming TRM exercise. The Community continued to believe that the TRM exercise should follow the common rules and practices in the WTO, to ensure that questions and replies were exchanged in writing in advance of a committee's meeting. He wished to thank the Committee Chairmen for their hard work and all delegations for contributing to this TRM exercise.

35. The representative of Japan said that his delegation highly appreciated the efforts made by China in the first-year review under the Protocol of Accession. Through this exercise, Japan believed that mutual understanding had been enhanced on the status of China's implementation of its commitments. While there was still room for improvement in terms of the substance of and procedures for the responses received, Japan trusted that China, in the coming years, would fully engage in the exercise to the satisfaction of all Members. In this spirit of positive engagement, Japan

looked forward to the 2003 review process being conducted smoothly and efficiently. Japan wished only to stress its hope that China would address as expeditiously as possible the issues that had been raised. On the substance of implementation, his delegation would not go into detail, as these issues had been amply dealt with during the series of review meetings already held.

36. The representative of Chinese Taipei said that his delegation wished to give due recognition to the efforts of the Chinese delegation in responding to the questions raised by Chinese Taipei and by many other Members concerning China's implementation of its accession commitments. Many Members with substantial investment and trade interests in China had either submitted written questions or intervened verbally in the course of the TRM sessions. Since Chinese Taipei had such a close trading relationship with China and was one of China's largest foreign direct investors, his delegation had participated positively in the TRM process. Altogether it had tabled ten written submissions and had made considerable use of the forum to exchange views with China's capital-based experts. As a result of these useful exchanges, his delegation was now in a better position to understand the general status of China's implementation of its accession commitments and to appreciate some of the difficulties that might have been involved. In his delegation's view, it had achieved, to a large extent, the shared goal of assisting China to improve its conformity with WTO rules and principles. His delegation considered that China had been making conscientious efforts to fulfill its obligations under the TRM, and the mechanism had proved to be extremely useful. He looked forward to continued improvement in the years to come.

37. The representative of Switzerland said that his delegation too wished to highlight the remarkable efforts made by the Chinese Government to transpose WTO law into its legislation. In Switzerland's view this indicated a serious commitment of the Chinese authorities with regard to the WTO as well as to China's trading partners. His delegation understood that implementation of the provisions of the Protocol of Accession could encounter difficulties in the phase immediately following accession. However, given the increasing importance of China as an actor on the international stage and its legitimate ambitions with regard to the definition and formulation of rules within the multilateral trading system, it was essential for the deficiencies in implementation to be addressed satisfactorily as soon as possible. In this regard he stressed that Switzerland was still concerned about counterfeit and the lack of security with regard to intellectual property, and would like this issue to be included for priority action by China, in order to make significant improvements in this area. Switzerland continued to follow attentively the efforts made by the Chinese Government and was willing to provide all the support it could for the complete realization of the implementation of China's Protocol of Accession.

38. The representative of Chile said that his delegation agreed with China that the work done by its officials in Geneva as well as in the capital was excellent with regard to providing Members with all the elements relating to the implementation of China's commitments within the WTO. Chile was aware of the massive and profound changes and national regulatory instruments necessary for China to implement WTO rules, and could well imagine that this had not always been without problems. Chile was aware of the significant efforts China had had to make to deal with some of these difficulties. While there would always be room for improvement, Chile hoped that all WTO Members would deploy the same amount of massive and profound efforts that China had deployed in meeting its WTO commitments. In a recent visit of the Vice-Minister of Foreign Affairs of Chile to China, Chile had had the opportunity to witness the efforts aimed at implementation and the positive impact this had had in bilateral relations with Chile. In conclusion, his delegation believed it was appropriate to highlight China's active participation in the negotiations, particularly at the recent Ministerial meeting of the CAIRNS Group, and the coincidence of interests China had with members of that Group.

39. The representative of Canada expressed his delegation's appreciation to the Chinese delegation and Government for the resources they had dedicated to this TRM exercise, especially with

respect to the tremendous amount of information they had provided through the Committees and Councils of the WTO, and particularly for the specific responses they had provided to questions raised by Canada. Canada expected that the TRM would continue to provide an opportunity to obtain clarification of the progress in the implementation of China's accession commitments to the WTO.

40. The representative of India said that his delegation was struck by China's deep commitment to complete a sincere implementation of the obligations it had undertaken during the process of accession. It was also struck by the enormous amount of work China had done, both in changing its legislation and in making administrative arrangements, including making its people aware of the implications of the WTO system. This was a huge task, as it involved making wholesale changes in its laws and systems, and highlighted in particular China's total belief in the WTO system and its conviction that the multilateral trading system would provide further impetus to its already impressive growth process. India complimented China for what it had done and looked forward to further collaboration with it in strengthening the multilateral trading system.

41. The representative of Cuba said that her delegation recognized the efforts made by the Chinese Government to implement its accession commitments and the results achieved. While there was always room for improvement, China deserved very high marks for the work undertaken in 2002. The more than 300 notifications submitted, uniform application of its trade policy and streamlining of its laws and regulations clearly showed China's commitment to meeting its WTO obligations and served as proof of transparency and involvement. Cuba welcomed the close cooperation with China, both in compliance with the Doha Development Agenda and in bilateral relations, and urged other WTO Members to refrain from imposing any conditions on China other than those it had accepted in its Protocol of Accession. At the same time, it hoped that other WTO Members would follow China's example and fulfil their own WTO commitments.

42. The representative of Uruguay said that his delegation thanked China for its important statement and wished to highlight China's endeavours to implement its WTO commitments in a number of fields. In this respect, Uruguay believed that particular attention should be drawn to the dedication and time invested by China in both the implementation of its commitments and the TRM process. In light of the fact that market access for several export products from Uruguay to China were subject to tariff-rate quotas, his delegation wished to stress the importance to Uruguay of the administration of these tariff quotas. In conclusion, his delegation wished to reaffirm its satisfaction at seeing China participating as an active Member of the WTO, and hoped to continue working with China within the organization in favour of the multilateral trading system.

43. The representative of Korea welcomed the strong commitment to the multilateral trading system which had been indicated in China's statement. Korea congratulated China on successfully concluding its first year as a Member of the WTO and commended China for its efforts in implementing its accession commitments. Korea believed China had implemented its commitments in a faithful manner and had engaged in the TRM exercise in a comprehensive and cooperative manner. In this regard, his delegation particularly appreciated the assurances given by China on its intention to fully comply with the relevant WTO agreements in implementing its domestic regulations on trade remedies. Korea firmly believed China would continue to play an important and responsible role on all WTO fronts, including the Doha Development Agenda negotiations, and looked forward to developing even closer cooperation with China in common endeavours to strengthen the multilateral trading system.

44. The representative of Pakistan said that his delegation joined others in thanking China for its very clear, frank and factual statement. Like others, Pakistan welcomed China's efforts to satisfactorily meet very difficult and onerous requirements that had been placed on it. The statements made thus far clearly showed that China had done an excellent job. Pakistan congratulated China on

its domestic measures, on making an average of almost one notification per day to the WTO, and on the number of delegations it had flown to Geneva, which were indeed record-setting.

45. The representative of Thailand said that his delegation welcomed China's statement summarizing its efforts to implement its commitments. During the review process Thailand had received detailed and comprehensive information from China which had provided a clearer and better understanding of the work that had been done by the Chinese authorities to comply with China's obligations and commitments under the Protocol of Accession. Thailand commended China's efforts and the tremendous amount of work it had done to faithfully implement its commitments, and was of the view that any excessive demand to China on this matter should be avoided. Thailand looked forward to close cooperation with China in the work of the WTO.

46. The representative of Zambia thanked the Chinese representative for the detailed and informative report on the work his delegation had undertaken. Zambia appreciated and wished to congratulate China for its tremendous work and achievement thus far in bringing its trading regime into line with WTO rules. Zambia acknowledged the amount and complexity of the work the Government of China had had to undertake, and wished to join other WTO Members in showing increased support and flexibility in demands on China, so that it could comply fully with its requirements.

47. The representative of Hungary thanked China for its detailed statement and joined others in recognizing the dedication and major efforts of China to meet its accession commitments. This indicated to Hungary that there was a genuine intention by China to meet its commitments. Hungary was also aware of the difficulties, both administrative and substantial, faced by China under the TRM. His delegation was ready to work further to ensure that the TRM met its objectives and at the same time did not put undue burdens on China.

48. The representative of Côte d'Ivoire said that his delegation joined others in congratulating China for its efforts on implementation and in the TRM process, and particularly for its respect for its commitments. Since China has become a Member, not a day had gone by without its creating further economic relations with Côte d'Ivoire, and ensuring that the rules of the WTO were applied. His country had companies coming from China on a daily basis and had greater ties thanks to the WTO agreements. He thus wished to pay tribute to China and congratulate it on its efforts.

49. The representative of China thanked all delegations who had spoken for their interventions and positive observations on the efforts and achievements China had made with regard to the implementation of its accession commitments. His delegation was deeply touched and greatly encouraged by delegations' positive remarks. His Government was serious about implementation. Its experts were sensitive to the questions raised during the discussions in the subsidiary bodies, and would do their best to address the legitimate concerns of Members, whether on agriculture or industrial market access or on services trade or on intellectual property protection. The TRM exercise was meaningful in the way it promoted exchange of information and increasing transparency. It was also meaningful for China to identify the areas where it should make greater efforts to improve the situation. His delegation shared the view of many Members that any proposal to further complicate the process should be avoided. China's accession to the WTO was a major step forward in its opening and reform efforts, and would have a far-reaching impact on China's political, social and economic life. China's rise as a responsible trading nation was a big plus for peace, stability and prosperity. If all kept this larger picture in mind, he was sure that future TRM exercises would be carried out even more smoothly. He again wished to thank all delegations for their encouragement and positive contribution.

50. 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 first review of

China's implementation of the WTO Agreement and the provisions of its Protocol of Accession by the General Council, pursuant to Section 18 of the Protocol, had been concluded.

4. Council for TRIPS – Report on the implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health

51. The Chairman recalled that under the Doha Declaration on the TRIPS Agreement and Public Health, Ministers had recognized that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. Ministers had instructed the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002. As all Members were aware, work on this important matter was continuing, and the TRIPS Council Chairman had called the negotiators back to Geneva to pursue their efforts.

52. Mr. Pérez Motta (Mexico), Chairman of the Council for TRIPS, reported on the TRIPS Council's consideration of this matter thus far. As all were aware, Members had been conducting an intensive process of discussions and consultations over the past months. On 29 November the TRIPS Council had decided to suspend its formal meeting in order to enable delegations to hold consultations that might be required and in order to encounter the flexibility needed in order to be able to continue with the negotiating process. Two days earlier this process had continued in an open-ended meeting which had ended the previous afternoon. At the conclusion of that meeting he had proposed that he be given the opportunity to use the time available on the present day to engage in a drafting exercise with the assistance of different groups of delegations, depending on the interests of delegations, so as to be able to present the following day a document under his own responsibility for the consideration of the Members of the Council. He said that he saw good willingness on the part of delegations and had noted a clear commitment to comply with the instructions received from Ministers in Doha, which was to have a proposed solution by the end of 2002. For practical purposes, the end of 2002 meant precisely the present meeting of the General Council. He proposed that the General Council suspend its discussion on this item and revert to it at the end of its meeting.

53. The General Council took note of the report by the Chairman of the Council for TRIPS and so agreed.

54. At the session of the General Council on 11 December, the Chairman of the Council for TRIPS provided an interim report on developments regarding this matter. He had considered convening an informal meeting of the TRIPS Council for this purpose, but had thought it would be more convenient if he were to report to Members through this meeting of the General Council. When he had spoken on this item the previous day, he had mentioned that useful and constructive open-ended consultations had been held earlier in the week and that he would now look to see how the points that had been made in those consultations might best be reflected in textual form. This was what he had been doing since then. To assist him in this process, he had been calling on some delegations to share with him their advice and thinking, drawing on the assistance of different delegations for different parts of the text. He wished to emphasize, however, that any text he might produce would be presented exclusively on his responsibility. Although the work over the past day and a half had been useful, he did not yet feel in a position to share with the General Council a new text. He would therefore need more time, and wished to apologise to delegations for this delay. He would, however, take this opportunity to summarize how he saw the situation, and run through the various elements of the paragraph 6 solution that Members had been working on. As all knew, there was an important problem regarding the coverage of the system, in particular the so-called "scope of diseases". He could not claim that over the past few days, significant progress had been made on this point, where positions still remained quite far apart. Regarding the question of eligible importing countries and, in particular, the question of some Members voluntarily deciding not to use the system

in whole or in part, he believed that Members were relatively close to finding a way of handling this matter, even if it was not yet fully clear exactly which Members would be making such statements.

55. On the question of the assessment of manufacturing capacity, useful discussion had taken place, but it was too early to say whether there was language on this matter that he would feel confident in putting forward. The same was true for the issue of so-called "double remuneration". Regarding the various procedures for notification and safeguards against diversion, he thought the work that had been done over the past four days had increased the amount of common ground, although some significant differences remained. One difference, in particular, was the question of the measures that Members importing products under the system might make available to prevent re-exportation of these products. Other issues on which further work was required were those of regional cooperation and transfer of technology. Regarding the legal mechanism, discussions had indicated some convergence of thinking, but he wished to emphasize that some delegations had made clear that their position on this matter was dependent on the substantive content of the decision ultimately agreed upon being satisfactory. In conclusion, he said that it was still his hope to be in a position to share with the Council for TRIPS in the coming day or two a text which he felt confident could command general support and which could then be forwarded for action to the General Council. This was the basis on which he was continuing his work.

56. The Chairman thanked the TRIPS Council Chairman for his interim report and for his continued hard work and perseverance. All knew it was not an easy journey and wished him well in the next hours and days on what remained a hugely important issue for the WTO and for people outside the WTO. He proposed that the General Council take note of the statements and agree to suspend consideration of this item and revert to it subsequently in the light of advice from the Chairman of the TRIPS Council, but in any event not later than 20 December.

57. The General Council so agreed.

58. At the resumed meeting of the General Council on 20 December, the Chairman of the TRIPS Council, reporting on the results of his consultations, recalled that when he had last reported to the General Council, at its meeting the previous week, he had summarized point by point the status of the discussion on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. He believed that since that time, significant progress had been made. In the light of further consultations, he had circulated, in his capacity as Chairman of the TRIPS Council, a draft Decision on 16 December. This draft appeared to command widespread but not universal support among Members. In particular, he wished to mention that there continued to be outstanding difficulties with paragraph 1(a) of the draft Decision as it concerned the so-called "scope of diseases" question. He regretted to have to inform Members that despite intensive consultations over the past few days, it had not been possible to find a solution to this problem. All shared the disappointment that, having made such great efforts and having got so close to reaching agreement on the text of 16 December, Members had not been able to conclude their work by the end of the year.

59. Under the circumstances, the TRIPS Council had authorized him to recommend that it be asked to resume work promptly at the beginning of 2003 to resolve the outstanding issues in the Chairman's text of 16 December 2002, and to report to the General Council so that a decision implementing a solution to the problem identified in paragraph 6 would be taken at the first meeting of the General Council in 2003, which he understood was scheduled for 10 February 2003.

60. The representatives of the United States, Kenya (on behalf of the African Group), Brazil, India, China, Malaysia, Canada, Argentina, Philippines, Botswana, Indonesia, Chile, Thailand, Cuba, Pakistan, Peru, Hungary, Chinese Taipei, European Communities, Japan, Switzerland, Czech Republic, Norway and Hong Kong, China, and the Holy See (as an observer) requested that their

statements at the meeting of the TRIPS Council held just prior to the meeting of the General Council be reflected also in the records of the latter.¹

61. The representative of Kenya, speaking on behalf of the African Group, added that the WTO should play a supportive role in saving lives of nearly 10,000 people who were dying every day in African villages for the lack of needed lifesaving medicines. The focus of work was to find a solution for Members with insufficient or no manufacturing capacities in the pharmaceutical sector, and not the scope of diseases. The African Group was ready and determined to continue the discussion on the problems identified in paragraph 6 of the Doha Declaration, but was not convinced that the scope of disease coverage should be part of the discussion. She expressed the hope that when Members resumed discussion, they would avoid focusing on the scope of diseases instead of capacity problems. The solution should not in any way be seen to replace or modify the Doha Declaration, which reaffirmed the existing flexibilities in the TRIPS Agreement.

62. The representative of South Africa supported the statement by Kenya on behalf of the African Group.

63. The General Council took note of the statements, including the statements made at the meeting of the TRIPS Council (and reproduced in IP/C/M/38), and invited the TRIPS Council to resume work on this matter promptly at the beginning of 2003 to resolve the outstanding issues in the Chairman's text of 16 December and to report to the General Council so that a decision implementing a solution to the problem identified in paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health was taken at the first General Council meeting in 2003.

5. Committee on Trade and Development – Report by the Chairman of the Committee in Special Session on Special and Differential Treatment in Pursuance of Paragraph 12.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (TN/CTD/6)

64. The Chairman recalled that pursuant to paragraph 44 of the Doha Ministerial Declaration, the General Council at its meeting in July had considered a report by the Chairman of the Committee on Trade and Development (CTD) in Special Session. The General Council had taken note of that report and had approved the recommendations contained in it, notably to extend the time-period for completion of this work to December 2002. The General Council had also agreed to establish a monitoring mechanism for special and differential treatment (S&D), and had instructed the Special Session of the CTD to elaborate the functions, structure and terms of reference of this mechanism for approval by the General Council. He also recalled that the CTD in Special Session had submitted a report to the TNC the previous week in TN/CTD/6. However, as Members were aware, work under this mandate was currently being pursued by the Chairman of the CTD in Special Session.

65. Mr. Smith (Jamaica), Chairman of the Committee on Trade and Development in Special Session, recalled that the report of the Special Session detailing the work that had been carried out, in pursuance of the mandate contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12.1 of the Decision on Implementation-Related Issues and Concerns, during the period from January to July 2002, had been considered and approved by the General Council on 31 July 2002. The General Council, while accepting that "a large number of issues, including some that are complex, have been raised, both in the written submissions and the ensuing discussions", and that "a significant amount of work remains to be done before Members can agree on clear recommendations in a number of areas", had instructed the Special Session of the CTD to "proceed expeditiously to fulfil its mandate, as contained in paragraph 44 of the Doha Ministerial Declaration

¹ These statements are reproduced in full in the Minutes of the TRIPS Council meeting, contained in IP/C/M/38.

and paragraph 12 of the Decision on Implementation-Related Issues and Concerns, so as to be able to report to the General Council with clear recommendations for decision by 31 December 2002".

66. Following a series of informal consultations held in September 2002, the Special Session had adopted an intensive indicative work programme so as to fulfil the mandate given by the General Council. As a result, the Special Session had met eight times during the past three months, during which it had continued its analysis and examination of the various Agreement-specific proposals, had undertaken further discussion on some of the cross-cutting issues, and had looked at the possible elements relating to the establishment of a Monitoring Mechanism on special and differential treatment. Even though the level of engagement had increased significantly during this period, differences among Members continued to exist. He had prepared a draft report to the General Council which had been made available to Members and had been initially discussed on 3 December. The main aspects of the draft report on which there were differences included the choice of options on the "Way Forward", and the possible identification of recommendations for decisions on Agreement-specific proposals. He had been holding consultations and wished to continue these. In his view, much would depend on delivering as ambitious an outcome as possible at the present time on the Agreement-specific proposals, and on providing clear and judicious guidance to the General Council in respect of further work. He was aware that the present General Council meeting might conclude on 13 December and wished to continue his endeavours so as to try to reach a possible conclusion on the draft report by then. While he recognized this might be difficult, he nevertheless wished to ask the General Council to suspend its consideration of this item in order to give the Special Session more time to achieve an outcome that was acceptable to Members. In any case, he would come back to the General Council with the latest status and developments when the item was taken up again.

67. The General Council took note of the report by the Chairman of the Committee on Trade and Development in Special Session and suspended its consideration of this item.

68. On 11 December, the Chairman of the Committee on Trade and Development in Special Session made an interim progress report to the General Council in an informal session.

69. The Chairman thanked the Chairman of the Committee on Trade and Development in Special Session for his interim report and for his continued hard work and perseverance. He proposed that the General Council agree to suspend consideration of this item and revert to it subsequently in the light of advice from the Chairman of the Committee on Trade and Development in Special Session, but in any event not later than 20 December.

70. The General Council so agreed.

71. At the resumed meeting of the General Council on 20 December, the Chairman of the Committee on Trade and Development in Special Session recalled that the report of the Special Session of the Committee on Trade and Development (CTD) detailing the work that had been carried out in pursuance of the mandate in paragraph 44 of the Doha Ministerial Declaration and paragraph 12.1 of the Decision on Implementation-Related Issues and Concerns, during the period from January to July 2002, had been considered and approved by the General Council on 31 July 2002. The General Council, while accepting that "a large number of issues, including some that are complex, have been raised, both in the written submissions and the ensuing discussions", and that "a significant amount of work remains to be done before Members can agree on clear recommendations in a number of areas", instructed the Special Session of the CTD to "proceed expeditiously to fulfil its mandate, as contained in paragraph 44 of the Doha Ministerial Declaration and paragraph 12 of the Decision on Implementation-Related Issues and Concerns, so as to be able to report to the General Council with clear recommendations for decision by 31 December 2002".

72. After a series of informal consultations held in September, the Special Session had adopted an intensive indicative work programme, so as to fulfil the mandate given by the General Council. As a result, the Special Session of the CTD had held eight formal meetings during the past three months, during which it had (a) continued its analysis and examination of the various Agreement-specific proposals, (b) undertaken further discussion on cross-cutting issues, and (c) looked at possible elements relating to the establishment of a Monitoring Mechanism on special and differential treatment. Since the summer break, he felt that some progress had been made on the various issues pending before the Special Session. The level of engagement on many of the more than 80 Agreement-specific proposals had increased substantially. Oral responses had been provided to many of the various proposals, including in the back-to-back meetings with other WTO bodies. This had increased engagement, but had also revealed significant differences on a large number of proposals and issues.

73. As the discussions had progressed in recent weeks, it had become clear that in order to be able to present a report to the General Council that would be acceptable to all Members, it was necessary to reach an understanding on at least two main aspects of the work. One was to agree on a harvest of Agreement-specific proposals, albeit a late and limited harvest. The second issue on which agreement clearly was required was the structuring of further work – what had been described as the "Way Forward". Accordingly, in the first draft of the report to the General Council (TN/CTD/W/25) which had been prepared on his own responsibility and circulated to Members on 3 December, he had included, in addition to the factual status of the work on the various issues, a number of options on the possible way forward. In this draft report he had also taken account of the possibility of reaching agreement on decisions in respect of some Agreement-specific proposals. These were to be included in Annex III to the report. Most Members had accepted the draft report as a good basis on which to work.

74. In informal consultations, a number of constructive suggestions had been made on the factual part of the draft report, and these would be reflected in the revised version when the report was finalized. However, there had been divergent views on the "Way Forward" in Section VII of the draft report. Furthermore, many Members had emphasized the importance of making progress on the Agreement-specific proposals, which would constitute the immediate deliverables. In order to expedite progress on the Agreement-specific proposals, he had identified on his own responsibility and on the basis of the discussions that had taken place in the Special Session, a list of 22 proposals on which he considered it might be possible to make immediate recommendations for decision. Focused and interactive discussions had taken place on these proposals. Members had agreed on four proposals for immediate decision. These included two proposals on the General Agreement on Trade in Services (GATS), one on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and one on the Enabling Clause. In his view, Members were also very close to agreement on several other proposals. Regrettably, however, they had not been able to go the extra yard. At the same time, and as reflected in the consultations, there had continued to be significant differences on two aspects of the "Way Forward". Members had divergent views on the matter of referring some of the Agreement-specific proposals to other WTO bodies, including negotiating groups. Some Members had been of the view that the Special Session could benefit from the ongoing discussions in these bodies, since either the issues were already under consideration, or because it would be difficult to take a decision on them in isolation from the ongoing negotiations. Other Members had disagreed. They had emphasized that the Ministers had given a mandate to the CTD to carry out this work. Finally, in addition to divergent views on referrals, there had been significant differences on the timelines for completing the remaining work of the Special Session.

75. In an effort to provide a basis for agreement, he had revised Section VII of the draft report on the "Way Forward". In this revised version, which had been discussed in informal consultations, he had proposed the rationalization of the further work of the Special Session, including through the involvement of other WTO bodies. He had also proposed timelines for completion of the work in two

tranches – the first to 15 March 2003 and the second to 15 May 2003. However, in spite of intensive and prolonged consultations on the "Way Forward", Members had not been able to agree either on the referral of Agreement-specific proposals to other WTO bodies, or on the timelines for completion of the remaining work. In spite of all efforts to find common ground, these differences could not be bridged and had prevented the Special Session from coming to agreement on its report to the General Council. He had therefore been obliged to bring this situation to the attention of Members. Even though there was no agreement on the report, it was his view that this was far too important an area of work to be left without exerting further effort towards fulfillment of the mandate. To do otherwise would be deeply regrettable, especially in light of the amount of work that had already been carried out, and the progress that in his view was possible, with further effort and goodwill on the part of all involved. He therefore proposed that while the General Council might wish to take note of his statement, it should also agree to provide additional time to allow the Special Session to finalize its report.

76. The Chairman proposed that the General Council authorize the Committee on Trade and Development in Special Session to continue its work towards finalizing its report on special and differential treatment in pursuance of paragraph 12.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, and to report back to the General Council at its first meeting in 2003.

77. The General Council took note of the statements and so agreed.

6. Sub-Committee on Least-Developed Countries – Recommendations for facilitating and accelerating the accession of LDCs to the WTO Agreement (WT/COMTD/LDC/12)

78. The Chairman recalled that under paragraph 42 of the Doha Ministerial Declaration, Ministers had recognized that accession of LDCs remained a priority for the membership and agreed to work to facilitate and accelerate negotiations with acceding LDCs. Ministers had also instructed the Sub-Committee on Least-Developed Countries to design a work programme on LDCs. That work programme, adopted by the General Council at its meeting in February and March 2002, included, as one of its seven broad elements, measures to facilitate and accelerate LDCs' accession to the WTO Agreement. At its meeting on 2 December, the Sub-Committee had agreed to guidelines to facilitate and accelerate negotiations with acceding LDCs.

79. Mr. Molander (Sweden), Chairman of the Sub-Committee on Least-Developed Countries, said that as a follow-up to paragraphs 9 and 42 of the Doha Ministerial Declaration and in accordance with the mandate contained in paragraph 18(iii) of the WTO Work Programme on LDCs, the Sub-Committee had agreed on 2 December to Guidelines on the Accession of LDCs (WT/COMTD/LDC/12) and had forwarded these to the General Council for adoption. These guidelines would make a significant and valuable contribution to LDCs' integration into the multilateral trading system. Since the entry into force of the WTO Agreement in 1995, no LDC had acceded under Article XII of the WTO Agreement, while several LDCs were in the process of accession. Facilitating and accelerating these negotiations, including through targeted technical assistance, should be a matter of priority for the membership. These guidelines would make a decisive contribution to facilitating and accelerating LDCs' accession, if matched with effective implementation. He wished to express gratitude to the LDCs, to all Members and Observers of the Sub-Committee, and to the Director-General and his staff for their contribution to securing agreement on these guidelines.

80. The main elements of the guidelines he wished to outline were in the following four areas: market access, WTO rules, process, and trade-related technical assistance and capacity building. First, in the area of market access, Members had agreed to exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account what had been

undertaken by existing LDC Members. Acceding LDCs also agreed to offer access through reasonable concessions and commitments commensurate with their individual levels of development, financial and trade needs and in line with the relevant provisions in GATT 1994, GATS and the Agreement on Agriculture. Second, in the area of WTO rules, it had been agreed that the special and differential treatment (S&D) provisions should be applicable to all acceding LDCs from the date of entry into force of their accession protocols. Transitional periods in specific WTO Agreements should be granted in accession negotiations, taking into account individual development, financial and trade needs and with a view to enabling acceding LDCs to implement and comply with the rules. In this regard, the transitional periods should be accompanied by action plans, and should be supported by technical assistance for acceding LDCs. In addition, commitments to Plurilateral Trade Agreements should not be a precondition for accession to the multilateral trade agreements of the WTO. Third, in the area of process, the guidelines focused on the good offices of the Director-General, which should be available to assist acceding LDCs and Chairpersons of LDC accession working parties. Other additional measures to streamline and facilitate the accession process were also mentioned. Fourth, in the area of trade-related technical assistance and capacity building, targeted and coordinated technical assistance by development partners to cover all stages of the accession process should be provided, with the objective of effectively integrating the acceding LDCs into the multilateral trading system. Finally, the guidelines would be kept under review, with agreed review procedures for the Sub-Committee, a stocktaking at the Fifth Ministerial Conference and, as appropriate, at subsequent Ministerial meetings. These measures and steps would facilitate LDCs' accessions and enhance their participation in the rules-based trading system. Therefore, the formal adoption of the guidelines by the General Council was important, as these would facilitate LDCs' accession negotiations and would be a move towards the universality of the WTO.

81. The General Council adopted the draft Decision in WT/COMTD/LDC/12.²

82. All representatives who spoke expressed appreciation to the Chairman of the Sub-Committee on LDCs and other Members for their efforts in finalizing the draft Decision.

83. The representative of the United States expressed appreciation to delegations involved in the accession process for their efforts to streamline and simplify the WTO accession procedures for LDCs. The United States attached particular importance to ensuring that accessions were conducted on an expeditious basis, but with due regard to the substantive issues and the contribution that WTO membership could make to domestic economic reform in the least-developed countries. Her delegation hoped that adoption of the guidelines would help Members to move forward.

84. The representative of Zambia, speaking on behalf of the LDCs, said he believed that the text was balanced although not perfect. In adopting this decision, one should keep in mind that the main challenge was to translate it into concrete results by ensuring that all LDCs could accede to the WTO Agreement in a flexible, transparent and quick manner.

85. The representative of Japan said that in his delegation's view, the past discussions on this topic had renewed Members' awareness of the importance of facilitating the LDCs' accession processes as well as their integration into international trade and the multilateral trading system. Japan sincerely hoped that LDCs could realize their accessions in the very near future, either before or at the next Ministerial Conference, through the collective effort of both the applicant countries as well as Members. In accordance with the decision, Japan would constructively take part in the LDCs' accession processes.

86. The representative of the European Communities said that his delegation welcomed the agreement reached and would live up to it. With these new guidelines and Members' collective

² The Decision was subsequently circulated in WT/L/508.

commitment to facilitate and accelerate ongoing LDC accessions, one should see concrete results and welcome new LDC Members as soon as possible.

87. The representative of India said that it was significant that no LDC had acceded to the WTO Agreement since the establishment of the organization in 1995. He hoped that adoption of the guidelines would facilitate faster accession of LDCs to the WTO Agreement. While his delegation would have preferred more specific provisions, it realized that the draft Decision under consideration was all that could be agreed upon collectively. India supported the adoption of the decision and would fully implement the guidelines agreed upon.

88. The representative of Norway said that his delegation welcomed the adoption of these guidelines which were an important step in the right direction toward facilitating LDCs' accession process. As acceding LDCs might consider their accession process to be extremely burdensome and uneven, with regard to their specific resource constraints and limited negotiating capacity, he hoped that Members would limit their requests to LDCs, which were perhaps the biggest constraints experienced so far in LDCs' accession negotiations. However, it should also be recognized that the negotiation process was also an important educational tool which might facilitate and strengthen the understanding and use of the WTO rights and obligations of the applicants. With regard to technical assistance, it was necessary to continue ensuring a coordinated approach. As resources were not unlimited, technical assistance should be needs- and result-oriented in order to facilitate the accession process of the LDCs.

89. The representative of Kenya, speaking on behalf of the African Group, said that most LDCs belonged to the African Group. The guidelines were an important step, but as stated by the Chairman of the Sub-Committee, they would only be successful if matched by effective implementation and technical assistance.

90. The representative of Canada said that his delegation had taken an active part in the work to reach consensus on recommendations for facilitating and accelerating the accession of LDCs. This was an excellent example where constructive engagement among developed, developing and – most notably – LDC Members had worked to advance practical measures to achieve the desired objective. Canada welcomed the recommendations from the Sub-Committee and would work to implement them in a timely and effective manner. It looked forward to cooperating with LDC acceding countries and with all other WTO Members to that end.

91. The representative of Hungary said his delegation hoped that these guidelines would ease somewhat the burden of the accession process on LDCs, which strained the capacity of even countries with higher and more developed resources. It also hoped that these guidelines would help speed up the process on substance, where a fine balance should be sought. On the one hand, LDCs should be expected to meet certain basic obligations, but on the other hand, as experienced in recent accession processes, LDCs should not be asked to undertake commitments which were not commensurate with their capabilities, their situation and their levels of development. Hungary hoped that as a result of these new guidelines there would be a higher level of realism and that accession processes would be speeded up.

92. The representative of China welcomed the General Council's adoption of the guidelines to facilitate and accelerate the accession of LDCs to the WTO Agreement. This was a step forward in the special and differential treatment in favour of LDCs. China hoped this would promote full participation of the LDCs in the work of the multilateral trading system and, more importantly, their integration into the world economy.

93. The representative of Cuba said the guidelines should facilitate and accelerate the accession process of the LDCs. At the same time, the guidelines should prevent Members from requesting

commitments from LDCs that were beyond their economic and development possibilities. This was the first step in the direction of the better integration of LDCs into the multilateral trading system. Cuba hoped that Members would demonstrate a real political will in the implementation of the guidelines.

94. The Chairman expressed appreciation to delegations for their generosity of spirit which had permitted the adoption of the guidelines.

95. The General Council took note of the statements.

7. Committee on Subsidies and Countervailing Measures – Statement by the Chairman of the Committee on the work undertaken pursuant to Paragraph 10.6 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns.

96. The Chairman recalled that under paragraph 10.6 of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17), Ministers at Doha had instructed the Committee on Subsidies and Countervailing Measures to take certain actions with regard to the extension of the transition period for certain Members, under the rubric of Article 27.4 of the Subsidies Agreement, for certain export subsidies provided by such Members. The Chairman of the Subsidies Committee had indicated to him that he wished to report to Members on the successful work that had been undertaken in the Committee pursuant to this mandate. He commended the Chairman and Members of the Committee for the efforts they had made to respond to the needs and interests of developing countries in this particular area.

97. Mr. Hovorka (Czech Republic), Chairman of the Committee on Subsidies and Countervailing Measures, said that while paragraph 10.6 of the Doha Decision on Implementation-Related Issues and Concerns contained no reporting requirement, he wished to report to the General Council that the Committee had almost completed its mandate, and was continuing to work in a very constructive way to finish the work. Throughout the process, all Members had engaged in a very positive manner, unfailingly respecting both the letter and the spirit of the mandate from Doha. In this sense, this had been an extremely beneficial exercise for building confidence in the institution at a very important time. The issue covered by paragraph 10.6 of the Implementation Decision was a procedure creating a "fast track" or simplified basis for certain developing-country Members to obtain an extension of the eight-year transition period for the elimination of export subsidies. That period came to an end on 31 December 2002. While Article 27.4 of the Subsidies Agreement contained a provision enabling developing-country Members to obtain an extension of this transition from the Committee, the provision contained no procedural guidelines. For a number of developing-country Members who had been facing difficulties in implementing their obligation to eliminate export subsidies, obtaining a measure of certainty in their ability to obtain such extensions had been key to their joining the consensus to launch a new round of negotiations.

98. The procedures approved at Doha had been developed in an intensive process in the Committee conducted in 2001 by the previous Committee Chairman. These procedures established a simplified transparency- and standstill-based process for developing-country Members meeting certain thresholds for share of world trade and total Gross National Income to obtain extensions for export subsidies in the form of tax and duty exemptions. At Doha, Ministers had approved the procedures by directing the Committee to use them to grant extensions for qualifying export subsidy programmes. Ministers had also directed the Committee to use the same procedures in granting extensions for the same sorts of programmes of Members at similar stages of development and having a similar order of magnitude of share in world trade as those meeting the numerical thresholds set forth in the procedures. A total of 20 developing-country Members had requested extensions directly based on the fast-track procedures, in respect of a total of 45 programmes. That list had eventually been narrowed down to 19 Members in respect of 43 programmes, as certain programmes had been

subsequently withdrawn by the demandeur Members. One other Member had invoked the clause in the Doha Implementation Decision as to similar level of development and similar order of magnitude of world trade, and on that basis had requested fast-track extension of two programmes. Given that the eight-year transition period expired on 31 December 2002, the Committee had been working intensively since January on the mandate from Doha. In particular, an exhaustive exercise had been conducted based on the fast-track procedures, involving detailed notifications of the programmes in question, and exchanges of written and oral questions and answers. All Members had repeatedly expressed their satisfaction both with the level of transparency achieved and with the very constructive and cooperative spirit in which all had engaged.

99. He wished to give enormous credit to all Members for scrupulously adhering to the terms of the mandate from Ministers. At no time had any Member attempted to introduce any other factors or conditionalities into the process, and this had been the key to success. Just before the summer break, it had become apparent that the transparency exercise had been completed in respect of the large majority of the programmes notified in the fast-track process. This had led, just after the summer break, to an extremely positive initiative undertaken jointly by the delegations of Australia, Canada, the European Communities, Japan, Switzerland and the United States, which proposed an early harvest of fast-track approvals for the programmes for which the transparency process had by then been completed. This very constructive proposal had formed the basis of the work during the two months that had followed, in which the Committee had refined the text of the draft decision originally proposed by a group of delegations, and had completed the transparency exercise for the programmes that had not been included in the proposal as originally formulated. All Members had engaged in an extremely positive and cooperative way in the Committee's work to formulate the draft decisions for action. Thanks to this constructive spirit and to Members' making themselves available for frequent informal consultations, at its special meeting on 22 November the Committee had been able to take decisions in respect of all of the extension requests, based directly on the fast-track procedures. In total, the Committee had taken 43 separate decisions, in respect of the qualifying programmes of the 19 demandeur Members. This was undoubtedly an achievement of great significance for the demandeur countries, in terms of allowing them the extra time for policy adjustment that had been a critical element in their joining the consensus at Doha. It also represented a major accomplishment for the Subsidies Committee, but more importantly for the organization. The Committee had received a clear mandate from Ministers, and all Members had worked with a common purpose to fully and faithfully fulfill that mandate. This should be a matter of enormous satisfaction to all.

100. While all of the work in respect of the requests based directly on the fast-track procedures was finished, the Committee had not yet completed its work in considering the fast-track request by one Member that had invoked the language in the Implementation Decision as to similar level of development and similar order of magnitude of world trade. However, he was conducting a very intensive series of informal consultations to explore possibilities to find an appropriate solution. This could be done, but it was clear that this would only be possible with a further concerted effort and, importantly, a renewed commitment on all sides to find the maximum possible flexibility. He appealed to the delegations concerned to redouble their efforts in this regard. Time was extremely short, and Members should make all efforts towards progress.

101. Finally, he wished to inform the General Council on the Committee's activities in respect of requests for extension of the export subsidy transition period that were based on Article 27.4 of the Subsidies Agreement only, and not covered by the mandate from Ministers. In a number of cases, the demandeurs were also demandeurs in the fast-track exercise. The difference, for those Members, was that the programmes involved did not qualify for fast-track treatment. There also, Members had been engaging very constructively in the review process, seeking to identify the basis for a consensus in respect of these requests. Some of these requests were, however, much more complex and difficult than others and, with the deadline of 31 December 2002, time was running short. However, he was confident that an agreement would be reached on all of the outstanding requests. He appealed to the

interested delegations to continue to intensify their efforts to develop the remaining necessary information in respect of the programmes and the nature of the requests, and requested all Members concerned to join in the efforts to find a solution acceptable to all.

102. The representative of the United States said that for well over a year, the United States had been intimately involved in addressing the practical concerns expressed by many developing countries regarding the extension of the transition period under Article 27.4 of the Subsidies Agreement. Her delegation had assisted in the development of the special extension procedures leading up to the Fourth Ministerial Conference and had supported the Implementation Decision taken at Doha which had adopted those procedures. In the last several months, her delegation had been actively engaged in addressing very difficult technical issues and ultimately in obtaining the early approval of the requests made by virtually all of the small exporters. The United States was pleased that the extension requests of 19 developing-country Members had now been approved and congratulated the Committee for its dedication and productive work. Her delegation would continue to work constructively on the outstanding requests and hoped that a consensus could soon be reached on the appropriate terms for these extensions.

103. The representative of Colombia said his delegation regretted that a decision had still not been taken with regard to an extension for Colombia of the transition period for some of its subsidy programmes. He wished to express appreciation to the Committee Chairman for his efforts to further the process, to the Secretariat, and to the group of countries which, at the September meeting of the Committee, had tabled a proposal which had subsequently been circulated in G/SCM/W/521. In that proposal Colombia was included among the countries eligible for "early harvest" and for the fast-track extension procedures. He also wished to thank the group of countries which, together with Colombia, had presented in mid-2001 this implementation-related issue as part of the transparency process. His delegation was convinced that with goodwill on the part of all countries, in particular those few which had not yet been able to join the consensus, Colombia's request would be agreed upon.

104. The representative of Japan expressed gratitude to the Committee Chairman for his outstanding efforts to move this matter forward. As one of the original proponents of the so-called early harvest proposal, he wished to congratulate those countries which had been granted an extension of their programmes. Japan believed that the exercise in the Committee had received a sufficient level of cooperation from those countries in answering questions and submitting information, thereby contributing extensively to the transparency of those programmes. Japan had been encouraged to hear the optimism of the Committee Chairman for the remaining work, as it wished to see the remaining extension issues decided by the end-of-year deadline.

105. The representative of Barbados expressed appreciation to the Committee Chairman for his report and his outstanding work. Barbados welcomed the fact that the Committee had been able to take a decision on these matters and approve the extension of certain export subsidies. This was particularly significant within the current context of stalemate on other implementation issues. He wished to express gratitude to the membership for acknowledging the particular circumstances of small developing-country Members and the critical importance of these programmes to them as they were trying to diversify their economic structure. A few outstanding matters were still before the Committee, and Barbados looked forward to their satisfactory resolution.

106. The representative of the European Communities thanked the Committee Chairman for his hard work and expressed satisfaction that in large part the mandate of the Doha Implementation Decision under this point had now been fulfilled. This had been due to the immense work that had been carried out in the Committee, mainly by the developing countries who had notified the programmes offered for the first time and who had cooperated fully in the review process. They deserved special acknowledgement in view of their resource constraints. The process had brought an

unprecedented amount of transparency and had been a clear success story in this particular implementation area. The Community was determined to continue its efforts so that the work could be completed, and hoped that the remaining requests would be decided upon before the end of 2002.

107. The General Council took note of the report by the Chairman of the Committee on Subsidies and Countervailing Measures and of the statements.

8. Report by the Chairman of the Trade Negotiations Committee

108. The Director-General, Chairman of the Trade Negotiations Committee, reporting on the TNC's fifth meeting on 4-6 December, said that two items had been taken up: reports by the Chairpersons of bodies established by the TNC, and reports on outstanding implementation issues by relevant WTO bodies pursuant to paragraph 12(b) of the Doha Ministerial Declaration. With respect to the reports by the Chairpersons of bodies established by the TNC, the long discussion which had taken place had greatly contributed to Members' continuing effort. The thoughtful statements by a large number of delegations had been useful, and had given him strong and clear signals as to the direction in which Members should be moving. At the start of the meeting, he had characterized the current situation as being rather mixed, inasmuch as Members had made progress on all fronts, but in an uneven way, and perhaps not as quickly as they needed to. He had reiterated that more clarity in negotiating positions was needed so as to begin to forge consensus, and that all the areas of negotiation needed to move forward together, so that all participants could have an early idea of the possible overall balance of gains and concessions under the single undertaking. He believed that this time around there might well be no room for a last minute deal. Delegations had generally agreed with his opening remarks, and it had been clear from their statements that everyone was cognizant of the breadth and complexity of the issues. However, he had warned that everyone should recognize the sense of urgency and not wait until the last minute to make a move. He was convinced that Members could clearly not afford to go to Cancún with an overloaded agenda and with too many unresolved issues. Views had been expressed on all the areas of work under the TNC, with a general emphasis on agriculture, on the work of the Special Session of the Committee on Trade and Development, and on the issue of TRIPS and Public Health. In his conclusion, he had said that delegations were right to have concerns about the way things were going. However, one should also be realistic in admitting the positive trend of the rising level of participation since October. He had underlined the need to keep up this esprit de corps, perhaps with a sense of compassion to give it a human touch, particularly when dealing with development issues.

109. With regard to future meetings of the TNC, he believed Members might need to meet more often to address not only the substance of the negotiations, but also the positive linkages between the different negotiations in a broader context. He was considering how to engender a more interactive type of discussion at the meetings, turning general statements into more specific ones, with the aim of clarifying positions and moving towards convergence. The TNC would also need to continue to keep the question of the scheduling of meetings under close scrutiny, in line with what was set out in the Principles and Practices agreed early in 2002. This would require careful management, striking a balance between flexibility and predictability. The schedule should allow a balanced time allocation to all negotiating groups to underscore his principle of balanced and concerted movement on all negotiating fronts. Members should make their best efforts to take into account the special needs of small delegations.

110. With regard to the reports on outstanding implementation issues by relevant WTO bodies pursuant to paragraph 12(b) of the Doha Ministerial Declaration, he recalled that paragraph 12(b) provided that the outstanding implementation issues for which no specific negotiating mandate had been provided in the Declaration would be addressed as a matter of priority by the relevant WTO bodies, which would then report to the TNC by the end of 2002 for appropriate action. These outstanding issues had been considered by nine regular WTO bodies during 2002. From the reports of

these bodies, it had been clear that despite all the hard work that had been done, Members did not seem to have reached agreement on definitive solutions on most of the issues before them. In preparing for the TNC meeting, he had consulted with the Chairpersons concerned and with a number of delegations to seek their advice on how the TNC could handle the issues in each area. He had reported to the TNC that his consultations had also showed that significant differences persisted about what action the TNC should take. On the basis of suggestions made prior to the meeting, he had suggested that the possible courses of action for any given issue could include the following: (i) resolving the issue; (ii) agreeing that no further action was needed on the issue; (iii) referring the issue to a negotiating body; (iv) continuing work in the relevant subsidiary body under enhanced supervision by the TNC and with a clear deadline, perhaps June 2003; and, (iv) undertaking further work at the level of the TNC. However, he had had to report also that he had not detected an emerging consensus on any of these options. In the TRIPS Council, a reservation had been placed on the adoption of the report of that body. In the light of delegations' statements at the TNC meeting, Members had been able to reach agreement to lift the reservation, and that the report would therefore be considered to have been presented to the TNC. He was pleased to report to the General Council that, at the end of the discussion and on the basis of what had been said, the TNC had been in a position to take note of consensus regarding the implementation issue considered by the Committee on Sanitary and Phytosanitary Measures (SPS). He believed that this was a good example of how a Committee could develop concrete procedures to address a specific concern. However, on the other issues, although encouraging progress had been made in some areas, there did not yet appear to be any agreed solutions. The discussion had also made it clear that Members had not been able to reach agreement as yet on an approach to the outstanding implementation issues, with the exception of SPS. In the light of this, he had informed the TNC that he saw no alternative to suggesting that, during the end-of-year break, Members reflect further on the reports and on what they had heard during the meeting. For his part, he would consult informally, as part of his overall responsibilities as TNC Chairman, on possible next steps. The TNC would then come back to the question of appropriate action on these issues at its next meeting, which was currently scheduled for 4-5 February 2003. However, he believed that Members should not underplay the progress in some areas, such as technical barriers to trade. For this reason, he had encouraged delegations also to continue working with each other and with the Chairs of the relevant bodies, to see if the outcomes which had appeared to be within reach in some areas could be achieved by the time of the next TNC meeting.

111. The representative of Norway thanked the Director-General for his report and asked whether it could be circulated.³

112. The representative of Bulgaria said that Members were at a very important moment of the negotiations which had been launched by the Ministerial Conference in Doha. The first of the three years of negotiations was over and certain time-frames and deadlines provided for in the Doha Ministerial Declaration expired at the end of 2002. These time-frames and deadlines were part of the very delicate balance achieved in Doha among the various interests of Members, and on the basis of which the launching of the negotiations had become possible. The deadlines for implementation-related issues and concerns were the first deadlines established by the Doha Declaration because of the importance attached to them. Paragraph 12 of the Doha Declaration stated that Ministers "attach the utmost importance to the implementation-related issues and concerns raised by Members and are determined to find appropriate solutions for them." Pursuant to paragraph 12(b), those implementation issues had to be addressed "as a matter of priority" and the relevant WTO bodies had to report to the TNC by the end of 2002 for appropriate action. However, it was clear that for all but one of the outstanding implementation issues, no appropriate solution had been found and no appropriate action had been proposed by the relevant WTO bodies. In fact, the relevant WTO bodies had not fulfilled their mandate pursuant to paragraph 12(b). The reports which had been submitted, and on which the Chairman of the TNC had reported, were not those envisaged by paragraph 12(b)

³ The report was subsequently circulated as Job(02)/212.

since they did not contain any appropriate action. They were only factual reports of the discussions. Thus, Members had not been able to undertake the very first step in the negotiations agreed to in Doha. Therefore, the delicate balance of interests reflected in the deadlines agreed to in Doha was no longer present. Bulgaria continued to attach special importance to some of the implementation issues and would have to draw the necessary conclusions. With the failure to undertake this first step, which was a matter of priority, Bulgaria would have difficulty in taking the next step in the negotiations. It would have to rethink its position in other areas of the negotiations, including the next deadlines, and reserved its position in those areas.

113. The representative of India said that his delegation shared Bulgaria's views. Members' failure to adhere to the deadlines prescribed in the Doha Declaration had complicated matters considerably for most developing countries. India would have preferred more positive results at least by the end of December, and regretted that Members had not been able to make adequate progress. India noted that the TNC Chairman would hold further consultations with the concerned delegations and hoped that when the TNC Chairman reported at the TNC meeting on 4-5 February, developing countries would feel satisfied with regard to the results achieved and the road map ahead.

114. The representative of Kenya, speaking on behalf of the African Group, welcomed the report of the TNC Chairman on the TNC's work. She wished to register the African Group's disappointment that the deadlines set by Ministers at Doha had not been adhered to and appealed to Members to take the issue of deadlines very seriously as it would affect the work programme and the progress to be made towards Cancún. She welcomed the consultations to be held by the TNC Chairman and encouraged him to ensure that these would yield a balanced outcome for developing countries, including and in particular for countries of Africa.

115. The representative of China said that his delegation shared the views expressed by previous speakers. The end-2002 deadline set by Ministers in Doha for implementation issues was approaching, but from the reports submitted by the relevant WTO bodies, his delegation believed that the mandate given by the Ministers at Doha in paragraph 12(b) of the Ministerial Declaration had not been fulfilled. Although these bodies had discussed the implementation issues before them, not much substantive progress had been made and further work remained to be done to address these issues of great concern to developing-country Members in a meaningful manner. It seemed to his delegation that the situation regarding the outstanding implementation-related issues remained almost the same as it had been before and at the Doha Ministerial Conference. Among other things, the issues concerning implementation of the Agreement on Textiles and Clothing contained in paragraphs 4.4 and 4.5 of the Doha Declaration remained unresolved, and his delegation looked forward to an early solution to these issues.

116. Resolution of the outstanding implementation issues would have a substantive impact on the negotiations under the Doha Development Agenda. Members should redouble their efforts, first, to build confidence for the developing-country Members in the multilateral trading system and second, to pave the way for the smooth running of this round of new multilateral negotiations. Since all the regular bodies, with the exception of the SPS Committee, had either failed to reach any consensus or made no recommendations, it was high time that the TNC decided to take appropriate action. It was not appropriate to send these issues back to the regular bodies, as there was no hope of making any progress. His delegation supported the proposal by India and others that the TNC should deal with these issues directly, as they were an integral part of the Work Programme. His delegation also supported the idea that these issues should not be left until the Fifth Ministerial Conference, and believed that Members should try their hardest to reach proper solutions to them over the next couple of months.

117. The General Council took note of the report by the TNC Chairman and of the statements.

9. Committee on Anti-Dumping Practices – Report on matters referred to the Committee by the Doha Ministerial Decision on Implementation-Related Issues and Concerns (G/ADP/9 and G/ADP/10)

118. The Chairman recalled that under paragraph 7.4 of the Decision on Implementation-Related Issues and Concerns, Ministers at Doha had instructed the Committee on Anti-Dumping Practices to draw up guidelines for the improvement of the annual reviews provided for under Article 18.6 of the Agreement on the Implementation of Article VI of GATT 1994, and to report its views and recommendations to the General Council for subsequent decision within 12 months. He drew attention to the Committee's recommendations in document G/ADP/9 in this regard. He further recalled that Ministers had also instructed the Committee, under paragraphs 7.2 and 7.3 of the Implementation Decision, to examine matters relating to Articles 15 and 5.8, respectively, of the Agreement, and to draw up appropriate recommendations within 12 months. The Committee's recommendation regarding Article 5.8 was contained in document G/ADP/10, and the Committee had met on 9 December to pursue its consideration of the issue relating to Article 15.

119. Mr. Espinosa (Ecuador), Chairman of the Committee on Anti-Dumping Practices, said he wished to report⁴ on his own responsibility and without prejudice to the position of any Member, as Chairman of the Committee on Anti-Dumping Practices, pursuant to paragraph 7.4 of the Decision on Implementation-Related Issues and Concerns. In that paragraph, Ministers had agreed that "The Committee on Anti-Dumping Practices is instructed to draw up guidelines for the improvement of annual reviews and to report its views and recommendations to the General Council for subsequent decision within 12 months". He also wished to report, on his own responsibility and without prejudice to the position of any Member, on the activities of the Committee and its Working Group on Implementation pursuant to paragraphs 7.2 and 7.3 of the Implementation Decision, although neither of those paragraphs contained a specific obligation with respect to reporting.

120. Paragraph 7.2 provided that Ministers recognized "that Article 15 of the Agreement on the Implementation of Article VI of GATT 1994 is a mandatory provision, the modalities for its application would benefit from clarification. Accordingly, the Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to examine this issue and to draw up appropriate recommendations within twelve months on how to operationalize this provision". Paragraph 7.3 provided that Ministers took note that "Article 5.8 of the Agreement on the Implementation of Article VI of GATT 1994 does not specify the time-frame to be used in determining the volume of dumped imports, and that this lack of specificity creates uncertainties in the implementation of the provision. The Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to study this issue and draw up recommendations within 12 months, with a view to ensuring the maximum possible predictability and objectivity in the application of time frames".

121. Since establishing a framework for discussing the issues referred to the Committee and its Working Group on Implementation at a special meeting in December 2001, the Committee and Working Group had been engaged in discussing proposals on each of the three topics under discussion. The Committee and Working Group had held a series of informal meetings, and he had also conducted informal consultations on numerous occasions. Members had submitted documents containing proposals, explanations, questions and answers, and draft recommendations, and had engaged actively in discussions. This process had led to a clarification and distillation of the issues. A technical summary, giving an overview of the main points in Members' proposals, questions and responses, and discussions, was attached to his report.¹ The discussions had revealed that many Members recognized the importance of the issues raised. During the course of the discussions, delegations had expressed their understanding, and, in some cases, support, in respect of some of the

⁴ The report was subsequently circulated in document G/ADP/11.

proposals or elements thereof. In addition, his perception was that many delegations, regardless of their views on the substance of the proposals made, had found the discussions useful in furthering their understanding of the proposals and the technical issues involved, and of other Members' views concerning the proposals. This was confirmed by the highly constructive spirit with which Members had engaged in the detailed discussions on these highly technical and complex issues.

122. As a result of the cooperative spirit shown by Members throughout the discussions, he was pleased to report that the Committee had adopted two recommendations with respect to two implementation issues referred to it by Ministers. First, with respect to the mandate in paragraph 7.4 of the Implementation Decision, the Committee had adopted, on 27 November, a recommendation regarding annual reviews of the Anti-Dumping Agreement (G/ADP/9). In order to provide useful information to Members and the public, and to enhance transparency, the Committee had recommended that additional information, concerning the number of anti-dumping revocations reported by Members, be included in the annual report, that the annual report include a comparison of the number of preliminary and final actions reported by Members on an ad hoc basis and in their semi-annual reports, and that developed-country Members should include in their semi-annual reports the manner in which the obligations of Article 15 of the Agreement had been fulfilled. This information would be compiled and included in a table in the Committee's annual report, and would include noting where Members had not provided such information. He believed that this additional information to be included in the Committee's annual reports would indeed improve those reports and promote transparency. As Chairman of the Committee, he recommended adoption of this recommendation by the General Council.

123. With respect to the mandate in paragraph 7.3 of the Implementation Decision, the Committee had adopted, on 27 November, a recommendation concerning the time-period to be considered in making a determination of negligible import volumes for the purposes of Article 5.8 of the Anti-Dumping Agreement (G/ADP/10). In order to provide guidance in this regard, the Committee had recommended that Members determine the volume of dumped imports with reference to one of three defined time periods, notify the Committee as to the chosen methodology to be used in all investigations and, if in any investigation the chosen methodology was not used, provide an explanation in the public notice or separate public report of that investigation. He believed that this recommendation, implemented by Members, would ensure predictability and objectivity in the application of time-frames in anti-dumping investigations to determine negligible import volumes for purposes of Article 5.8 of the Agreement.

124. With regard to the third implementation issue referred to the Committee and its Working Group, his sense was that there continued to exist substantially divergent views on the matter of operationalizing Article 15 of the Agreement. Despite the many discussions and the intensive efforts of a number of Members in consultations, he was unable to identify any significant basis for consensus on a recommendation by the Committee responsive to the mandate under which the discussions had been conducted. While the discussions had revealed areas of common ground among Members with respect to the proposals made, this had not proved adequate to attract support for a consensus on a recommendation on these areas. Certain delegations had expressed the view that the areas as to which there was some degree of common understanding were insufficient as a substantive matter to warrant a recommendation. Other delegations had expressed disappointment in this regard, as they had hoped that the Committee might be in a position to formulate some sort of recommendation on some or all of the issues. However, it was clear that the issues raised in the proposals, as developed and clarified through the discussions, might yet form the basis for further discussion, should any Member submit proposals concerning them for discussion in an appropriate forum.

125. In light of this, he considered that in the context of the mandate from Ministers to the Anti-Dumping Committee and its Working Group, the discussions of these issues had been taken as far as

possible. He realized that what the Committee had succeeded in accomplishing might be less than what had been originally expected by some Members. However, he was pleased with the two recommendations that had been adopted, and confident that they would improve the quality of the Committee's annual reports and the predictability and transparency of anti-dumping investigations. Moreover, he was convinced that the exchange of ideas had been valuable in itself, and the quality of the discussion and the information exchanged among Members supported his belief that Members had usefully spent this time. He wished to thank Members of the Committee for their active and cooperative engagement in this process, the previous Vice-Chairperson of the Committee for her work on these issues, as well as the Secretariat for the support given to him in this process. Finally, as the Committee had completed its work under the existing mandate, he hoped that Members would find useful the information in the technical report of the Committee's discussions on the matters referred by Ministers to it and to its Working Group on Implementation.

126. All representatives who spoke expressed appreciation to the Chairman of the Anti-Dumping Committee for his tireless efforts to bring these issues to a successful conclusion.

127. The representative of Korea said that his delegation welcomed both recommendations adopted by the Committee on Anti-Dumping Practices. Given the very limited number of agreements that had been achieved by Members on the outstanding implementation issues mandated by Ministers at Doha, the recommendations adopted by the Anti-Dumping Committee would have significant meaning and implications for the discussion of implementation issues. This success was due in part to the fact that the provisions in the Anti-Dumping Agreement had not needed to be amended, and thus there had been no undermining of the balanced rights and obligations of Members under the Agreement. However, this did not mean that the adopted recommendations had limited importance and effect. While these recommendations focused on the technical aspects, they would increase the level of transparency and predictability in the investigation procedures and in the application of anti-dumping measures. It was regrettable that the Committee had failed to produce a recommendation on operationalizing Article 15 of the Agreement in spite of its hard work and the significant convergence achieved on most areas. Given the effort and flexibility shown by Members in order to achieve consensus during the discussions, the absence of an agreement should not be misinterpreted as a lack of their interest in operationalizing special and differential treatment (S&D) for the benefit of developing countries. His delegation urged Members to continue their constructive consideration of the S&D issues in the appropriate fora.

128. The representative of Brazil expressed his delegation's frustration at recent developments in discussions in the Committee, because the issue of operationalizing Article 15 of the Anti-Dumping Agreement was by far the most important of the three paragraphs of the Implementation Decision that had been referred to the Committee for appropriate recommendations. A positive outcome to this issue would have demonstrated the willingness of developed countries to address the legitimate concerns of developing countries in this area. From the beginning of the process, Brazil had been actively involved in these discussions. In January 2002, together with two other developing countries, Brazil had presented proposals on this issue and had thereafter engaged in a process of answering questions posed by Members. Brazil had then presented a revised proposal in which its ambitions had been significantly lowered. Unfortunately, his delegation's flexibility had not been matched by corresponding flexibility on the part of a few developed countries. The recent versions of the text that had been under discussion had added virtually nothing for developing countries, compared to the rights all Members already enjoyed under the Anti-Dumping Agreement. Even worse, in some cases, the language suggested by a few developed countries diminished the rights developing countries currently had, and this would be an unacceptable result.

129. Until the very end of the process developing countries had endeavoured to find an acceptable text with a minimum of value-added. In a final effort and as an attempt to break the deadlock, they had indicated a series of issues on which they would be ready to negotiate, asking in exchange, for the

inclusion of some vague wording for a few selected points which would not cause problems for the developed countries. The developing countries were looking for a package solution, but this approach had not been successful either. On a more positive note, his delegation appreciated that some other developed countries had engaged very constructively in this process and, in some cases, had even come up with language to overcome some of the difficulties. The lack of a positive outcome for the Article 15 recommendation overshadowed the two recommendations that had been negotiated. The recommendation with regard to Article 5.8 went in the right direction; however, it was not an S&D text. The recommendation related to the Committee's annual reports had a minor part that dealt with S&D – as it related to compliance – and its main elements were of a general application. Brazil hoped that in the Rules Negotiating Group, the issue of operationalizing Article 15 of the Anti-Dumping Agreement would be given the attention it deserved and that substantive progress in this area would be made, as this area needed urgent and deep rethinking.

130. The representative of Chile expressed appreciation for the efforts made by the Chairman, the Secretariat and Members to reach a positive conclusion on the issue of operationalizing Article 15 of the Anti-Dumping Agreement, which was of interest to many Members, be they developed, or developing, or somewhere in between. Like Brazil, Chile had been frustrated by the lack of a recommendation on this issue. The language of the proposal, which aimed at achieving modest results, should not have given rise to problems for any delegation, particularly for any developed country. Chile appreciated the efforts made by many Members to reach a satisfactory solution. At the end of the day, as stated by Brazil, the recommendations by the Committee would have a minimal impact, involved merely a clarification of the Agreement and had nothing to do with S&D, as they provided no special treatment for developing countries. However, on Article 15, Members could have made some modest progress. However, a consensus had not been reached due to the sensitivity of some Members. While Chile was grateful for the effort that had been made on this issue, it was also frustrated. Once again, Members had failed to seize an opportunity to push the system in the right direction.

131. The representative of Colombia said that implementation of Article 15 of the Anti-Dumping Agreement had always been a priority for Colombia. Ministers at Doha had admitted that adequate implementation of Article 15 should be one of the priorities in the negotiating process launched at Doha. In the beginning, Colombia had hoped that, though far from the initial position stated by developing countries, a solution would be found, even if minimally significant. Therefore, his delegation shared the frustration of Korea, Brazil and Chile. Colombia thanked those delegations who had contributed to trying to find a solution to this implementation issue. It noted that no solution had been found either on this issue or on many other implementation issues.

132. The representative of India said that in paragraph 7.2 of the Implementation Decision, Ministers had recognized that while Article 15 of the Anti-Dumping Agreement was a mandatory provision, the modalities for its implementation would benefit from clarification. Since the beginning of 2002, his delegation had engaged constructively in the discussions on this issue. It had put forward proposals and provided clarifications sought by Members. In the process, it had shown flexibility with a view to reaching a consensus in this matter. India had already taken some of the important elements of its proposal to the Rules Negotiating Group. Ultimately, it had been left with only one element, which was the price undertakings. Even on this element, India had engaged very constructively to find a solution. While India had been flexible on many of the details, there were three concepts his delegation felt were important in order for it to realize any value from the decision. India was extremely disappointed that it had not been possible to work out a solution that would add value to the existing provisions of the Agreement. The issue of operationalizing S&D provisions of the Anti-Dumping Agreement was of tremendous importance to a number of developing countries. India regretted Members' inability to come up with meaningful recommendations on this issue.

133. The representative of the United States expressed disappointment that the Committee had not been able to reach agreement on Article 15, but said this had not been for any lack of trying on the part of her delegation or on the part of many other Members. It should be remembered that the Committee had been able to reach agreement on two other difficult implementation issues, including on a paragraph in its recommendation on Article 18.6 specifically to address the concerns of developing-country Members about Article 15 compliance. The US appreciated that these were neither S&D issues nor implementation issues, but they had been raised by developing countries throughout the process and the US had assumed that a positive result would be important to developing countries. The US had worked very hard to try to bring about an agreement on Article 15 as well. When discussions had appeared to be at a standstill, it had submitted a proposal for the September meeting of the Anti-Dumping Working Group that had received a great deal of favorable attention and comment from other Members. When its proposal had been the subject of serious discussion at the October meeting, the US had worked very quickly to draft and table a revised proposal at that meeting to address the concerns that other Members had expressed, so that the US proposal could be turned into a draft recommendation for Members to consider as a possible basis for consensus. Her delegation had been fully engaged in the consultations on this issue, and had continued to support further modifications to the proposals in order to address other Members' concerns. Canada's tabling of a proposal at the November meeting had been a very helpful effort to bridge the gap, and had come very close to providing a basis for the Committee to reach consensus. The Chairman's tireless efforts had also been extremely helpful, but unfortunately Members had not reached consensus.

134. The representative of Japan said that Ministers at Doha had instructed the Anti-Dumping Committee to examine and draw up recommendations or guidelines on three specific issues. His delegation welcomed the fact that the Committee, through its Working Group on Implementation, had successfully concluded its discussion on two of the issues, namely, on Article 5.8 and on Article 18.6 of the Anti-Dumping Agreement. The two recommendations on these issues, which had been adopted by the Committee, were extremely useful in Members' implementation of the Agreement. Japan regretted that Members had not been able to reach a consensus on the issue relating to Article 15, despite their extensive efforts. Nevertheless, Japan believed that the exercise had proven to be successful in revealing areas of common ground, and agreed with the Committee Chairman that the discussions would serve as a good basis for further successful discussions in the area of anti-dumping in the Committee or in other fora, including the Rules Negotiating Group. Japan looked forward to continuing work in this area.

135. The representative of Malaysia said his delegation welcomed the consensus achieved on two implementation-related issues mandated by Ministers in Doha, namely Article 5.8 and Article 18.6 of the Anti-Dumping Agreement. However, it regretted that no consensus had been achieved with respect to the issue related to Article 15, operationalizing the S&D provision of the Anti-Dumping Agreement, despite the flexibility shown by developing countries like Malaysia to move on certain issues and to make concessions in order to achieve a consensus. However, several developed-country Members had refused to budge from their entrenched positions, and had merely offered what was already provided for on price undertaking in the Anti-Dumping Agreement. Malaysia had worked throughout this process looking for elements that could add value to what was already in the Agreement, such as ways to operationalize constructive remedies like price undertakings, and areas where S&D could be provided. In so doing, Malaysia sought neither to add to the obligations of the developed countries nor to add to the rights of developing countries. It had merely sought clarification of certain issues and how to operationalize certain provisions like those regarding price undertakings, which were already in the Agreement. In the process, some developed countries had flatly rejected the concept that the standard of response in the questionnaires from developing countries, which were used in anti-dumping investigations, was within the scope of Article 15, and had quoted a panel interpretation that the questionnaire was outside the scope of Article 15. In Malaysia's view, the standard of response of such questionnaires could be discussed within the

context of Article 15. Malaysia regretted that there had been no consensus despite the tremendous amount of flexibility it had shown. However, it hoped that in the months to come in the lead up to Cancún, Members would be able to constructively address all the implementation-related issues, as they would have to answer to Ministers in Cancún with respect to the mandate given to them in Doha.

136. The representative of Canada welcomed the consensus on two implementation issues, which would add predictability and transparency to the implementation of the Anti-Dumping Agreement. Like previous speakers, Canada was disappointed that the Committee had been unable to reach a consensus on the issue of operationalizing Article 15 of the Agreement. Canada acknowledged the importance of this issue and regretted that no consensus could be reached despite the hard work and the flexibility shown by all Members involved in the discussions. However, Canada was optimistic that the progress made by the Committee on this issue would continue in 2003, either through the work of the Anti-Dumping Committee or through the continuing work of the Rules Negotiating Group, and looked forward to addressing these issues at that time.

137. The representative of Indonesia said that like other speakers, his delegation was disappointed that no agreement had been reached on the issue of operationalizing Article 15 of the Agreement. That issue was undoubtedly one of the most important for most developing countries, including Indonesia. Trade remedy instruments, such as anti-dumping, were frequently misused for the purpose of protection, such as repeated anti-dumping investigations that caused trade harassment and unfair trade restrictions. In order to ensure that the Anti-Dumping Agreement was implemented fairly and with maximum predictability, clarification of the implementation of certain provisions, such as those regarding time-frame for negligible import volume and operationalization of the S&D treatment in Article 15, were imperative. Regrettably, the provisions of Article 15 were not mandatory and lacked precision, thus making them difficult to operationalize. Indonesia hoped that in the coming months Members could reach agreement on this issue.

138. The General Council took note of the report and of the statements, and approved the recommendation contained in document G/ADP/9. The General Council also took note of the recommendation contained in document G/ADP/10, as well as the report by the Chairman of the Committee relating to Article 15 of the Anti-Dumping Agreement.

10. Committee on Market Access – Recommendations regarding the meaning to be given to the phrase "substantial interest" in Article XIII:2(d) of GATT 1994 pursuant to Paragraph 1.2 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns (G/MA/119)

139. The Chairman recalled that Ministers at Doha, in paragraph 1.2 of the Decision on Implementation-Related Issues and Concerns, noted the issues raised in the report of the Chairperson of the Committee on Market Access (WT/GC/50) concerning the meaning to be given to the phrase "substantial interest" in paragraph 2(d) of Article XIII of the GATT 1994, and directed the Market Access Committee to give further consideration to the issue and make recommendations to the General Council as expeditiously as possible, but in any event not later than the end of 2002. The report by the Committee on Market Access had been circulated in document G/MA/119.

140. Mr. Phoho Setipa (Lesotho), Chairman of the Committee on Market Access, said the Committee had not been in a position to make any recommendations to the General Council regarding the meaning to be given to the phrase "substantial interest" under paragraph 2(d) of Article XIII of GATT 1994. Instead a report had been prepared by the Committee and circulated in G/MA/119. The Committee had had a very useful discussion on this subject on the basis of reflections, both oral and written, from several delegations during the course of the year in the context of informal and formal meetings. While a number of delegations had agreed that this issue was of importance to small and medium-sized economies and recognized the difficulties such economies faced, there had been a

divergence of views regarding the recommendations to be made to the General Council on this subject. In short, some Members had been of the view that the Committee should continue discussing this issue, especially in light of a recent submission by a Member, while some other Members had been of the view that the Committee had discussed this subject to the maximum extent possible and could not take it any further. As a result, the Committee could only conclude that a consensus was not possible on recommendations to the General Council on this issue, and that it should be referred to that body for consideration.

141. The representative of Honduras said that his delegation wished to place on record that "substantial interest" had to be measured according to the importance of the product or commodity within the economy of each country, or that the same product, at a given time, had been subject to an Article XXVIII negotiation and substantial interest had already been shown, either through some type of legal action or by proof that the product played an important role within the economy.

142. The representative of Jamaica said that this was an issue of importance to many small suppliers. It was an issue which Jamaica believed bore directly on the capacity and preparedness of the WTO to respond to those Members who had only a limited range of exports and who were small suppliers in sometimes very few markets which they could effectively access. It was also an issue on which there had been considerable discussion before the Doha Ministerial Conference and to which Ministers had given priority when, in paragraph 1.2 of the Decision on Implementation-Related Issues and Concerns, they had directed the Market Access Committee to give further consideration to these issues and to make recommendations to the General Council as expeditiously as possible, but in any event not later than December 2002. The intent of the proposal was to give some security and predictability in terms of market access to small suppliers, by taking into account such factors as the importance of the product to the exporting Member, in determining substantial interest for the purposes of future "allocations" under Article XIII. His delegation deeply regretted that no consensus had been reached on this important implementation issue in the Market Access Committee. It was also concerned that other implementation issues would be the subject of consultations by the Chairperson of the TNC and were therefore likely to be subject to further processes. In the case of this particular implementation issue, Jamaica was unclear what its status would now be. Jamaica believed it warranted further discussion and should not simply wither on the vine. If the latter were the case, Jamaica would have to take this into account in a very serious way in contemplating how implementation issues that had emerged from Doha were being treated, and the level of responsiveness that was occurring in respect of these issues.

143. The representative of Mauritius said that his delegation wished to underscore and support Jamaica's statement.

144. The Chairman suggested that Members might wish to reflect further over the end-of-year break on the various views that had been expressed on this matter, particularly with regard to the future course of action, and said that as all delegations were aware, this issue might be raised again by any Member in any WTO forum it deemed appropriate, including in the negotiations under the Doha agenda.

145. The General Council took note of the report and of the statements.

11. Committee on Customs Valuation – Report of the Identification and Assessment of Practical Means to address Members' concerns regarding accuracy of declared values pursuant to Paragraph 8.3 of the Doha Ministerial decision on Implementation-Related Issues and Concerns (G/VAL/50)

146. The Chairman recalled that in paragraph 8.3 of the Doha Decision on Implementation-Related Issues and Concerns, Ministers underlined the importance of strengthening cooperation between the

customs administrations of Members in the prevention of customs fraud. Ministers also recognized the legitimate concerns expressed by the customs administrations of several importing Members on the accuracy of declared values, and directed the Committee on Customs Valuation to identify and assess practical means to address such concerns and to report to the General Council by the end of 2002 at the latest. The report by the Committee on Customs Valuation had been circulated in G/VAL/50.

147. Mr. Karoblis (Lithuania), Chairman of the Committee on Customs Valuation, said that the Committee had only the previous day adopted its report to the General Council on paragraph 8.3 of the Decision on Implementation-Related Issues and Concerns. The draft text which had been adopted was contained in G/VAL/50. An integral part of this report was the attached terms of reference for the Technical Committee on Customs Valuation which had been established under the Customs Valuation Agreement. The preparation of these terms of reference had been a separate exercise from the preparation of the report. These terms of reference were contained in draft form in G/VAL/W/117 and had also been adopted by the Committee the previous day. He recalled that the Committee's mandate in paragraph 8.3 stated that, "recognizing the legitimate concerns expressed by the customs administrations of several importing Members on the accuracy of the declared value, the Committee on Customs Valuation is directed to identify and assess practical means to address such concerns, including the exchange of information on export values and to report to the General Council by the end of 2002 at the latest." Substantive work on this mandate had been carried out at three meetings of the Committee. There had been three submissions aimed at satisfying the mandate of identifying and assessing practical means to address concerns related to the accuracy of the declared value. Discussions had been held on the basis of these submissions. Members had shown a positive and constructive attitude in these discussions, and this had been a key factor in reaching a common understanding on the way to proceed. The report summarized the main aspects of the submissions received. It was essentially a factual presentation of the Committee's work to date under this mandate, and informed the General Council of the Committee's need for technical input and advice in order to further evaluate all submissions and views. It had requested this from the Technical Committee on the basis of the attached terms of reference. The Committee had asked the Technical Committee to conclude its examination and to report back to it by 15 May 2003 in order that it might consider the technical inputs and advice provided. In this regard, the Committee requested the General Council to allow it to continue to work under the existing mandate, and to establish an appropriate time for reporting on this matter, as the Committee had not been in a position to recommend an appropriate time.

148. The Chairman proposed that the General Council take note of the report and of the progress to date and authorize the Committee to continue its work under the existing mandate and to report back to the General Council once its work had been completed.

149. The General Council so agreed.

12. Marrakesh Ministerial Decision concerning the possible negative effects of the reform programme on least-developed and NFIDCs – Follow-up to the Report of the Inter-Agency Panel on short-term difficulties in financing normal levels of commercial imports of basic foodstuffs – Report by the Chairman of the Committee on Agriculture

150. The Chairman recalled that at its meeting in October, the General Council had taken note of the report of the Inter-Agency Panel on short-term difficulties in financing normal levels of commercial imports of basic foodstuffs, and approved the recommendations contained in paragraph 168 of the report. With regard to the recommendation in paragraph 168(b), the General Council had taken note that the question of feasibility of an ex-ante financing mechanism would be pursued by the Committee on Agriculture, on the understanding that a proposal regarding the establishment of an ex-ante financing mechanism would be submitted by the WTO net food-importing developing countries,

and that a follow-up report concerning the discussion of the proposal would be submitted to the General Council following the regular meeting of the Committee in November.

151. Dr. Farahat (Egypt), Chairman of the Committee on Agriculture, reporting on the Committee's deliberations on this matter, said that his report concerned the recommendation in paragraph 168(b) of the report by the Inter-Agency Panel regarding the question of the feasibility of an ex-ante financing mechanism aimed at food importers. As the Chairman had recalled, at its meeting on 15 October the General Council had instructed the Committee on Agriculture to pursue this issue and to report back to it. A proposal for the establishment of an ex-ante financing mechanism had been submitted by Bangladesh, Cuba, Egypt, Jordan, Kenya, and Sri Lanka on behalf of the WTO Net Food-Importing Developing Countries and the Least Developed Countries (G/AG/W/58 and Corr.1). On the basis of the proposal, a series of informal consultations and formal discussions had taken place at the November meeting of the Committee, in the course of which the sponsors of the proposal had been given an opportunity to clarify a number of technical points concerning their proposal. It was his understanding that wide differences of opinion remained, in particular between the donor Members and the sponsors of the proposal. A number of donors continued to question the need for establishing a new financing scheme and had raised doubts regarding the viability of the proposed ex-ante revolving fund. For their part, some NFIDCs had linked their position concerning specific aspects of the agriculture negotiations to acceptance of the proposal. Some donor Members had argued that since this was an implementation issue it should not be tied to impending deadlines in the agriculture negotiations. On the basis of his informal consultations with interested Members, he felt it would be useful to continue the informal process. He intended to intensify his consultations beginning early in 2003, with a view to preparing a decision regarding the proposed ex-ante fund by the Committee at its regular meeting in March 2003. A report regarding the outcome would be made to the General Council as soon as possible thereafter.

152. The representative of Jordan thanked the Chairman of the Committee for his report and for the efforts exerted by him and the Secretariat on this issue. His delegation also wished to express its sincere thanks to the donor countries for their cooperation and for their positive spirit in trying to reach a satisfactory conclusion. Intensive consultations had taken place, and Jordan supported the Committee Chairman's proposal to continue the informal process. As one of the NFIDCs, Jordan attached great importance to this issue, due to the fact that such a fund would be a kind of safety net. While the process was taking a long time, Jordan hoped there would be an agreement or decision on establishing the fund before March 2003. The projections of some international organizations in their latest reports showed that the liberalization taking place in the agriculture sector would create a sharp, or at least some, increase in the prices of basic foodstuffs, which confirmed the need to establish the proposed fund.

153. The representative of Cuba said that his delegation had taken an active part in the work to date on this issue. It appreciated the Committee Chairman's efforts to find an appropriate solution to the problem of establishing a revolving fund to finance the normal import levels of net food-importing and least-developed countries. In this respect, Cuba fully endorsed the Committee Chairman's report with a view to continuing consultations. Cuba urged other Members to participate constructively in order to reach an effective solution as soon as possible to what was a pressing problem for many developing and least-developed countries.

154. The representative of Nigeria said that his delegation supported the call by the Committee Chairman for further work on this issue and hoped that a solution could be reached very soon.

155. The representative of Tunisia said that his delegation attached great importance to the implementation of the Marrakesh Decision on the negative effects of the reform programme on least-developed and NFIDCs. This issue had been included in the Doha Declaration as an implementation matter which had not yet been integrated into the agricultural process. It had the same degree of

importance as other matters and should be dealt with in the General Council. The process of reform in agriculture, in particular as it concerned the reduction of all internal support and thus created a distortion, would have negative effects on the developing countries and in particular on the NFIDCs, as prices for commodities would increase. The negative effects of the reform programme had been shown, and Tunisia wished to see the NFIDCs and the least-developed countries receive some reassurances in this respect. It appealed to Members regarding the proposed ex-ante financing mechanism, so that it would be able to participate in such a fund.

156. The Chairman, in the light of the report by the Chairman of the Agriculture Committee, proposed that the General Council take note of the report and of the statements and authorize the Agriculture Committee Chair to continue his consultations with a view to preparing a decision by the Committee on the proposed ex-ante financing mechanism at its regular meeting in March 2003, and to report back to the General Council on the outcome as soon as possible thereafter.

157. The General Council so agreed.

13. Rules of origin – Harmonization work programme – Statement by the Chairman

158. The Chairman recalled that at the General Council meeting in July, the Committee on Rules of Origin had forwarded 94 core policy issues to the General Council for discussion and decision, and had recommended that the General Council focus first on 12 of these issues. In the light of the Committee's recommendations, the General Council had held two informal meetings, first on 7 October and most recently on 25 November, to discuss these crucial policy issues. At the same time, at his request and on his behalf, both the Chair and Vice-Chair of the Committee had been pursuing informal consultations on these issues, with a view to furthering this work as much as possible before the present meeting. He thanked both the CRO Chair and Vice-Chair, as well all delegations involved, for the hard work they had been putting into trying to seek an early resolution to these complex technical and political issues.

159. Mr. Costa Filho (Brazil), Vice-Chairman of the Committee on Rules of Origin, reported on behalf of its Chairman, Mr. Moser (Switzerland), on the results of the consultations which they had held with a number of delegations, as well as the outcome of the work carried out by the Committee on Rules of Origin in 2002. First, there had been some progress on the implications issue, which was a major stumbling-block to progress in the negotiations. Strong support had emerged among delegations for the notion that "whenever there is a mandatory legal requirement in the determination of origin in the WTO Agreement other than the Agreement on Rules of Origin, the harmonized rules of origin must be used". However, some Members still maintained differing views on this issue, and consensus had not yet been reached. Second, concerning the 11 crucial issues, during the one-to-one consultations with the CRO Chair, several delegations had indicated flexibility on several issues. Many delegations had also clearly indicated their bottom line. These indications were useful information for further consultations. It had also been confirmed that major progress could only be made after reaching a consensus on the implications issue. In order to address the 156 outstanding issues, the Committee had held three negotiating sessions, in April, June and November, and had resolved 19 technical issues, thus reducing the number of remaining issues to 137.

160. The representative of India recalled that the work programme on the harmonization of rules of origin had been initiated 8 years earlier and that Members were still some distance from completing it. India was disappointed that yet another deadline was being missed. This was an example of an issue on which the time schedule specified in the Agreement had not been kept. While his delegation appreciated the work and effort put in since the General Council meeting in July 2002 and at the meeting in September, it felt that the lack of progress was on account of a lack of political will rather than any technical difficulties. Of the 12 core issues which had been referred to the General Council as a test case, the main stumbling block appeared to be the implications issue, which in India's view

had been settled by the Agreement on Rules of Origin. Some Members seemed to be having doubts on this, which could only be resolved if there was some constructive engagement from their side. Alternative suggestions had not been forthcoming, despite the fact that renewed efforts had been initiated by the General Council Chairman in September to resolve this matter. A positive attitude and creativity were now required to break this deadlock.

161. India also wished to draw Members' attention to the trade facilitation potential of harmonized rules of origin. This was one of the important imperatives of trade facilitation, and the extent of Members' commitment in this area could be gauged by reference to the progress made in the harmonization of rules of origin. India was perplexed at the incoherence in approach towards the harmonization work programme on the one hand, and on the other hand the efforts being made to bring in newer rules for more transparent and predictable trade via trade facilitation. It was important to remember that countries could not be expected to undertake new obligations on trade facilitation when even the existing instruments of trade facilitation in the WTO Agreements were not fully operational. Members now needed to reflect on how a new deadline could be met, and to show flexibility and the necessary political will to meet this deadline. India sincerely hoped that this would be the last extension. His delegation emphasized that progress or lack of it in this area of work would also have an impact on progress in other related areas of work. A focused and pragmatic schedule would need to be established to achieve the target and to maintain the credibility of the process and the system as a whole.

162. The representative of Brazil said that his delegation shared the overriding sentiment of disappointment and frustration, in that Members were once again facing a situation in which the General Council had to take note of another missed deadline in the conclusion of the harmonization work programme for non-preferential rules of origin. Brazil had been reasonably optimistic at this time in 2001 that the conjunction of two new elements would inject renewed impetus into this process: the first was the agreement to bring the "core policy issues" of the harmonization work programme under the direct responsibility of the General Council in the second semester of 2002; and the other was the political commitment demonstrated in the launching of a new round of multilateral trade negotiations at the Doha Ministerial Conference. Brazil's expectation had been that these two factors would be translated into the political will to conclude the real unfinished business from the Uruguay Round. It was particularly frustrating to see that more decisive progress was being held up by the so-called "implications" debate, when a significant number of Members were of the view that the relationship between the Agreement on Rules of Origin and other WTO Agreements was already clearly outlined in the former's provisions.

163. With a view to overcoming the lingering doubts, Brazil had taken the initiative of proposing specific language to further detail this relationship, in a proposal which seemed to address the concerns of some delegations. It expected those Members who were not yet comfortable with the proposed solution to come forward with clear indications of their persisting doubts, if any, and specific proposals to overcome them, in order to allow work to move forward. Despite this somber evaluation, Brazil remained confident that Members would be able some day to conclude the Uruguay Round. In this spirit, it accepted the proposed extension of the deadline until July 2003, in the expectation that this would allow Members to report to Ministers at Cancún that the harmonization work programme had been finalized. However, he wished to add a word of caution that it would be incoherent, at best, to inform the Fifth Ministerial Conference that Members had been unable – in the eight and a half years since the entry into force of the Uruguay Round Agreements – to complete the harmonization work programme on non-preferential rules of origin and, at the same time, propose the inclusion of new areas like trade facilitation into the agenda of the WTO for negotiation in one and a half years. He recalled that the Agreement on Rules of Origin recognized in the preamble that "clear and predictable rules of origin and their application facilitate the flow of international trade".

164. The representative of Hong Kong, China said that the Agreement on Rules of Origin provided for a harmonization work programme which aimed to develop a set of harmonized origin rules for all non-preferential commercial policy instruments. Due to the complexity of the issues, the deadline for completing the work programme had been extended three times from the original deadline of July 1998. Over the years, technical experts had made considerable progress in tackling numerous issues in the work programme, but with the considerable number of policy issues remaining to be resolved, a further extension of the deadline seemed unavoidable. However, given the lack of progress in the past round of consultations, there was a need to consider seriously how the consultations could be intensified to achieve a breakthrough, and what actions should be taken to crack the outstanding issues step by step. This would require commitment among Members in the coming months, in addition to the already busy negotiation schedules and preparatory work for the Cancún Ministerial. Hong Kong, China was committed to the continued work in this Committee and would participate fully and actively in future discussion and consultations.

165. The representative of the United States said that her delegation remained committed to the effort to reach agreement on harmonized rules of origin. The United States believed that no Member had expended greater time and resources in this negotiation than it had. Regrettably, many Members had concerns about how harmonized rules would affect their interests in a number of WTO areas such as TRIPs, SPS and antidumping. Her delegation believed the solution to this negotiating logjam was to find a solution to the so-called implications issue. If this issue could be resolved, a reasonable solution could be found for the remaining product-specific issues.

166. The representative of Japan said his delegation believed that the next step towards completing the harmonization work programme on non-preferential rules of origin should be to continue efforts to resolve the issue of implications and to accelerate discussions on the other 11 crucial issues through confessional-type bilateral meetings between the Committee Chairman and each interested Member. Further, in 2003 Members would need to tackle not only the 12 crucial issues but also the other core policy issues in order to complete the harmonization work by the proposed deadline. In order to resolve the remaining core policy issues, one suggestion would be to undertake confessional-type bilateral meetings, similar to those conducted regarding the 12 crucial issues. Japan was fully prepared to work with other Members in order to complete the unfinished harmonization work in a timely manner. To this end, it urged other Members to show a certain flexibility regarding the outstanding product-specific issues, on the assumption that all Members would do the same in order to conclude a difficult negotiation in its final stage.

167. The representative of Norway said that his delegation supported those who had said it was important to move ahead with this issue. Norway was grateful for the efforts made over the past six months to try to solve this issue. However, it had been clear that merely transferring this issue from the Committee to the General Council was not enough, if the political will to change some positions was not forthcoming. In Norway's view, some of the crucial issues had been identified. The implications issue was obviously the crucial issue for moving forward. While this might not solve everything, it was a basic pre-condition for moving ahead. His delegation hoped that whatever procedure was being considered, Members would show some political will to get a break-through on these issues. Otherwise, this issue would continue unresolved for another seven or eight years.

168. The Chairman said that in light of the Committee Chairman's report, Members had to face the fact that despite their best efforts to date, the deadline of end-December 2002 for completing the harmonization work programme could not be met. At the same time, it had to be acknowledged that Members' credibility was at stake in setting any new deadline, and that a further extension could not be approached lightly. Taking into account the importance of the issues to be resolved and the implications to be considered, and in the full knowledge of the consequences of a failure to meet another new deadline, he proposed that the General Council extend, to July 2003, the deadline for completion of negotiations on the core policy issues identified in the CRO Chair's report to the

General Council of 15 July 2002. He also proposed that following resolution of these core policy issues, the Committee on Rules of Origin complete its remaining technical work, including the work referred to in Article 9.3(b) of the Agreement on Rules of Origin, by 31 December 2003.

169. The General Council took note of the statements and agreed to the Chairman's proposal.

14. Work Programme on Small Economies – Report by the Chairman of the Dedicated Sessions of the Committee on Trade and Development

170. The Chairman recalled that at its meeting in February/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 would report regularly to the General Council on the progress of work in its Dedicated Sessions on this subject.

171. Mr. Abbott, Deputy Director-General, speaking on behalf of the Chairman of the Dedicated Sessions of the Committee on Trade and Development, said that his report was being made pursuant to the Decision of the General Council at its meeting in March 2002 (WT/L/447). As stated in the first report, the Committee on Trade and Development had formally begun this work by holding a first Dedicated Session on 25 April 2002. A joint submission had then been made by Barbados, Belize, Bolivia, Cuba, Dominican Republic, El Salvador, Fiji, Guatemala, Haiti, Honduras, Jamaica, Mauritius, Nicaragua, Papua New Guinea, Paraguay, Solomon Islands, Sri Lanka, and Trinidad and Tobago (WT/COMTD/SE/W/1). The second Dedicated Session had been held on 1 July 2002. The proponents of this work programme had requested that the third Dedicated Session be scheduled to coincide with the "Geneva Week" for non-resident Members and observer governments. The third Dedicated Session, initially scheduled for the beginning of October, had had to be postponed when the "Geneva Week" was rescheduled from the beginning of October to the beginning of November, and had been held on 4 November 2002.

172. The meeting had been well attended, as a number of non-resident delegations who did not normally attend the meetings of the CTD were present. At the second Dedicated Session, a submission had been made by Barbados, Belize, Bolivia, Cuba, Dominican Republic, El Salvador, Fiji, Guatemala, Honduras, Mauritius, Nicaragua, Paraguay and Sri Lanka, which contained proposals for changes to some existing WTO agreements (WT/COMTD/SE/W/3). A second submission had then been made by Macao, China which related to the structural impediments of small economies and the nature of their economic vulnerabilities (WT/COMTD/SE/W/2). As delegations had not had enough time to study those submissions for that meeting, they were on the agenda for continued consideration at the third Dedicated Session. At this Session, a group of small economies also presented a document (WT/COMTD/SE/W/7) containing responses to a number of questions posed by the delegation of the United States regarding previous proposals made by the small-economy group (WT/COMTD/SE/W/3).

173. In addition, three documents prepared by the Secretariat were before Members at that meeting. The first was a literature review which contained an overview of how the issue of smallness had been dealt with in the economic literature (WT/COMTD/SE/W/4). That document included a discussion of the different measures of smallness that had been used in the literature. It also discussed how the issue of "vulnerability" had been approached in the economic literature. The second paper, entitled "Trade and Economic Performance – The role of economic size?" was a more analytical document which had been prepared as a result of Members' suggestions (WT/COMTD/SE/W/5). This paper looked deeper into some of the issues discussed in the literature review and included issues Members had indicated as being of interest to small economies at the first two Dedicated Sessions. In particular, this paper discussed the variable "share in global trade" as a potential measure for economic size.

After a discussion of the different measures of economic size, the document analysed a number of questions, such as: how do economies of scale and transport costs affect small economies' competitiveness in global markets?; to what extent does economic size affect economies' openness to trade and the diversification of their export structure?; what do data on volatility in export earnings and volatility in GDP say about economies' vulnerability to external shocks?; and how does economic size relate to measures for economic performance, in particular GDP per capita and GDP per capita growth?

174. The Secretariat had collected relevant data for each of these questions for the membership. That data was presented and analysed in the paper, and whenever possible, the findings of the data analysis had been compared with the results of more sophisticated econometric analyses found in recent literature, in order to control for the robustness of the results. This paper aimed at providing Members with an in-depth analysis of the variables of relevance to small economies in the multilateral trading system. The paper had been particularly appreciated and had given rise to an interesting debate. The third document contained a list of WTO provisions which could be of particular relevance to small economies (WT/COMTD/SE/W/6). The Committee would continue its work to fulfill the mandate given in paragraph 35 of the Doha Ministerial Declaration and the instructions given to it by the General Council in March 2002, at future Dedicated Sessions of the CTD.

175. The representative of Japan said his delegation appreciated that the proponents of this issue had a constructive attitude towards the need to frame the term "Small Economies". In order to address this issue, it might be useful to have the relevant countries submit, along with the relevant data, proposals that addressed common characteristics found in the small economies. Consideration of this issue should be conducted on the basis of relevant provisions of the WTO agreements, within the parameters set forth in paragraph 35 of the Doha Ministerial Declaration. Members also had to avoid duplicating work being conducted in other committees.

176. The representative of the United States said her delegation was pleased that work in the Dedicated Sessions was advancing and, while the work had not come to definitive conclusions, it believed there were a number of practical issues that could be advanced that would address problems being experienced by small economies. The United States had seen some good progress in the Subsidies Committee in the Article 27.4 exercise that would benefit small traders, including many Members active in the small economies group, in particular. For its part, her delegation would continue to engage actively to try to address these problems, consistent with its overall approach of addressing such issues pragmatically, wherever possible.

177. The Chairman said that given the General Council's mandate to review the Work Programme and to make recommendations for action to the Fifth Ministerial Conference, he would urge all delegations to continue to give this subject their focussed attention as they moved into the new year, so that they could fulfill the mandate from Ministers.

178. The General Council took note of the report by Deputy Director-General Mr. Abbott on behalf of the Chairman of the Dedicated Sessions of the Committee on Trade and Development, and of the statements.

15. Issues affecting least-developed countries – Interim report by the Director-General pursuant to Paragraph 43 of the Doha Ministerial Declaration (WT/GC/W/485)

179. The Chairman recalled that Ministers in Doha, under paragraph 43 of the Doha Ministerial Declaration, had requested the Director-General, following coordination with heads of the other Integrated Framework agencies, to provide an interim report to the General Council in December 2002 on all issues affecting LDCs, and a full report to the Fifth Session of the Ministerial Conference.

180. The Director-General said that in accordance with paragraph 43 of the Doha Ministerial Declaration, he had circulated an interim report, which was before the General Council in WT/GC/W/485. The Interim Report addressed "all issues affecting the Least-Developed Countries". The Doha Ministerial Declaration placed the needs and interests of developing and least-developed countries at the heart of the WTO's work programme and negotiations. Ministers in Doha had committed themselves to make positive efforts designed to ensure that developing countries secured a share in the growth of world trade commensurate with the needs of their economic development. In according attention to their development needs, Ministers had recognized the particular vulnerability of the LDCs and the special structural difficulties they faced in the global economy. The marginalization of the 49 LDCs, whose share in world trade had decreased from 0.8 per cent in 1980 to 0.5 per cent currently, was one of the biggest challenges facing the multilateral trading system. Moreover, 50 per cent of the population in LDCs was living on less than a dollar a day. One recent study estimated that on current trends, the incidence of poverty would increase by about one third by 2015 unless steps were taken to redress this situation.

181. He strongly believed that the multilateral trading system, and the Doha Development Agenda in particular, could make positive contributions to address this situation. At the same time, he also wished to stress that other associated and companion policies going beyond the competence of the trading system would be required. In light of the complex challenges faced by the LDCs, there were no magic formulas, no one-size-fits-all formula, and no quick fixes. Nonetheless, Members were resolved to address this challenge with determination underlined by realism and in coordination with other development partners – agencies, donors, and the LDCs themselves. To give work more focus, he was currently considering the most effective way to establish a dedicated LDC unit within the Secretariat. With respect to his interim report, he wished to underline a few essential aspects. This report showed the measures and actions the WTO membership, together with other players in the international community, had taken since Doha in addressing the needs of LDCs. Progress had been made, but there was scope for action.

182. There were two main components in the report before the General Council. The first was the implementation of the WTO Work Programme for Least-Developed Countries, which had been adopted by Members pursuant to the mandate in the Doha Declaration and reported to the General Council in February 2002. The second component was the Integrated Framework (IF), whose implementation had been carried out in partnership with LDCs themselves, bilateral donors, and the six multilateral economic institutions, namely, IMF, ITC, UNCTAD, UNDP, World Bank and WTO. Overall, he was confident in reporting that progress had been made in the one year since Doha. One such achievement had been already reported under agenda item 6 of the present meeting regarding LDCs' accession. He welcomed the adoption of the Guidelines to facilitate and accelerate LDCs' accession and integration into the rule-based multilateral trading system, and expressed appreciation to the Chairman of the Sub-Committee on LDCs for his effective stewardship of this issue. With regard to the IF, there had been the highest level of commitment from the Heads of Agency on the implementation and extension of the IF to as many LDCs as possible. At the same time, there was scope for improvement.

183. As he had mentioned in his interim report, implementation of the Work Programme for LDCs was proceeding well. He wished to highlight some elements of the Work Programme and the steps taken to effectively implement the commitments contained. First, with regard to market access for LDCs, improvements in access for LDCs had been recently announced and reported by Australia, Canada, Japan and Switzerland. Further improvements towards the objective of duty- and quota-free access could be expected with progress in the Doha negotiations. Second, with respect to trade-related technical assistance and capacity building, priority had been accorded to the delivery of assistance to LDCs. This had been reflected in the WTO Annual Plan for Technical Assistance and in his interim report on technical assistance. As to work carried out on the accession of LDCs to the WTO Agreement, this had already been mentioned. The Guidelines adopted could facilitate and

accelerate the LDCs' accession negotiations. However, as he had stressed already, these Guidelines needed to be matched with actual and meaningful implementation. He would report on this particular aspect to Ministers at Cancún. While he believed that the multilateral trading system could make positive contributions to trade-led development in LDCs, the WTO could not do it alone. The trade needs of LDCs were numerous and complex, ranging from problems related to the implementation of WTO agreements and the lack of human and institutional capacities, to infrastructural bottlenecks. Addressing these problems in a comprehensive manner required the competence and resources of other players, including bilateral donors and other multilateral economic institutions. This was the basic idea that underpinned the revamped IF, which was to complement and maximize available means for assisting trade development of the most vulnerable members of the international community.

184. As he had underlined in the report, the LDCs themselves had the right and the responsibility to manage the process of their meaningful integration into the multilateral trading system and the global economy. He attached priority to the implementation of the IF, as did other Heads of Agencies, the donors and the LDCs themselves. He had had the opportunity to review this situation with the Chairman of the IF Steering Committee (IFSC). With the support of bilateral donors and LDCs, the IF, while its experience to date was short and limited, had so far demonstrated the importance of mainstreaming trade into countries' national development plans and poverty reduction strategies, country ownership, capacity building, partnership and coordination, as well as coherence. He could not over-stress the need for improvement in the implementation of the IF, especially in the follow-up phase to the Diagnostic Trade Integration Studies (DTIS). He hoped that in the upcoming months leading up to Cancún, the six agencies, together with bilateral donors and LDCs, could make this work better, by accelerating the rate of implementation in the LDCs already included, as well as by accelerating the pace of extension to meet the increasing demand for the IF from other LDCs.

185. All representatives who spoke expressed appreciation to the Director-General for his interim report. The representatives of Djibouti, Haiti, Benin and Guinea welcomed the Director-General's initiative to set up a special unit for the least-developed countries within the Secretariat.

186. The representative of Djibouti welcomed the interim report and noted that the Director-General would make a complete report on all problems affecting the least-developed countries to the Fifth Ministerial Conference.

187. The representative of Japan said the LDCs' effective integration into the multilateral trading system was important and Japan attached particular importance to the WTO Work Programme for the LDCs. His delegation would continue its constant efforts to work toward the fulfilment of the Work Programme and wished to comment on a number of points stressed in the Director-General's interim report. First, on LDCs' accession, Japan welcomed the Guidelines on LDCs' accession that had been adopted earlier. As urged in the Director-General's report, Members should exert their efforts to translate these Guidelines into concrete and meaningful practice. In this context, Japan noted a certain optimism among Members regarding LDCs' accession in the near future. Second, regarding the Director-General's comments on market access, Japan was one of the most determined Members to work toward the objective of duty- and quota-free market access for all LDC products. Before the G8 summit meeting in Kananaskis in June 2002, Japan's Prime Minister had taken the decision to immediately examine the expansion of the coverage of duty- and quota-free treatment for LDCs' products, by revising Japan's tariff-related law for the fiscal year beginning 1 April 2003. Lastly, on trade-related technical assistance, Japan noted with satisfaction that the WTO 2003 Technical Assistance Plan would continue to give priority to the LDCs. It also noted that the Director-General's report focused on how the DTIS of the Integrated Framework would be implemented. In Japan's view, the IF was one of the most important instruments for LDCs to mainstream trade into their respective development policies and contribute to the discussion on how to ensure the effective implementation of follow-up after the DTIS. He concurred with the interim report that a strong political and financial

commitment on the part of the beneficiary governments was crucial, as well as strengthened synergies among the Agencies and the donors. Japan, as a lead facilitator for Cambodia, wished to note that the response by Cambodia in that respect was an excellent example.

188. The representative of the European Communities said that the Community was a significant contributor to the IF Trust Fund. As an IF facilitator for three countries, namely, Mauritania, Senegal and Ethiopia, it was putting resources into trying to make the IF work on the ground. Overall, the Community welcomed the implementation of the IF as a potentially useful tool for mainstreaming trade into national development and poverty reduction strategies. It acknowledged that the first results, which had started to materialize, seemed to be encouraging. The Community looked forward to further work and to the Director-General's final report to the Fifth Ministerial Conference.

189. The representative of Zambia, speaking on behalf of the LDCs, recalled that the purpose of technical assistance to LDCs was their integration into the multilateral trading system in order to allow them to benefit from expanded trade, which would eventually help them alleviate poverty, address a number of health issues and increase their trade shares. The LDCs' need for technical assistance arose because of their difficulties in participating effectively in the multilateral trading system. This was why many paragraphs of the Doha Ministerial Declaration contained mandates for technical assistance and trade-related capacity building. The key problems faced by the LDCs included: (i) their limited capacity in both Geneva and capitals to deal with WTO issues as well as the expanded work programme, and the fact that many of them had no mission in Geneva; (ii) their limited understanding and awareness of WTO issues at capital level by key stake-holders which included the business sector, civil society, institutions and even government ministries; (iii) their difficulty in implementing WTO rules and disciplines – and in that connection, paragraph 6.2 of the TRIPS Agreement was specifically aimed at this; and (iv), the expanded set of issues resulting from regional and sub-regional trade initiatives, such as the EU-ACP initiative, which further challenged the LDCs' capacity to participate fully. The mandates contained in the Doha Declaration with respect to technical assistance provided that it should assist LDCs to adjust to WTO rules and disciplines, implement their obligations and exercise their rights. Based on their experience of the delivery of technical assistance so far, the LDCs believed that that the design of any technical assistance would be enhanced if certain principles were observed. For example, a technical assistance programme should contain a balance between the issue of implementing obligations and the issue of utilisation of rights under the WTO Agreement. Second, it should provide tools to identify the developmental impact of trade rules at the national and regional levels. Third, it should enhance LDCs' negotiating capacity in Geneva and in capitals to ensure that trade rules matched their development needs.

190. Paragraph 43 of the Doha Ministerial Declaration endorsed the IF as a viable model for LDCs' trade development. The Director-General's report contained information on the implementation and performance of the IF since its inception. For example, the IF had assisted in the opening up process in recipient countries and in the first step of their economies' integration into the multilateral trading system. However, the IF failed to address several issues such as follow up, the low number of LDCs which had completed the process of the IF, and the low rate of delivery on the ground compared to the rate at which issues were coming up in the WTO. As Members were aware, most LDCs would need to benefit from the IF before they could participate fully in the WTO. Therefore, the delivery of technical assistance under the IF to LDCs should be increased significantly. Finally, the procedures should be looked at so that the IF could be provided at a more efficient and effective rate. He thanked Members and the donor community for their interest in the IF despite the negative evaluation of the first phase and the mixed results foreseen from the next evaluation phase. Members should persevere and try to find ways to make improvements in this area, so as to enable many LDCs to benefit from the IF as soon as possible. In this connection he wished to recall that Ministers at Doha had endorsed the IF as a viable model for LDCs.

191. The representative of Haiti associated his delegation with the statement by Zambia on behalf of the LDCs, and expressed his delegation's satisfaction that the Director-General had taken the LDCs' concerns seriously. The creation of a unit for LDCs in the Secretariat would enable the LDCs to feel further integrated in the organization and to better follow the WTO's work, along with the acceleration of market access and technical cooperation. This unit, with the support of other organizations, would help to enable the LDCs to reinforce and diversify their production capacity in order to better benefit from market access. In Haiti's view, the number of countries who would be able to participate in and benefit from the IF would increase as a result of the creation of this unit. In the context of the setting up of the unit, he wished to emphasize the importance of having a linguistic balance so that all LDCs could find someone with whom to communicate, be it in English, French, Spanish, or Portuguese. Haiti would continue to support this new unit, so that it could be the prize the WTO could present at Cancún.

192. The representative of the United States welcomed the progress made in the IF and, as noted by the Director-General, also recognized that more could be done in the area of follow-up activities. It was encouraged that the diagnostics would be completed for the 11 additional LDCs by the end of the first quarter of 2003 and hoped that follow-up activities would begin shortly thereafter. In her delegation's view, the lead facilitator in each country would be invaluable in steering the process forward, and early identification of lead facilitators would improve the success of follow-up activities. A better definition of the role of the lead facilitator would help all participants manage the process better. The United States shared the Director-General's view that coordination among least-developed countries and multilateral and bilateral donors represented another an important step forward. However, more could be done there as well. In this regard, bilateral donor missions should be engaged early in the process. Each national coordination committee should ensure that all key players, including their own public and private sector as well as major donor missions, were pulling in the same direction. The United States strongly supported the idea of sharing technical assistance and capacity building responsibilities among multilateral donors, bilateral donors, and recipient countries in order to optimize resources and efficiency, while responding to the evolving technical assistance needs of developing countries. Each participant should work to meet the challenges of LDCs' trade development in areas where their competencies and expertise were most relevant.

193. The representative of Norway said that the Director-General's report gave a clear picture of the work, the progress and the way ahead. Norway welcomed the fact that more countries were following the example set by it and by the Community in granting tariff- and quota-free treatment to products from LDCs. The IF was the best tool available for helping to mainstream trade into national development plans and was also an important coordinating mechanism for trade-related technical assistance activities provided by the WTO, other organizations and bilateral donors. Like Zambia, Norway also believed that financing active involvement and follow up, in order to ensure implementation, were the key challenges of the IF. Trade policy priorities, based on the findings of the DTIS and integrated into the Poverty Reduction Strategy Papers, had to be followed up and implemented by the LDCs themselves, and by the involved organizations and the donor community through trade-related technical assistance and capacity building. Norway was expanding its activities in these areas. It had donated US\$500,000 in 2001 to the Global Trust Fund for the IF and had nearly tripled that amount for 2002. In addition, Norway planned to take more practical steps as lead donor/IF facilitator, and by being more active in the coordination and discussions on trade policy at the national level.

194. The representative of Switzerland said that in addition to statements his delegation had made on this matter in other bodies, he wished to note that the IF constituted a crucial effort by the international community to step up its support to LDCs' trade institutions and trade projects. Since Doha, the IF had become focused and instruments had been set up to make it operational. The so-called "revamped phase" of the IF had been so far conducted under time pressure, and despite the fact that the progress made had been below expectations, Members were now moving in the right direction.

It was now time for Members to learn from the experience of the first partner countries that had participated in the IF, with a view to further improving the IF. In this regard, the forthcoming evaluation of the IF would be of the utmost importance. In his delegation's view, some systemic questions would have to be tackled over the coming years: The IF was available to LDCs in a sequencing of interventions that depended essentially on the capacity of the World Bank to hire consultants for initiating the DTIS. This process should be organized in a more pragmatic way so that other countries could benefit from the process. Ways would have to be found to expand the programme quickly – not necessarily with exactly the same modalities – to other low-income and lower middle-income countries.

195. The IF's governance could be improved if donors and developing partner countries would take the lead, and if the functions of the existing institutional arrangement could be assumed by a mechanism consisting of a small independent technical secretariat that would have operational responsibility and would be guided by a bilateral or multilateral group which met regularly. The follow-up issue was pressing and needed a clear solution and sharing of responsibilities between donors, agencies and beneficiaries. There was also a need to improve substantially the identification of concrete projects based on the DTIS. This could be facilitated by the preparation of a clear mapping following the DTIS, setting priorities, sequencing and responsibilities. Finally, Members had not yet built the crucial element of guidance and ownership by the partner country. In his delegation's view, the IF would succeed only if the partner country was able to guide the process. Members had to determine the best ways to give support to the partner countries in making use of the IF.

196. The representative of Canada said that Canada was fully committed to the mandate described in paragraph 43 of the Doha Ministerial Declaration and was a major contributor and participant, as one of the two donor coordinators, in the IF. Canada believed that donors were fully committed to ensuring that the IF yielded the results it had been intended to produce. As one of the primary donors to the revamped IF, Canada was fully engaged in the process of strengthening the follow-up to the IF diagnostics, as highlighted by the Director-General and by some previous speakers. Canada considered that the evaluation of the IF process was of utmost importance and looked forward to it in 2003. Such an evaluation was to assess the IF process and the extent of achievement of its objectives of mainstreaming trade into national development plans, linking trade development and poverty reduction, and more closely coordinating donor support with a comprehensive policy framework.

197. The representative of Kenya said that her delegation attached great importance to issues affecting LDCs and was grateful to the Director General for his efforts and for the steps he had undertaken, as well as to those who had announced that they would further assist the integration of LDCs into the multilateral trading system. Kenya welcomed the progress made with the IF and agreed with Zambia's statement on behalf of the LDCs that LDCs should receive the support required to adjust to WTO rules and disciplines, implement obligations and exercise rights of membership. Kenya supported Switzerland's statement on the need to expand the IF to other low-income countries.

198. The representative of Benin supported the statement by Zambia on behalf of the LDCs. The special unit in the Secretariat for LDCs should have human, financial and material resources necessary to fulfil its mission, which should be clearly defined with the cooperation of the main beneficiaries. Benin was willing to make proposals at the appropriate time. The IF should be expanded to the countries that would need to be integrated, in particular LDCs. His delegation supported Canada's suggestions in this regard.

199. The representative of Guinea associated her delegation with the statement by Zambia on behalf of the LDCs. The Director-General's interim report on the implementation of the IF was of particular interest to her country, since it would be one of the beneficiaries of the second phase of the pilot programme. Her delegation thanked the partners who had invested in the success of the IF.

Guinea invited developed partners to act as facilitators, because this would guarantee the success of the IF activities in Guinea. She welcomed the cooperation with other organizations for the implementation of programmes in favour of LDCs. With regard to the special unit in the Secretariat for LDCs, this unit would allow LDCs to be able to improve their awareness and understanding of the provisions of the WTO Agreement.

200. The representative of Djibouti said that the necessary steps should be taken to ensure a linguistic balance with respect to the unit for LDCs in the Secretariat.

201. The General Council took note of the interim report by the Director-General and of the statements.

16. Implementation and adequacy of technical cooperation and capacity-building commitments in the Doha Ministerial Declaration – Interim report by the Director-General pursuant to Paragraph 41 of the Doha Ministerial Declaration (WT/GC/W/484)

202. The Chairman recalled that in paragraph 41 of the Doha Ministerial Declaration, Ministers had instructed the Director-General to report to the Fifth Session of the Ministerial Conference on the implementation and adequacy of the technical cooperation and capacity-building commitments in the Doha Ministerial Declaration, with an interim report to the General Council in December 2002.

203. The Director-General said that his interim report, which was before the General Council in WT/GC/W/484, addressed the implementation and adequacy of the technical cooperation and capacity-building (TC/CB) commitments undertaken by Ministers at Doha. In paragraph 41 of the Doha Ministerial Declaration, Ministers had reaffirmed the specific commitments they had undertaken on TC/CB, as contained in several substantive paragraphs of the Declaration. These commitments were summarized on page 3 of his report. He wished to highlight a few key points of that report. First, the TC/CB mandates embedded in the Doha Ministerial Declaration were unprecedented. Ministers at Doha had confirmed that TC/CB were core elements of the development dimension of the multilateral trading system. They had established an extensive mandate and had undertaken a firm set of commitments on TC/CB. This unprecedented mandate had challenged the way Members had previously conducted technical cooperation. He believed that the Secretariat, with the strong support of the membership, had begun addressing that challenge.

204. Second, coordination had been at the centre of the Secretariat's response to the Doha mandates on TC/CB. The challenges of TC/CB could not be met by one agency alone, no matter how large. The demands were numerous and supply was limited. For that reason, he had emphasized the urgent necessity for greater coordination and strategic partnerships. The Doha Declaration had involved an explicit mandate for coordination encompassing not only the WTO Secretariat, but also bilateral donors within the Development Assistance Committee of the OECD, the core multilateral economic institutions, and regional institutions, particularly regional development banks. Ministers had requested the WTO Secretariat to coordinate with all those institutions. He was pursuing that coordination objective with determination. Even at the present early stage, coordination efforts had yielded results. However, even with current far-reaching coordinated efforts, the results showed that the task was monumental and would for some time be a work in progress. He assured the membership of his firm commitment in this regard, and would continue to report on the dividends from his coordination efforts.

205. Third, the Joint OECD/WTO database was a key element in coordination efforts and in monitoring the response to the Doha mandates on TC/CB. To better coordinate and monitor the international response to the Doha mandates on TC/CB, the OECD and the WTO, jointly, had launched the DDA database on trade capacity building. All agency and country providers of technical assistance were parties to the database. Virtually all parties, including the regional development

banks, had reported to the database. The database would enable the international community to coordinate better, avoid duplication, identify gaps in the international response, and thus better estimate progress in the implementation of the Doha mandates. He had met with the Secretary-General of the OECD two weeks earlier. Among other things, they had reviewed progress and were confident they were on the right track. The first report on the database was also currently before Members. That report would be issued twice yearly.

206. Fourth, the 2002 and 2003 TA Plans had laid the basis and established the overall structure for WTO TC/CB for post-Doha and beyond. The 2002 TA Plan had been the first WTO annual plan on technical assistance. It had also been the first plan based on the Doha mandates, and had been experimental and transitional. His interim report provided a report on its implementation and, more importantly, highlighted the lessons that the Secretariat had drawn from its implementation. The 2003 TA Plan would build on the lessons of the 2002 TA Plan. He believed that the 2003 TA Plan had been enhanced significantly by the rigorous process of discussions, negotiations and brainstorming to which it had been subjected. On 8 October, he had attended the meeting of the Committee on Trade and Development to set out in detail his vision of TA for the short-, medium- and long-term. He had listened carefully throughout the morning session to the views and guidance from the membership, and had benefited enormously. As a result, the 2003 TA Plan had been much better targeted and focused. He expressed his sincere appreciation to the membership for authorizing the 2003 TA Plan at the meeting of the CTD on 22 November, and to the Chairman of that Committee for his tireless efforts and successful management of the consultations and negotiations on the 2003 TA Plan.

207. Fifth, the subject of TC/CB was a subject to which he attached priority, and this had been his starting-point. He had identified it as one of the four pillars of his work as Director-General. He would continue to accord this issue his direct personal attention within the Secretariat and in close cooperation with the membership. This attention did not stem only from the fact of a mandate from the membership, but also because TC/CB were inherently linked to assisting capacity-constrained Members to make use of trade as an engine for poverty alleviation, growth and development. Finally, he wished to report that the TC/CB commitments undertaken by the membership at Doha was an area where there had been demonstrably meaningful progress. However, there was yet scope for improvement. The progress that had been made had, however, created a good basis for beneficiary countries to be better prepared in the ongoing negotiations and other aspects of the Work Programme. Because of the high number of demands and the ever-expanding priorities, adequacy and implementation of TC/CB would always be a challenge. He would continue to monitor progress in this area and would offer a full report to the membership at Cancún.

208. The representative of Japan said Japan believed that trade-related technical assistance and capacity building were among the most important tools for developing-country Members to be able to participate effectively in ongoing negotiations and in the multilateral trading system. Therefore, it welcomed the progress on TA which had been made at an early stage of the implementation of the Work Programme after the Doha Ministerial Conference. Japan was determined to contribute to the effective implementation of the WTO TA Plan and to the coordinated work among Members on ways and means to further improve TA activities. In this context, Japan appreciated the Secretariat's efforts to promote strategic partnerships with other international organizations, regional organizations and bilateral donors, with a view to meeting the needs of beneficiaries more efficiently and effectively. Meetings with the Heads of Agencies of the IF and the database developed with the cooperation of the OECD were concrete examples of such efforts. The recent Workshop on Trade and Investment organized by the WTO in cooperation with UNCTAD and with support by the Japan International Cooperation Agency had been part of Japan's contribution in this respect. Japan paid tribute to the Secretariat's responses to Members' needs and concerns through a number of consultations with Members, both developed and developing, which was the best way to build mutual understanding and confidence. WTO TA was a work in progress, and therefore faced many challenges. However, Japan shared the view expressed in the Director-General's interim report that WTO TA/CB had created a

strong basis for adequate engagement by beneficiary countries in the ongoing negotiations as well as other aspects of the Work Programme and the implementation of WTO agreements and future agreements.

209. The representative of the European Communities thanked the Secretariat for the work that had yielded a timely adoption of the 2003 TA Plan, and appreciated that a number of points and concerns of interest to the Community had been taken on board in the preparatory phase of the Plan. In a constructive approach, the Community had given a favourable opinion of the 2003 TA Plan, which had been adopted on 22 November 2002 by the CTD. He thanked the Chairman of the CTD for his effective chairmanship. However, the Community would be watching very carefully how the Plan was implemented. It was important that Members make real efforts to move from TA delivery to more management, outsourcing and quality-control functions. The Community shared the concerns over the limited degree of information which had been made available up to the present on the implementation of the 2002 TA Plan. It welcomed that the Secretariat was committed to more transparency and to providing complete information regarding the management and implementation of technical assistance. It looked forward to the recently adopted 2003 TA Plan being implemented properly to the benefit of the participating developing countries, and to the further report at the Fifth Ministerial Conference.

210. The representative of Egypt said she wished to make a few remarks with regard to the Director-General's report. First, Egypt did not agree totally with the assumption made in the report that the current degree of delivery of TA/CB was adequate to allow developing countries to move forward with the ongoing negotiations and the Doha Work Programme. Most of the developing countries still faced serious difficulties in tabling the negotiation positions that would safeguard their interests, and did not have a clear understanding of the implications for their economies of many issues under negotiation. Second, Egypt considered the creation of the Technical Cooperation Audit Division in 2001 to be very positive. Auditing had proven to be an essential element for the success of the administration of TA and allowed for the rectification of mistakes and maximization of good practices. Her delegation looked forward to systematic and comprehensive evaluation of TA and the audit report on the implementation of the 2002 TA Plan, which would be circulated to Members in February or March 2003. Third, Egypt supported the Director-General's efforts to coordinate with other agencies the TA delivery that focused on commercial infrastructure for poverty reduction, in order to generate appropriate supply-side responses. Fourth, as for the delivery modes of TA/CB, the report had not elaborated on using information technology. Her delegation wished to ask the Director-General to give particular attention to this matter. Last, Egypt would prefer national and regional events that focused on specific trade issues of particular interest to the developing countries and with direct effect on the CB process. In this regard, Egypt welcomed the convening of the first regional training course for senior Arab Government officials to be held in Cairo on 18 January 2003, and assured that it would provide all the necessary facilities to ensure the success of this event.

211. The representative of Norway said that since the Doha Ministerial Conference, the WTO had done much to put into effect the mandate from Ministers on TC/CB. Norway attached great importance to securing predictable funding for the annual WTO TA Plan. In his delegation's view, future WTO TA should be at least at the same level as in 2002 and what was foreseen for 2003. Moreover, a repetition of the process Members had experienced prior to the approval of the 2003 TA Plan would not be satisfactory. The Secretariat had to work within a predictable financial framework. The Secretariat, the Budget Committee and the CTD had to work together to ensure that there was consistency between the Plan and its related costs. At the outset, the Plan should be drawn up based on the resource constraints, i.e. personnel and financial resources on the one hand, and requests for assistance on the other hand. The priorities set out in the Plan should be based on the recipients' needs, and LDCs should be a clear priority group. Norway looked forward to the evaluation and audit of the 2002 TA Plan by March 2003. This would also be an important basis for further financial contributions. Assessing the quality of the assistance given was an important challenge. Quality

assessment was difficult, but both donors and beneficiaries were interested to know what worked well and what did not, in order to allow for planning and implementation of new activities based on past experience. In this respect Norway welcomed the Secretariat's efforts to coordinate and build strategic partnerships with other organizations, such as UNCTAD, ITC and the World Bank.

212. The representative of India thanked the Secretariat for coordinating and carrying out the 2002 TA Plan despite severe resource constraints, as well as the donor countries for their support for TA activities. The 2002 TA Plan had been an experiment, and a number of lessons had been learned from its implementation. His delegation thanked the Secretariat for the considerable efforts it had made to coordinate the preparation of the 2003 TA Plan in consultation with Members. Paragraph 6 of the Director-General's interim report indicated that 89 per cent of the planned regional activities and 82 per cent of the planned national activities had been implemented by November, for which India wished to compliment the Secretariat. Paragraph 18 of the report indicated that out of 458 activities delivered by the end of November, 133 were ad hoc activities. The ad hoc activities issue had been discussed during the preparatory process for the 2003 TA Plan. While recognizing the need for some flexibility in the implementation of TA activities, India welcomed the fact that in the execution of the 2003 TA Plan, such ad hoc activities would be limited to five per cent. His delegation looked forward to further discussion on this issue in the CTD. India welcomed the increasing coordination by the WTO Secretariat with other relevant international institutions in the delivery of TA/CB activities, in particular with UNCTAD, which was a strategic partner for delivering TA. In this context, cost sharing arrangements in the case of joint activities with other international organizations, including UNCTAD, should be finalized early. During the process of finalizing the 2003 TA Plan, it had been agreed that the CTD would consider all issues relating to technical cooperation in 2003 as well as the scope of TA/CB activities. India looked forward to the discussion in the CTD on that issue. In paragraph 54 of the Director-General's interim report, it had been noted that since Doha, at various international conferences such as the Monterrey Summit on Financing for Development and the World Summit on Sustainable Development in Johannesburg, the Doha Development Agenda had been transformed from a trade agenda into a global agenda. His delegation was unclear about this reference and sought clarification as to what this implied. India hoped that the TC/CB programme being coordinated by the WTO Secretariat as mandated by Ministers at Doha would lead to building the human and institutional capacities of developing countries, LDCs and low-income countries in transition, and would assist them in adjusting to WTO rules and disciplines and to draw on the benefits of an open and rule-based multilateral trading system.

213. The representative of Kenya said that as mentioned in the Director-General's report, TC/CB were core elements of the development dimension of the multilateral trading system, and consequently formed an integral part of the Doha Development Agenda. As stated in the Ministerial Declaration, the delivery of TA should be designed to assist developing, LDCs and low-income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open rule-based multilateral trading system. Her delegation acknowledged that much progress had been made in the delivery of TA, and agreed with the Director-General's report that there was scope for improvement. African countries still faced an uphill task in that regard. Her delegation was encouraged that JITAP had been given a new lease on life that would consolidate the achievements made so far and would extend its programme of activities to other African countries. She looked forward to an immediate implementation of the new phase. She also welcomed the inclusion of NEPAD in the TA Plan and hoped that the cooperation between WTO and NEPAD would have meaningful results.

214. Her delegation noted that the report did not mention the two trade policy courses that had been undertaken in Nairobi and Casablanca in 2002. These courses had been pilot projects of 12-weeks duration each, and had been completed in September and evaluated thereafter. The results of these evaluations should have formed part of the interim report. Any positive contribution by the WTO to the capacity-building efforts of developing countries should be commended, developed and

replicated. Therefore, she was disappointed that such results had not been reflected in the interim report. However, she expressed appreciation for the two courses slated in the 2003 TA Plan. Her delegation hoped that this would become a permanent feature of future technical assistance plans and was confident that such courses would positively contribute to sustainable capacity building. She underlined that WTO TA should be directly relevant to the negotiations and implementation of commitments and should respond to the needs of the recipients. Complementary TA activities by organizations such as UNCTAD, as well as by bilateral donors, should be delivered within a coherent framework. In this regard she welcomed the Director-General's plans on a strategic partnership with other organizations. This would go a long way to integrating developing and least-developed countries into the multilateral trading system. Finally, her delegation commended the Director-General and the Secretariat for the continuous efforts to improve the quality of TA offered to developing countries and LDCs. The current level of engagement between the Secretariat and the membership would ensure that a meaningful contribution was made towards the effective participation of these countries.

215. The representative of Djibouti expressed his delegation's satisfaction that several organizations participated in WTO TA activities, such as the regional organizations dealing with development issues or other UN bodies. Regarding the evaluation and follow up of these programmes, his delegation wished to highlight that two- to three-day seminars, be they in Geneva or in the field, were not long enough to achieve a good result and to enable beneficiaries, in particular African countries and LDCs, to understand the WTO Agreement. Members should discuss the issue of the duration of seminars. Djibouti was contributing to technical assistance at its level. At least one regional seminar had been held yearly in Djibouti for African French-speaking countries or LDCs. In January 2003, a seminar on trade and investment would be held in Djibouti, and another one on environment and trade would be held after the Cancún Ministerial Conference. He thanked the Secretariat in this regard. However, the length of the seminars should be reviewed, and the statement by Kenya was important in this regard. A two- to three-month seminar would enable the beneficiaries to really familiarize themselves with WTO rules. Therefore, seminars, in particular those for LDCs and African countries, should last longer, should financial conditions so permit. This was an important element to be taken into consideration by Members in order to enable LDCs to integrate into the multilateral trading system.

216. The representative of the United States expressed appreciation to the Secretariat for its work to make the 2003 TA Plan a success. While pleased with the adjustments to the Plan, the United States continued to have some concerns regarding issues ranging from redundancy and cost sharing to accounting practices and quality assessment. The WTO should direct its efforts principally to those activities which focused on the WTO's capabilities for building trade capacity and for effective participation in negotiations. It should be cost-effective and within the budget. Like Norway, the United States supported plans to evaluate and audit the Plan after implementation, and hoped that such evaluations would be ongoing throughout the year. Lessons had resulted from Members' considerations. First, the programmes should respond to developing countries' concerns regarding repetitive training, by providing modular sequencing of courses. Second, there was a need for improving how the Secretariat incorporated recommendations or requests for TA from WTO Committees into the 2003 TA Plan. For example, the efforts by the Committee on Technical Barriers to Trade to identify needs did not appear to be reflected in the 2003 TA Plan. On regional trade policy courses, the Secretariat was heavily burdened with work in the 2003 TA plan. The Secretariat's own evaluation suggested that the courses were a worthwhile endeavour, but could benefit from greater guidance. The United States believed that it would be useful to establish an advisory group of six or seven experts with trade and university management experience to develop three- to five-year plans for these activities.

217. The representative of Thailand said that the Director-General's interim report was very useful in informing Members of progress in the TC/CB implemented so far, as well as in providing an

indicative direction of what should be done in 2003 and in the long run, in order to fulfil the commitments in this important area. Her delegation appreciated the hard work done in collaborating with other multilateral and regional agencies in the delivery of joint TC/CB activities and coordinating with the World Bank and the major regional development banks, which not only guaranteed funds for the implementation of the Doha mandates but provided policy knowledge and intellectual contributions. Her delegation took note with great interest of the database which had been established. This would be a good basis for future work, and would reduce the duplication of activities and increase the efficiency of the TA programme. Thailand also believed that much remained to be done in order to fulfil the long-term objectives of poverty reduction, integration and development of the developing- and least-developed-country Members. While the agreed 2003 TA Plan was not yet the solution, it had been developed from the lessons learned from 2002 with more focus on the needs of recipient countries, in which the results should be closely monitored and assessed. In this regard, phased TA might be necessary to ensure that the areas of priority for the recipient countries were kept well focused, with a degree of intensity. Thailand realized the limitation of human resources in the Secretariat which meant that it could not meet Members' demand, and thus supported the plan to have more regional rather than national TA, although the specific needs of each Member might not be met. In this connection, equal distribution of TA among regions should be ensured.

218. The representative of Zambia underlined the importance of ownership in the design of the TRTA/CB Plan by allowing for the input of individual countries to its design. This would ensure that the TRTA/CB Plan was tailored to individual needs rather than a "one-size-fits-all" plan. The adequacy of resources for addressing TA was a challenge. However this should be weighed with the benefits of an expanded, effective participation of a range of Members, as well as the commitments undertaken by Ministers at Doha. Zambia appreciated the direction the Director-General was taking in ensuring cooperation and coordination between the WTO and other agencies, such as ITC and UNCTAD, in the delivery of TRTA/CB, and this cooperation should be cemented. As noted on several occasions, addressing the supply-side aspects of LDCs' economies was crucial. LDCs had recently been offered a number of trade preferences by many countries. In order to be able to take advantage of these preferences, LDCs wished to see an expansion in technical assistance and trade-related capacity building on the supply side of their economies. Zambia welcomed the establishment of the WTO/OECD database. Allowing LDCs to input information into that database, particularly in the design of the many variables, would be of direct relevance to their situation and would increase the usefulness of the database.

219. The representative of Pakistan said that the Director-General's personal commitment to this area had given it a substantial boost, as evidenced by his report. He fully shared the Director-General's view that the work undertaken so far had made the WTO TA programme substantive, meaningful and credible. The increasing emphasis on cooperation with other agencies in pooling resources, especially with UNCTAD and OECD, would make this work more cost-effective and more transparent. It was his understanding that the WTO was considering an initiative of having trade clinics, which his delegation welcomed. This would help provide answers to problems arising from the implementation of WTO rules. Such clinics would provide invaluable support for building institutional capacity building. Pakistan hoped that in the ongoing discussions on the WTO budget there would be no reduction in the budget for TA work.

220. The representative of Jamaica welcomed the strategic approach which had been adopted on development and delivery of TA, and noted the three objectives of WTO TA, namely, the building of negotiating capacity relating to the negotiations and work programme launched at Doha; the building of institutional capacity for understanding the rules and implementing the WTO agreements; and technical assistance for developing and enhancing commercial infrastructure. This approach went beyond providing TA narrowly for the implementation of the Doha mandates – important as this was – and also sought to address some supply-side elements. Jamaica welcomed the efforts of the WTO

in seeking to coordinate with the relevant international and regional organizations to the fullest extent possible, in order to realize these objectives, since the WTO alone could not fulfil all of the various objectives. Jamaica commended the Secretariat for devising, under the Director-General's leadership, new methods to provide TA.

221. His delegation had always maintained that more innovative and creative means of delivering TA had to be developed to address the needs and requirements of Members, particularly small resource-constrained Members. In this connection, Jamaica commended the Secretariat on the development of new technical assistance modes, such as expansion of the WTO internship programme and the implementation of new training courses, which would serve to complement the more conventional modes of delivery. In his delegation's view, more sustainable training structures should be put in place as, for example, programmes for the training of trainers. As indicated in the interim report, Jamaica also agreed that TA and market access were not substitutes for each other, but complementary. TA was a means to an end, and was not a substitute either for fair rules or for reasonable obligations that were commensurate with the levels of development of Members. The year 2002 had been a turning-point in the manner in which the WTO Secretariat strove to deliver TA. Critically, it was now more demand-driven, and the responsibility was increasingly on Members to ensure that TA responded to their priorities as incorporated in their overall development plans. The success of this new strategic and demand-driven approach would depend to a significant extent on the provision of adequate and predictable resources.

222. The representative of Canada supported the statement in the report that TC/CB commitments undertaken by the membership at Doha were an area where there had been demonstrably meaningful progress. However, there was scope for improvement and more work remained to be done. In his delegation's view, all Members had engaged fully in partnership with the Secretariat to ensure that a process for funding was established, that funding was provided and that the TRTA needs were identified and substantially delivered in the very first year. Members had again engaged in an evaluation exercise of 2002 TA activities in order to make the 2003 TA Plan more effective. Like several previous speakers, his delegation believed that this evaluation was important. The Secretariat would provide reports and evaluations within specific time-frames, and his delegation looked forward to receiving these documents and giving them full attention. In this connection, the Secretariat should consider undertaking very early in 2003 consultations to come up with guidelines and criteria for the selection of TA and ad hoc activities, as Members had agreed at the time of approval of the 2003 TA plan. Canada had made a contribution to the Global Trust Fund of CAN\$ 1 million, and encouraged other donors who had pledged funds but not yet forwarded them, to do so with the least possible delay.

223. The representative of Morocco said that paragraph 41 of the Doha Ministerial Declaration had placed TC/CB as a priority in the development programme. More directly targeted TA activities would be very important in order to substantially increase and improve TA within the framework of the new strategy which had been approved by Members. Capacity building was a long-term process which required an integrated approach that would involve the institutions of developing countries dealing with WTO issues, with a particular emphasis on the training of trainers. Moreover, it would be very useful to be able to draw lessons from previous plans, since the organization had to adapt itself constantly in order to better respond to the needs of developing countries. Like Kenya, his delegation believed that reference should be made in the report to the two courses held in Nairobi and Casablanca. These courses were very promising, not only as a new form of TA but also as a means of reinforcing capacity building in the field.

224. The representative of the Côte d'Ivoire said that his country had benefitted from technical cooperation and capacity building in the field as well as training within the WTO. The TC/CB activities had been provided by WTO, UNCTAD, ITC and JITAP. He thanked those institutions for providing such assistance as well as the donors without which such TA could not have been provided. As a beneficiary of TA, Côte d'Ivoire believed that national seminars had been very effective, as they

had allowed operators to participate and to understand better WTO rules. There should be more regional seminars, as this would allow groups at the regional level to better formulate their demands with regard to the group to which they belonged, such as the ACP Group or the African Group. If national and regional seminars could not be organized, thematic video conferences should be set up to help participants better understand specific issues of interest. The dissemination of WTO training modules through electronic format would allow the training of trainers, who would then disseminate the information to other operators, in order to increase understanding of WTO rules.

225. In considering TC/CB, the first question to be examined should be the working language issue. Documents should be translated into a language which beneficiaries understood, in order for them to participate better in the seminars and to be able to disseminate such information in their respective countries. He also wished to propose the organization of bilateral meetings, such as between the European Union and WAEMU, and between the United States and ECOWAS, to increase understanding of the multilateral trading system and WTO rules, and to have information on the objectives of options and commitments in that context. For example, his country had received requests from the European Union but had no information as to the objective of such requests. Moreover, countries like his had difficulties in undertaking commitments as they could not assess the rationale and the consequences of these commitments. Therefore, assistance to make such evaluations would help his country to assess the commitments.

226. The representative of Nigeria associated his delegation with the statement by Kenya. Nigeria supported further evaluation of TA in order to improve its delivery. Technical assistance should be provided which took into account the needs of beneficiaries.

227. The representative of Mauritius expressed his delegation's satisfaction with the efforts to give a new orientation to TA delivery. The emphasis now was not only quality, but also in terms of the new institutional set-up the new strategy had introduced. For example, internal auditing seemed to be a very good instrument in ensuring that delivery was as effective and efficient as possible. He thanked Members and the Secretariat for having worked so well on this issue, as well as all donors who had been contributing generously to the TA programme. Mauritius supported the statements by Kenya and Zambia with respect to the new orientation and dimension of TA, and would like to see the JITAP programme extended to some other countries in Africa.

228. The representative of Cuba said that the Director-General had lent his full support to the TA issue since he had taken up office at the WTO. TA was also a priority area for Cuba and a means to help developing countries to increase their institutional capacity. Nevertheless, this means to help developing countries implement their obligations under the WTO Agreement should not be a substitute for the development of fair rules that would help developing and least-developed countries integrate better into, and benefit from, the multilateral trading system. It was essential that TA be designed to meet national requirements. The development of new forms of TA with other international institutions, in particular UNCTAD and the ITC, was a very positive element, since these organizations had a comparative advantage and experience in dealing with their respective areas of competence. Cuba supported the statements by Kenya and Jamaica in this regard.

229. The representative of Burkina Faso said that as an LDC which had benefited from WTO TA and from the JITAP programme, Burkina Faso thanked donor countries which had allowed it to better understand the rules of international trade and to integrate into the multilateral trading system. His delegation hoped that this form of TA would expand in the future and that many donors would support this aspect of TA. Burkina Faso was very optimistic regarding the place that LDCs would occupy in the world trade, thanks to this form of TA which would enable them, despite their modest means, to participate in WTO activities.

230. The Chairman said that with respect to India's request for clarification, the Secretariat would be in touch with that delegation directly.⁵

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

17. Procedures for the appointment of Directors-General – Communication from the Chairman (WT/GC/W/482/Rev.1)

232. The Chairman recalled that the General Council Decision of July 1999 on the appointment of the next Director-General (WT/L/308) called for a comprehensive set of rules and procedures for the appointment of Directors-General to be elaborated and adopted by the end of September 2000, and that considerable work had been done under this mandate by the previous Council Chairs. He also recalled that at the May meeting of the General Council, he had indicated his intention to pursue consultations on procedures for the appointment of Directors-General with the aim of trying to bring this matter to a conclusion by the end of the year as had been suggested by many delegations. Since then, he had held extensive consultations – including three open-ended informal meetings of the General Council in June, October and December – aimed at ascertaining delegations' views and developing a text that could be considered for adoption at today's meeting. He thanked all delegations for their very constructive discussions and many helpful suggestions throughout this process, all of which had helped enormously to advance work in this area to its present stage.

233. On the basis of the most recent open-ended consultations on 2 December, he had circulated for Members' consideration a revised draft text in document WT/GC/W/482/Rev.1. He had proposed three modifications to an earlier text circulated as WT/GC/W/482: First, in footnote 2, he had proposed the addition of the phrase "including the right of permanent residency"; second, in paragraph 15, he had proposed the addition of the phrase "including their vision of the WTO"; and, third, in paragraph 20, he had proposed replacing the word "assistance" by the word "support". He believed that the text with these minimal changes struck a careful balance among the many views that had been expressed in all the deliberations on this matter, and embodied the common ground that existed among Members at the present stage. He did not believe this text could be pushed any further without unravelling that balance, and he therefore requested all delegations to give it their favourable consideration. In his view, this text represented a solid step forward in improving the procedures for the appointment of Directors-General of this organization by elaborating and clarifying the procedures and making them more predictable. Furthermore, his sense of the discussion at the informal meeting on 2 December was that there was a solid basis of support for its adoption with minimal modifications.

234. Accordingly, he proposed for adoption the draft procedures for the appointment of Directors-General in document WT/GC/W/482/Rev.1. As indicated in the Note at the end of that document, these procedures would apply in their entirety to the appointment of the next Director-General.

235. The General Council so agreed (WT/L/509).

⁵ With regard to India's request for clarification regarding the Director-General's statement in paragraph 41 of the Interim Report the Secretariat provided the following clarification: "The Director-General participated at the Johannesburg World Summit on Sustainable Development (WSSD), including at the High Level Side Event on the Future of Multilateralism. In most of the individual statements made by over 100 participating Heads of State and Government, there was a re-affirmation of the Doha Development Agenda and a renewed commitment to its implementation. Furthermore, in agreed language, the WSSD collectively re-affirmed the text of the Doha Ministerial Declaration. The WSSD re-affirmed the DDA, in both the "Implementation Plan", as in paragraphs 90 to 92, and in the "Johannesburg Declaration". On this basis, the Director-General has urged WTO Members to implement the DDA including its time-frames. In doing so, he has underscored the specific point that the DDA should not simply be seen as an agreement or development agenda reached amongst trade ministers that met at Doha, but that the DDA should also now be seen as a global agenda because of its endorsement and increased profile at subsequent Summits such as the Johannesburg WSSD".

236. The representative of Bulgaria thanked the Chairman for his efforts to find a solution to some of the institutional questions the WTO was facing, including the positive outcome of the work on external transparency and the derestriction of documents, as well as the three institutional issues that were on the agenda of the present meeting. Bulgaria was among those Members who had insisted during the previous appointment process that clear procedures be adopted which would ensure that there was no repetition of the painful experience Members had had in 1998 and 1999 when the organization had been paralyzed for a considerable period of time. At the Doha Ministerial Conference, his delegation had reiterated once again the importance it attached to the institutional problems facing the WTO. He therefore wished to express his satisfaction that the Chairman had devoted considerable efforts to bringing about some progress on these issues. On the procedures for appointment of Directors-General, Bulgaria's position had always been that there was a need for clear and strict procedures with deadlines for the different stages of the selection process which would allow for as little discretion as possible and which would guarantee a conclusive outcome. Unfortunately, the procedures just adopted were incomplete and not entirely unambiguous. They were incomplete because they did not contain a voting procedure in the case of recourse to voting as a last resort, but merely provided that such a procedure would be determined at that time. He agreed with those delegations who had suggested that during the appointment process it would be more difficult to agree on a voting procedure. The procedures just adopted were also not unambiguous on the consultation process. An earlier draft circulated as JOB(02)/152 of 25 October had proposed that, for the process of elimination of candidates, those with the lowest level of support should be identified. That had been changed in the current text to candidates "least likely to attract consensus", which could mean either those having the lowest level of support or something else, and was therefore even less unambiguous. It was not clear, for example, what question delegations would have to answer, and it might then be left to the discretion of the Chairman and the facilitators to assess the level of objections, and it was not clear whether the objections by some Members would not have more weight than those of others. The current text seemed therefore to be a step back from the 25 October text since it did not guarantee a definitive and conclusive outcome to the selection process. Nevertheless, his delegation believed that the procedures just adopted contained some elements, such as the process of elimination of candidates, which itself constituted a positive step forward when compared to the existing situation. As the Chairman had stated, this was a step forward which improved the procedures and Bulgaria was therefore satisfied with the text that had been adopted.

237. The representative of Botswana said his delegation joined others in thanking the Chairman for his painstaking consultations on this subject, which had culminated in the text just adopted. He was also gratified that this text incorporated the modifications suggested by his delegation at the most recent consultations. His delegation nevertheless had some minor reservations, in particular with regard to paragraph 9 as read along with paragraph 13 of the text in WT/GC/W/482/Rev.1. Paragraph 9 involved a nomination process by Member states, while paragraph 13 involved what appeared to be a self-nomination process by a serving Director-General. There appeared therefore to be an element of inconsistency between the two which could possibly suggest that a serving Director-General should enjoy preference over other candidates, and he did not believe that was the intention. In the interest of fair play, a serving Director-General should be subject to the same nomination process as for new candidates. There was also a danger in assuming that a serving Director-General would have the support of his nominating Government to serve a second term, which might not always be true. In order to avoid that danger, therefore, a serving Director-General should also be subjected to the same nomination process as for other candidates. His delegation's other concern related to paragraph 14 regarding the representativeness of candidates. In the interests of inclusiveness and of facilitating the integration of developing countries into the multilateral trading system, his delegation considered that the post of Director-General should alternate between developed and developing countries. A precedent for this existed with regard to chairpersons of the General Council, where the post alternated between developed and developing countries, and this practice should apply also to the post of the Director-General. Paragraph 14 made reference to all regions, which gave rise to some discomfort, and also provided that, in a situation where a final

selection had to be made amongst equally meritorious candidates, one of the factors to be considered would be the diversity of the WTO membership. The deliberate intention should be to strike a balance between the interests of developed and developing countries, which was not provided by the current wording of paragraph 14. This paragraph therefore needed to be reviewed if Members intended to integrate LDCs and developing countries into the multilateral system. Otherwise, the weaker Members of this organization would continue to be the losers.

238. The representative of Brazil said his delegation wished to commend the Chairman for his tireless efforts in attempting to strike a balanced and acceptable result on this issue. He saw merit in approving a set of procedures that would orient future Chairs of the General Council on the difficult and complex task of selecting a Director-General for the WTO. Despite the wide range of opinions expressed during the consultations, Brazil was pleased to note that virtually everyone supported the notion that decisions should be reached by consensus. However, strong differences arose when there was an absence of consensus, which was precisely the problem that this set of procedures intended to address. Regrettably, no consensus had been possible on this very important issue, as a result of which the agreed solution proved to be less than satisfactory. While Brazil would not object to the decision on this matter, it wished to state for the record its preference for strict adherence to Article IX.1 of the WTO Agreement, which stated that "... where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote."

239. The representative of Kenya, speaking on behalf of the African Group, expressed disappointment at the way this decision had been adopted. She believed that a text on such an important issue for the African Group should not have been adopted in haste, and that this text would go down in history as one that they did not fully endorse. Members would recall that the African Group had proposed that the Director-General should, on a rotating basis, be nominated and selected from a developing- and a developed-country Member. Furthermore, where Members were faced in the final selection with equally strong candidates, they should take into consideration the desirability of reflecting the diversity of the WTO's membership in successive appointments to the post of Director-General. However, paragraph 14 of the text in WT/GC/W/482/Rev.1 indicated that the desirability of reflecting the diversity of the WTO's Members in successive appointments to the post of Director-General would be one of the factors to be taken into account where Members were faced in the final selection with equally meritorious candidates. The African Group believed that the diversity of the WTO's membership in successive appointments to the post of Director-General should be the sole determinant to be taken into consideration when selecting final candidates.

240. The representative of Nigeria thanked the Chairman for making the best possible efforts to ensure that the text was acceptable to all delegations. His delegation had already made its views clear, particularly on paragraph 21 of the text in WT/GC/W/482/Rev.1 relating to recourse to voting as a last resort. Lessons from previous exercises on this issue did not permit Members to toy with the matter or shy away from taking a firm decision on it. He recalled that his delegation had proposed that the paragraph in question stop after the first sentence, and that the rest of the paragraph be deleted. He wished also to support the statements made earlier by Botswana and Kenya.

241. The representative of Norway congratulated the Chairman on the adoption of more specific guidelines for the appointment of Directors-General, which he hoped would be helpful in future. Unfortunately, it had not been possible to agree on a "circuit breaker" in paragraph 21 of the text in WT/GC/W/482/Rev.1. The lack of a circuit breaker was the main cause for the blockage during the selection exercise in 1999, when it became clear that resort to the voting procedures under Article IX of the WTO Agreement was not possible. It was also against this background that delegations had tried to find a solution to the question of a circuit breaker, so as to avoid similar problems in the future. Therefore, in his delegation's view, the formulation in paragraph 21, which provided for the possibility of recourse to a vote as a last resort "by a procedure to be determined at that time" could

only mean a voting system different from the provision in Article IX of the WTO Agreement. Norway's recommendation to colleagues in the future would be to agree on a double majority system, i.e. a majority of Members that accounted for at least 50 per cent of world trade.

242. The representative of Cuba recognized the Chairman's efforts in the development of the text that had been adopted. Nevertheless, Cuba wished to state that this text did not take into account all the points it had made during the consultations. In particular, Cuba wished to place on record its disappointment that paragraph 21 of the text in WT/GC/W/482/Rev.1 did not state clearly that the only applicable procedure in the case of a vote was that established in Article IX.1 of the WTO Agreement. In this respect, Cuba endorsed the statement made by Brazil. It also endorsed the statements by Botswana and Kenya on behalf of the African Group on the need for rotation between developing and developed countries to ensure the representativeness of the candidates established in paragraph 14 of the text.

243. The representative of Jamaica thanked the Chairman for his hard work and the effort he had put into producing this text. Although Jamaica realised that this was a compromise text, it wished to comment on two issues. First, Jamaica would have wished paragraph 14 of the text in WT/GC/W/482/Rev.1, regarding rotation, to be more explicit in its recommendations. Second, on paragraph 21 concerning voting, there should have been clarity on the voting procedure that would apply in the absence of consensus. Jamaica believed that Article IX of the WTO Agreement should apply, although it was not a sound approach to have a situation where a decision on voting procedures would take place in the middle of an electoral process. This was unheard of in a democratic process, and clarity on the process should be established from the outset. This notwithstanding, his delegation had joined in the consensus on this text, and wished again to thank the Chairman for his hard work in producing it.

244. The representative of Chile thanked the Chairman for his tireless efforts in bringing this matter to a conclusion. Chile believed that the text was as good as it could get, and while one could perhaps never get a perfect solution, it was nevertheless a timely one. To have let this matter drag on and overlap with other work towards the Cancún Ministerial Conference might possibly have led to a much worse end result. While one could go on haggling forever on bits and pieces of the text, Chile believed the text was a good one and that delegations needed to keep this in mind. The text had resulted from a number of consultations, and while his delegation had not been involved in all of them, it was confident that the process had been very transparent and one in which every Member had had the possibility of making its views known. His delegation therefore did not believe that the decision had been adopted in haste. Regarding paragraph 21 of the text in WT/GC/W/482/Rev.1, he wished to be on record as being in full agreement the statement by Brazil. His understanding of the reference in that paragraph to voting procedures to be determined was that it referred to issues such as the time, date, place and form of the vote, i.e. whether electronic or paper, the procedures for recount if necessary, and the question of how non-resident Members would vote. However, the rules concerning voting and rights are written, cast in stone in Article 9.1 of the Marrakesh Agreement. And finally a comment on rotation. I think what we need is to always have a strong DG. At least it is in the interest of smaller, weaker delegations like mine to have a very strong DG. To only select the DG on the basis of rotation would lead us, perhaps inevitably, to have a weaker DG than we otherwise need and deserve. Therefore, I think that the result that we have achieved is a good and balanced one.

245. The representative of Australia said that there was often a fine line between delegations who were commenting for the record – and there had been a number of those since this text had been adopted – and those who were suggesting that the process had been one of haste. He supported the comments just made by Chile. In his delegations's view, the Chairman had the right thing in declaring his intention back in May that Members would seek to have a decision by the end of the year on this issue, and for his painless efforts in the months since then to broker a consensus among all delegations. He considered that the process on this issue had been one of the greatest transparency. There had

been a number of open-ended meetings and, while he sympathized with the ability of smaller delegations to come to open-ended meetings, delegations had had a very full discussion. The Chairman had asked at the most recent informal meeting whether Members felt they had the basis of a consensus, and his delegation believed that at that stage they did. All recognized that their preferred position was not in this document, and if Members ever tried to get a consensus among 145, soon to be 146 Members, it was always going to be difficult. If there was one message that came out of the recent discussion under the Trade Policy Review Body which reviewed developments in international trade, and the concerns expressed there about regional trade agreements – which some considered were a good thing, although many disagreed – was that if Members did not show that they could make some progress at the multilateral level, then the process of bilateral and regional integration and preferential agreements would continue apace. The same applied to the text under consideration. There had been a considerable amount of discussion on it, and while it was not a perfect text and all would wish to tinker with it, it was at this stage the best that all could collectively do. The time had come to move on. The end of the year had arrived, and the time had come to adopt this as the General Council had done. Any implication that this had been done in inordinate haste and had not reflected the broad position of most delegations was quite unfair.

246. The representative of Switzerland said that his delegation very largely shared the views just expressed by Australia, and joined other in expressing gratitude to the Chairman for the efforts he had made in conducting the discussion on this issue. Having followed these efforts from the very beginning, his delegation could say that they were conducted in an exemplary and transparent manner, and the subject had been given the thorough attention it deserved. Following this procedure, and following the decision the General Council had taken on this text, Members had achieved the welcome result of clarifying and giving shape to procedures for the nomination of Directors-General. It was not the result that his delegation, for its part, would have wished, and there was no doubt that this was not the optimum result all would have wanted. The essential point had been the question of paragraph 21, and the advisability of laying down a procedure for voting in the event that there was no consensus. Switzerland had considered it important to be able to agree on a procedure for a vote other than that provided in Article IX of the WTO Agreement, which, ultimately, would not be of great help. It was important to define a voting procedure for two reasons. First, because a voting procedure which could have been accepted by consensus would have required more discipline on the part of the Members engaged in the exercise of nomination of the Director-General, a discipline which had been singularly lacking in the past. Second, a decision by vote would have served as an element of pressure and a deterrent in the event of a blockage in the process of nomination by consensus. Switzerland believed that a procedure based on a double majority would have been the most suitable. It would meet the needs of overcoming a possible blockage in reaching consensus, and would better represent the spirit behind the consensus that had not been reached. His delegation believed that, even with the improvements, the text as adopted proposed a largely traditional procedure. It believed too that this would not be the last word on this issue in the light of developments which might occur in future. Finally, the fact that Members had not resolved the question of a voting procedure in a manner that his delegation would have wished to see would mean that Members would have to show greater discipline and a greater sense of responsibility at the time of nomination of future Directors-General. Switzerland certainly did not want a repeat of the earlier nomination process, which it believed Members could ill afford.

247. The representative of Barbados said his delegation wished to commend both the Chairman and Secretariat for their hard work during the consultative process that had led to the adoption of the procedures for the appointment of Directors-General. Barbados recognized that this matter was not a simple one and that the text that had been adopted was a product of the difficult circumstances with which Members had been confronted. However, Barbados shared some of the concerns expressed by other delegations about certain paragraphs and hoped that at some future date there would be an opportunity to make improvements to this text. On the issue of recourse to voting in the event that consensus were not possible, Barbados wished to place on record its position that in such an

eventuality it would not be able to support any form of voting based on trade shares or any other such criteria. Its position was based not only on the fact that with a share of trade of 0.000 per cent Barbados might not get an opportunity to have a say in the vote, but essentially because it felt that in the interests of the good governance of this organization, any voting should be on the basis of the one-Member-one-vote principle.

248. The representative of the Philippines said that his delegation had unfortunately not been present either at the time of adoption of this text or at the most recent open-ended consultation. However, as far as he could remember, the issue of a double-majority vote had been eliminated from the Chairman's draft text as early as two months ago. It was lamentable that this idea was being revived, when delegations at this stage, as responsible and serious officials, should be agreeing to this text on the basis of an amicable consensus. If some delegations wished now to place on record their positions on an issue that had been dropped two months earlier, then all were facing a very serious problem. He hoped that all Members would be able to abide by taking a decision on appointment of Directors-General on the basis of Article IX:1 of the WTO Agreement.

249. The representative of Chinese Taipei said that although in reality the text as adopted was definitely not a perfect one, a tremendous amount of time, energy and creativity had gone into drafting this text. Credit should be given where it was due. His delegation wished particularly to express its sincere appreciation to the Chairman as well as to other colleagues for their contributions which had made this text possible, and believed it to be a thoughtful, unbiased and well-drafted text which he was more than pleased to endorse.

250. The representative of Hungary said that, having listened to some of the statements, he believed that justice needed to be done to the characterization of the process conducted on this text. There had been some negative comments, including that this was an untimely and hasty decision, which he believed were unfair. His delegation believed the process that the Chairman had undertaken had been exemplary in its inclusive and transparent nature. Members had spent some 8 months on this – a procedural question – and if this did not seem sufficient, with the dozens of meetings that had been held in various formats, and if some considered this to have been hasty, then it did not bode well for any outcome of the DDA negotiations. On substance, his delegation wished to say that it saw two principles confirmed by the procedures that had been adopted. First, that the job of Director-General of WTO was simply too important to be anything other than merit-based. This was a very important criteria, and should remain so. The reference in the procedures to representativeness and the need to reflect the diversity of the membership was sufficient to provide for the necessary change, if there was need to do so, among various groups of countries. However, the first, and important, qualification was merit. Second, the fact that no agreement on the form of a vote had ultimately proved possible was a confirmation of the working method of consensus in the WTO which had served everyone well. His delegation hoped that voting would be used in rather exceptional circumstances. Although there was clearly not much use in discussing at this stage the nature of the vote to be taken at some point in the future, he wished to mention – since reference had made by a number of speakers specifically to Article IX:1 of the WTO Agreement – that Hungary did not consider it at all realistic to assume that the Director-General could be selected by countries that represented less than 5 per cent of world trade and less than 5 per cent of budgetary contributions.

251. The representative of Mexico said that although his delegation did not usually intervene to support others, he believed that in this case it was important to do so. He wished to join Chile, Australia, Switzerland, Hungary and others in expressing gratitude for the exhaustive and transparent process that had undertaken on this issue, and that the process in this case had been of great value. All were aware that this was the time to be reasonable not only because of the status of the ongoing negotiations, but also because of the state of the world economy on which delegations had had an exchange earlier in the overview discussion in the Trade Policy Review Body.

252. The representative of the United States said that although, as others had stated, the text that had been adopted was not a perfect document, the United States would not spend time going through all the different points where it might have wished the document to be otherwise. The Chairman had provided her delegation with every opportunity to do so in his consultative process, which it believed was thorough and fair. In the end, the Chairman had put forward a document which represented his best judgement as to where consensus could be found. The United States was not going to take the floor to interpret every word of it because it believed the words in the document really had to speak for themselves. The key question was whether, at the time of the next DG selection process, Members would be able to say that, with this document, they were better off than they were before. Her delegation believed, despite any misgivings it had about the document, that the answer was yes. She thanked the Chairman for his persistence, dedication and wisdom in leading this process. Frankly, had the Chairman been able to come up with a document that satisfied everyone, given the different points of view that existed, she believed he would have had to have another title –perhaps magician.

253. The representative of Japan said that having heard some of the statements under this item, his delegation felt the need to intervene. As others had said, the document that had been adopted was not perfect. That was the nature of coming to a consensus text. Japan felt that in helping Members arrive at this text, the Chairman had done a wonderful and exemplary job.

254. The Chairman said that the many generous comments that had been addressed to him certainly belonged to all the delegations who had spent literally countless hours after many months going over the crossing of t's and the dotting of i's. The document could certainly have been better from many perspectives, but this was the best that Members could do and what they were prepared to live with for today. As the United States had stated, it was better that what one currently had, which was nothing. As a result of this text, the governments who would be nominating candidates in the future, and candidates for the office of Director-General themselves, would know what the rules were, what the deadlines were, and Members had imposed on them and on everyone collectively, a greater sense of discipline. He also expressed gratitude to the Secretariat, who had helped both him as well as Members a great deal on this and two other issues on the Agenda of the present meeting. While he would take criticism, he felt it was unfair to characterize this decision as one that had been taken in haste.

255. The General Council took note of the statements.

18. Guidelines for the appointment of officers to WTO bodies – Communication from the Chairman (JOB(02)/198/Rev.1)

256. The Chairman recalled that at the General Council meeting in February, several Members had indicated their dissatisfaction with the current process for appointment of officers, and had expressed the wish that Members try to devise a better approach to this process, which would, inter alia, allow for greater transparency. Subsequently, at the General Council meeting in May, he had indicated his intention to pursue this question in consultations after the summer break, in order to be able to reach some understandings before the year's end which could be used as an input into the next appointments exercise. Since then, he had held extensive consultations, including two open-ended General Council meetings in November and December. In all of his consultations there had been a broadly shared view that the existing Guidelines (WT/L/31) were basically sound, but that they would benefit from being supplemented in order to reinforce certain existing provisions as well as to improve the transparency of the process. Delegations had suggested, in this connection, that this exercise should draw largely on the extremely useful suggestions made by the three former Chairpersons of the General Council in their paper circulated in August (Job(02)/98).

257. On the basis of the most recent open-ended consultations on 2 December, he had circulated for Members' consideration a revised draft text in JOB(02)/198/Rev.1. He had proposed two modifications to the earlier text. First, in guideline 1.1, the correct reference in the text should be to guideline "6.1", and this correction had been made. Second, in the Annex, he had added the Trade Negotiations Committee in the list of bodies in Group 5, as suggested by Chile, with a footnote to clarify that the agreement reached by the TNC regarding the appointment of its chair and the chairs of its subsidiary bodies would continue to apply to such appointments. He had tried to respect the view expressed by many Members that modifications to the 1995 Guidelines be kept to a minimum so as not to risk opening discussion on sections of that text that had been broadly acceptable at the time they had been drafted. He believed that this text represented a careful balance among the many views expressed in all of the deliberations on this matter, and his sense of the discussion at the informal meeting on 2 December had been that there was a solid basis of support for its adoption with minimal modifications. Accordingly, he wished to propose for adoption the draft guidelines for the appointment of officers to WTO bodies in Job(02)/198/Rev.1.

258. The General Council so agreed (WT/L/510).

259. The Chairman then said that in accordance with the guidelines just adopted, 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. Also, in accordance with Guideline 7(b), he would be assisted in this process by Mr. Perez del Castillo (Uruguay), the serving Chairman of the Dispute Settlement Body, and Mr. Bryn (Norway), the only former Chairman of the General Council still serving in Geneva as Permanent Representative. Further, in keeping with Guideline 7(c), he requested the Secretariat to distribute 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. On a preliminary basis, he hoped to begin these consultations the following week, as he knew the time in January would be short. He invited any Member wishing to speak to him or to relay a message either of interest in one of these positions or advocating someone else for a position, to contact him or the colleagues who would be assisting him. He, along with his two collaborators, would try to do justice to the improved Guidelines Members had just adopted.

260. The General Council took note of the statement.

19. Internal transparency and effective participation of Members – Preparatory process in Geneva and negotiating procedure at Ministerial Conferences – Statement by the Chairman (JOB(02)/197)

261. The Chairman recalled the dedicated discussions on this important issue at the May and July General Council meetings as well as at an informal open-ended consultation on 24 October, and said that at the latter meeting, delegations had encouraged him to consult with a smaller group in order to make progress on this important matter. As he had reported at the informal meeting of the General Council on 2 December, these smaller group consultations had considered some draft elements which sought to outline areas of convergence, as well as those areas where positions remained far apart. He also recalled that at 2 December meeting, Members had engaged in a discussion of a draft Chairman's Statement (Job (02)/197) which sought to identify areas of common ground based on discussions over the course of 2002. He recalled that a number of suggestions for modification to this text had been made and passionately advocated, and that he had tried to take into account as many suggestions as possible without tilting the balance in the original text. These were found in Job(02)/197/Rev.1. He then went through the six modifications which had been made to the earlier text, and said that all of these had been made in an effort to err on the side of accepting more proposals, approaches and formulations aimed at providing greater transparency and openness. (i) In the first paragraph, second sentence, the phrase "While the statement carefully attempts to reflect the main thrust of discussions

so far" had been deleted. (ii) In the first paragraph, last sentence, "past" has been replaced by "our improved". (iii) In Section II, first bullet, "should" had been replaced by "shall". (iv) In Section III, first bullet, first sentence, the words "and unique" had been added before "issues facing each conference". In addition, the text previously contained in the second-to-last bullet of Section III had been moved to this bullet point, with two additions: the word "therefore" had been added to the first sentence, and the phrase "and the elements set out in this statement" had been added to the third sentence. (v) In Section III, third bullet, second sentence, "serious" had been added to qualify "consideration". (vi) In Section III, fifth bullet, the phrase "as far as possible" had been deleted.

262. Having said this, he said that there had remained a number of proposals that simply did not enjoy consensus. In addition, it was important to emphasize that the current text in no way pre-empted further improvements, just as the text gavelled by the General Council Chairman in 2000 had not prevented Members from returning to this issue and seeking improvements. The General Council was about to gavel improvements that built on what had been achieved in 2000. He had every expectation that his successors, in future attempts returning to this issue, would continue to build on the improvements already made. He believed that the submissions thus far in this process – WT/GC/W/422 by Bulgaria, WT/GC/W/471 by India and 14 other countries and WT/GC/W/477 by Australia and 8 other countries – as well as the constructive discussions over the past year would serve Members well in the pursuit of further improvements to the decision-making practices. As he had indicated at the 2 December meeting, he was hopeful that the General Council would agree to endorse the attached statement as it stood, in recognition of the fact that Members' collective consideration of improvements in internal transparency and effective participation, including in relation to the preparation and organization of Ministerial Conferences, was an ongoing process. He said that in the interest of time he would not read out the statement in JOB(02)/197/Rev.1, and for which he sought the endorsement of the General Council.

263. All representatives who spoke expressed their delegations' appreciation for the Chairman's efforts to reach an understanding on this important matter.

264. The representative of Bulgaria said that his delegation had devoted special attention to the issue of internal transparency, and had tabled a submission which suggested some guarantees against the appearance of last-minute proposals worked out in small-group meetings and which other delegations were not given sufficient time to assess (WT/GC/W/422). The last 24 hours at Ministerial Conferences and the problem of draft decisions prepared at the last moment in small "Green Room" type meetings had been identified as the key problem of internal transparency. It had triggered the discussions on internal transparency in 1999 and had been taken up as a priority item immediately after the Seattle Conference. Unfortunately, despite the efforts undertaken and despite the Chairman's personal efforts in this respect, this key problem could not be solved. The guidelines contained in the Chairman's statement did not contain significant elements which would constitute a major step forward. On the contrary, they seemed to legitimize small-room consultations without giving sufficient guarantees for participation by delegations in the decision-making process.

265. He said that an example was the second tirt of the second bullet in Section II of the Chairman's proposed statement, which spoke only of the opportunity of Members "to make their views known". Bulgaria felt that this was insufficient for guidelines on internal transparency and effective participation of Members in the preparatory process for Ministerial Conferences. It had proposed at the informal meeting that the phrase "making their views known" be replaced by the phrase "participation in the preparation of draft texts". His delegation felt that this would reflect the basic rights of Members to participate in decision-making in what claimed to be an intergovernmental organization. Unfortunately, this proposal had not been reflected in the latest draft. Bulgaria was among those delegations who had expressed a preference that the Chairman's statement be taken note of by the General Council instead of being endorsed, as had been proposed. He recalled the statement by the General Council Chairman in 2000 had initially been taken note of. It was perhaps more

appropriate to take note of the Chairman's proposed statement and to see in future whether it would be endorsed. Bulgaria continued to believe that taking note of the statement would be more appropriate, mainly because it had not been possible to solve the key problems that had triggered the discussions on internal transparency and effective participation, but also because his delegation had doubts as to whether it was appropriate to endorse a text whose elements – and he was quoting the Chairman's statement – "were not fully negotiated". Bulgaria believed this might set a precedent which could have negative implications for the intergovernmental character of the WTO, which operated on the basis of consensus.

266. The Chairman said that the reason he had proposed endorsing the statement at the present meeting was that a number of Members who had been arguing for more transparency felt that an endorsement by the General Council would be a stronger commitment. He shared that view and therefore felt that it would perhaps be worth doing that, and building on the statement that had been taken note of in 2000. His idea was to build on a stronger foundation, and this was his reason for proposing that the statement be endorsed. In doing so, he noted that he was drawing on the experience with the TNC's principles and practices, which had been endorsed by the TNC in February 2002.

267. The representative of India recalled that Ministers had confirmed, in paragraph 10 of the Doha Ministerial Declaration, their collective responsibility to ensure internal transparency and the effective participation of all Members. India agreed with the Chairman's assessment that Members had come a long way since Seattle and that the preparatory process for Doha had been marked by improved levels of transparency. However, on some crucial aspects, there was scope for improvement. This was evident from the experience gained in organizing the preparatory process for the Doha Ministerial Conference and at Doha itself. India wished to commend the Chairman for holding consultations on the question of internal transparency with a view to coming up with agreed guidelines and procedures. It had noted carefully the efforts the Chairman had made to reflect the concerns expressed by many developing countries on this issue. His delegation had gone through the revision in JOB(02)/197/Rev.1. It had expressed some views at the last informal session held on 2 December. While the Chairman had no doubt taken some of these points on board, there were certain other important aspects, such as transmission of documents and the so-called "Green Room" process, which India wished to discuss at greater length with other Members under the Chairman's guidance, so that an agreement could be reached. India was also conscious that it might not be possible to achieve this in the next day or two, and therefore wished to suggest that further consultations be held to bridge the gap and to come up with a document acceptable to all delegations. It was essential that this crucial issue, in which many developing countries were interested, was addressed satisfactorily before the preparatory process for the next Ministerial Conference started. As mentioned by India at the TNC meeting, this would be an important confidence-building measure that would reassure the developing countries that all their efforts in Geneva would be useful inputs at the Ministerial Conference.

268. The representative of Canada said that the effective participation of Members in the preparatory process and negotiating process at Ministerial Conferences was an issue of intense interest to Canada and, presumably, to all Members as it affected the most fundamental aspect of Members' work in the WTO. His delegation had associated itself with the paper submitted by eight other developed and developing Members of the organization as a means of contributing to this consultation and debate (WT/GC/W/477). That paper examined the diverse membership and interests of the organization, and considered the challenges faced by a large and diverse membership which reached decisions by consensus. To meet the objectives set by Ministers at Doha would call for a large amount of work in a limited period of time. Members needed to draw on the experience of recent years to find practical ways to achieve consensus in both the preparatory process and the Ministerial Conference, with particular reference to the next Ministerial Conference in Cancún. Canada also drew certain conclusions from its own analyses and from the debate which the subject had engendered

among the membership. He then highlighted two of these. First, in a Member-driven organization processes needed to be kept flexible. In Canada's view prescriptive and detailed approaches to the preparatory processes would not create the best circumstances for consensus to emerge in Cancún or in future Ministerial meetings. Second, the preparatory process had to leave space for the Ministerial Conference and Ministers themselves to take up those issues which called for resolution at a political level. The statement presented by the Chairman met the shared objective of continuing to improve the preparatory and organizational processes under which Members operated, and provided a framework that was sufficiently flexible to be adaptable to the individual circumstances of each Ministerial Conference. Canada strongly believed that it was in the interests of the organization as a whole to harvest the consensus in areas where the Chairman's exhaustive consultations had demonstrated convergence, and hoped that the membership would endorse the Chairman's statement.

269. The representative of Cuba said that his delegation greatly appreciated the written and oral contributions submitted by Members during the course of these consultations. His delegation, along with several others, had submitted document WT/GC/W/471, which reflected Cuba's position on this major issue. His delegation noted that in the Chairman's statement a number of important points remained unresolved and that some issues needed to be studied in greater depth, *inter alia*: all consultations should be transparent and open-ended and any consultations or meetings held outside this process were not part of the formal preparatory process; there should be sufficient time for delegations to consider documents in order to facilitate proper consideration by, and consultation with, their capitals. Cuba also regretted that the statement did not clearly and unambiguously state that the draft Ministerial Declaration should be based on consensus and that, when this was not possible, differences should be fully and appropriately reflected and the various options suggested by Members listed. Cuba therefore endorsed India's suggestion to continue the consultations with a view to obtaining a statement which really did cover all of the elements under discussion.

270. The representative of Kenya, speaking on behalf of the African Group, said that these countries were extremely encouraged by the inclusiveness of the process of consultations undertaken and agreed that there had been incremental improvement since Seattle as far as internal transparency and the effective participation of Members was concerned. These countries welcomed the improvements to the text the Chairman had just outlined, in particular regarding Section II, first bullet, where the word "should" had been changed to "shall". The African Group had felt from the beginning that this process had to proceed under the very close supervision of the General Council. She wished to raise two other issues: one was that in agreeing that work on the declaration should be completed in the preparatory process to the maximum extent possible, she wished to add that any unfinished business should be then forwarded to the Ministerial Conference in very clear language that would reflect the different and divergent views of the membership, so that there was absolutely no confusion as to what the General Council meant when it transmitted a draft declaration to Ministers. The other issue was that at the Ministerial Conference itself, the African Group would expect all meetings and consultations to be transparent and all-inclusive. Restricted meetings should be discouraged. As all decisions made at the Conference were binding on all Members, it was reasonable that all Members should be part of the decision-making processes that took place at the Conference. Transparency was necessary in order to ensure the participation of all Members at that forum. Indeed, she said that the chances of success at Cancún would be enhanced if Members were able to create confidence among all delegations in the preparatory process and at the Ministerial Conference itself. She agreed that the principles and practices as outlined in the Chairman's statement went a long way in the pursuance of greater transparency and inclusiveness in future work, but also supported India's suggestion to continue consultations on this issue.

271. The representative of the European Communities said that in his consultations the Chairman had ensured the highest possible degree of transparency and predictability, which in itself rendered full participation yet more effective. The Community applauded that goal. Finding the balance between transparency and predictability on the one hand, and sufficient flexibility for Ministers to do

their work on the other hand, was extremely difficult. His delegation felt that the Chairman had struck the right note, and that further consultations risked unravelling a delicate balance. It could therefore endorse the Chairman's statement.

272. The representative of Norway said that the Chairman's statement was an excellent effort to get some lines on paper on an issue where there was a need for concrete guidelines. He wished to make some comments on the statement in Job(02)/197. The first was that there had been a very preliminary statement in December 2000 on this issue. When he compared some of what was in the 2000 statement with the statement in Job(02)/197/Rev.1, there did not appear to be many elements that were contradictory. However, there were perhaps two or three points he wished to highlight that could be useful. First, the statement did not touch the point in the December 2000 text that "Members reiterated that Ministerial Conferences should be held at WTO Headquarters unless the Ministerial Conference or the General Council decided to accept an offer by a Member to host a Ministerial Conference". This point might be worth considering, in order to avoid giving the impression that the opposite was the rule. His delegation felt that the general rule should be that Ministerial Conferences should be in Geneva, especially for the period of the Doha Round, because Members were not going to launch a negotiating round every second year.

273. Second, regarding the negotiating structure, the December 2000 text made a point that the setting up of any negotiating structure and working groups, as well as Chairmanship, should also be agreed during the preparatory process. While Members might not always succeed in this, it was part of the normal preparatory process, and this was not as clear in the Chairman's statement as it should be. Third, and most importantly, the December 2000 text read, "there seems to be broad agreement among Members that the Chairman of the General Council, with the support of the Director-General and the Secretariat, should assume a central role in the preparatory process as well as during the Ministerial Conference, especially in a negotiation of any agreed outcome. The host country would normally provide the Chairperson of the Conference who would Chair the Ministerial debate". The point was, how would Members move from what was described in Section II of the Chairman's statement, that is, the preparatory process, to what was described in Section III, which was the Ministerial Conference? The link between those two elements was definitely the Chairman of the General Council and the Director-General, and Norway felt that this should be recognized, perhaps at the expense of the local Chairman, if the Conference was outside Geneva. This might have been spelled out a bit more clearly. He had heard other comments made by colleagues and shared some of the difficulties both New Zealand, and Malaysia in an earlier discussion, had referred to. However, he had also perhaps come to the conclusion that what was in the draft text was very much what the market could bear. Then, perhaps in a couple of years, there would be another Chairman discussing exactly the same thing that was being discussed now.

274. The representative of Indonesia said that Indonesia welcomed the Chairman's statement in Job(02)/197/Rev.1. It saw the paper as an opportunity for Members to consider further the effort to improve the preparatory process and also to understand better the matter at hand. The last informal discussion on this issue had been very useful. Indonesia was glad Members were approaching it in a candid and pragmatic way using practical examples from the experiences both in Seattle and Doha. On the preparatory process for the Ministerial Conference, while agreeing that smaller consultations might also take place involving individual Members or groups of Members, he said that it should be noted that the establishment of many consultations should take into account the difficulties faced by some Members, particularly the smaller delegations, in covering a number of consultations. The point was to avoid the establishment of so many contact groups. The number of, and structure and facilitators for, such working groups should be decided in the General Council in Geneva. Nevertheless, Indonesia could agree that such consultations should be reported expeditiously back to the full membership for further consideration. His delegation supported that work on draft declarations be completed in the preparatory process to the maximum extent possible. It went without saying that given transparent and all-inclusive processes, outcomes from the Geneva process should

be nearly complete. Ambassadors in Geneva were exercising the political mandates and judgments of their Ministers. Only those issues on which different positions were reflected should be left for Ministers to deliberate at the Ministerial Conference, and such differences should be fully and appropriately reflected in the draft declaration.

275. Regarding the process at Ministerial Conferences, Indonesia agreed that there should be a Senior Officials Meeting (SOM) prior to the Ministerial Conference. This was a common practice in all multilateral meetings, which should be continued. However, it should be noted that the SOM should start in Geneva. There would be tangible value in the involvement of capital-based senior officials during the Geneva process. Indonesia also welcomed the establishment of a Committee of the Whole. This would be the main forum for decision-making, and all of its meetings should be formal. Indonesia agreed that any extension of a Ministerial Conference should take place only in exceptional circumstances, and given the inclusive and transparent nature of the meeting, this extension should be agreed upon by consensus.

276. The representative of Japan said that under the Chairman's able stewardship, the discussion on this issue had gone as far as it could within the time available. Japan believed that the Chair's draft statement well reflected the discussions held so far and would serve as a useful record of Members' arduous work. Such a record would not only enable those involved in the preparation of Ministerial Conferences to appreciate Members' concerns, but would also serve as a point of reflection in Members' endeavour to enhance the transparency of the whole process leading up to and during each Ministerial Conference. Thus, his delegation supported the General Council's endorsement of the Chair's statement as presented, as a snapshot of where the General Council stood.

277. The representative of China said that his delegation had made its comments and proposed amendments on the paper in JOB(02)/197 in the previous informal consultations. Among those comments and proposed amendments, he wished to re-emphasize two points which China believed were of critical importance to the smooth and fair proceeding of preparatory work for and the conduct of Ministerial Conferences. The first point was with regard to the preparatory process in Geneva for the draft declaration. The draft declaration for submission to the Ministerial Conference should be based on consensus. Where this was not possible, differences should be fully and appropriately reflected in the draft, so that Ministers could take into account all divergent views and make appropriate political decisions. This did not mean that the draft should include hundreds of square brackets, but Members should be able, through consultations, to narrow down to three or four square brackets the major differences for the Ministers to take political decisions on. Ministers had to be informed of the major differences, and should not be led to believe, by a clean text, that there was already consensus, when this was not the case. This was why Members had to try to have the right draft to present to Ministers. This was common practice in many other international organizations, and he did not think there was any justification for the WTO not to follow this practice. His delegation had demonstrated its flexibility on procedures for the selection of Directors-General. Although it had had great sympathy with the positions of Kenya, Cuba, Botswana and other delegations on that text, it had gone along with the decision. However, there was no room for flexibility on the present point.

278. The other point was the decision on the selection of the chairpersons and facilitators to facilitate consensus building on outstanding issues at the Ministerial Conference. The decision on the number, structure and chairpersons/facilitators should be made through consultations with the Members in Geneva or immediately before the Ministerial Conference. This was an important step to ensure the neutrality and impartiality of chairpersons/facilitators. Finally, China shared India's view that there should be further consultations in order to improve the text.

279. The representative of Panama said that his delegation considered that the proposal in JOB(02)/197/Rev.1 contained positive elements to try to remedy procedures and practices that had

been called into question within and outside the organization. The proposal would contribute to no voice being unheard. Panama agreed with Kenya's statement, and would always be in favour of initiatives which would help Members to plan their participation on issues of interest to them. The proposal was not perfect, and Panama did not agree with all of it. However, it was a significant step forward and therefore his delegation could support it.

280. The representative of Nigeria said his delegation believed that a lot had been achieved in improving inclusiveness and participation of Members in the decision-making process of the WTO. However, with regard to preparations for Ministerial Conferences, a number of key issues still needed to be resolved. For example, there was a need for further work or added clarity in the area of transmitting draft texts to Ministers, facilitators and ways of indicating in draft texts where consensus had been reached and where it had not. Nigeria therefore joined others in suggesting that further consultations be held to come up with an improved text for further consideration.

281. The representative of New Zealand said that this issue and the previous two agenda items had absorbed a lot of time both for the Chairman and for delegations, but that these were important issues and that the results thus far were already worthwhile. There seemed to be continuing differences over some aspects, but this should not be a surprise. Members had tackled these same issues in the past, especially after Seattle, without reaching full consensus, and differences over process were often difficult to separate from differences over substance. The question was where to go from here, bearing in mind that there was a set of extremely difficult issues to resolve in the lead-up to Cancún, including some related to Members' mandate. Ideally Members should get the preparatory process underway early in 2003. The existing 2000 guidelines had served Members well in the Doha preparatory process in 2001 and in Doha itself. That preparatory process and the Doha Conference had not been easy, and many had unhappy memories of some aspects. However, his delegation's sense was that ultimately the problems primarily reflected deep differences over issues rather than critical deficiencies in process.

282. In both the preparatory process and at the Conference, Members had been forced to depend very heavily on the judgement of the respective Chairmen. They had been fortunate to have Mr. Harbinson and Minister Kamal at Doha. His delegation found it hard to visualise a process that did not rely on the General Council Chair in Geneva and the Chair from the host country. Someone ultimately had to carry the responsibility on behalf of the Members. New Zealand's conclusion was that the General Council Chair and the Chair from the host country needed to have, within agreed guidelines, the flexibility needed to deliver the ingredients that Ministers needed to put together. This was not to say the process could not be improved. His delegation felt this exercise had been useful in identifying some areas where changes could be made that responded to concerns identified by Members. It continued the post-Seattle effort to learn from experience. There was an inevitable need for compromise in an area as sensitive and complex as this. Nevertheless, the Chairman's statement was a step forward. In these circumstances, notwithstanding some of the comments by other delegations at the present meeting, New Zealand saw no realistic alternative to proceeding with the preparatory process on the basis of the improved guidelines set out in the Chairman's statement. It did not see a realistic prospect of consensus on a more prescriptive approach that would tie the hands of the General Council and host Chairmen. In the circumstances Members should all reflect carefully on the implications of not endorsing these guidelines, as some had suggested. Finally, in an effort to be helpful, he wished to leave Members with a question that was prompted by the last point raised by China, namely, whether a Senior Officials Meeting convened before a Ministerial Conference might not prove to address that point.

283. The representative of Honduras said that his delegation joined all those who had suggested the Chairman continue his consultations on this issue.

284. The representative of Zimbabwe said that his delegation had noted the statements by India and Kenya on behalf of the African Group. Zimbabwe felt there was still room for improvement in JOB(02)/197/Rev.1, and greater clarity was needed on the transmission of documents to Ministerial Conferences as well as regarding the hosting of future ministerial meetings in Geneva.

285. The representative of Singapore said that the issue of internal transparency had been discussed on several occasions in the General Council in both formal and informal modes. There had also been several rounds of informal consultations in smaller groups on this matter. Three submissions had been made by various delegations. Two of these reflected almost diametrically opposite positions on how the preparatory process for Ministerial Conferences and the Conferences themselves should be conducted. While some delegations had argued for tighter procedures, others, including Singapore, had argued for more flexibility in the way Members prepared for and conducted Ministerial Conferences. No two Ministerial Conferences were the same. Therefore, approaches should also be flexible and tailored to meet the circumstances prevailing at the time. Given the divergence of views among Members on this issue, his delegation was of the view that what the Chairman had produced was the best possible outcome. While it might not be the perfect text, Singapore recognized that it represented the middle path or common ground, and was a fair reflection of the balance of interests on this issue. As was stated in the last paragraph of JOB(02)/197/Rev.1, the document established a "foundation of convergence" at the present point in time upon which further improvements could be made based on future experience. While probably no one was completely satisfied with the text and some would like to tinker with it, his delegation did not think any further changes would be helpful. They were also unlikely to find consensus. As the Community had noted, any further attempts to try to improve the text posed the risk of unraveling what had been achieved thus far. For these reasons, his delegation's position was that the General Council should endorse the document presented.

286. The representative of Hong Kong, China said that in his work on this and the two previous agenda items the Chairman had set a fine example of how to build consensus in the organization. He wished to congratulate him for his skilful handling of these matters and his leadership, and to thank him in particular for his openness in listening to and taking into account many of the concerns expressed, including by Hong Kong, China. The Chairman's statement on internal transparency was the fruit of his painstaking efforts since May. Indeed, it had built upon the efforts made in recent years, particularly since Seattle, to enhance internal transparency and inclusiveness in the organization. While the principles and practices set out in the statement might not be perfect and some colleagues had expressed concerns about certain aspects not adequately covered in the statement, his delegation was of the view that this was probably the most and the best that could be achieved at the present stage. A number of delegations had expressed the wish to see clearer and more detailed prescriptions of how Ministerial Conferences should be organized. His delegation appreciated such desires, but felt it would not be appropriate for delegates in Geneva to impose too many restraints on how Ministers should conduct their work at Ministerial Conferences. Thus, as Members were already hard pressed in negotiations and would be heavily engaged in the preparatory work for Cancún in 2003, his delegation was not sure it would be wise for Members to keep burdening themselves with continued debates which were unlikely to produce early results. Therefore his delegation fully supported the Chairman's statement and hoped it could be endorsed by the Council.

287. The representative of Korea said that while it was necessary to achieve internal transparency and participation as much as possible in the preparatory process in Geneva and in the organization of Ministerial Conferences, this should not be at the expense of other important principles such as effectiveness, flexibility and practicality. In spite of the fact that there were still remaining issues that some Members wished to discuss further, his delegation believed that now was the time to harvest what had been achieved so far. The revised Chairman's statement was certainly improved, and bearing in mind that there was room left for further improvement in the future, Members had to take

an incremental approach to this matter. Therefore, Korea supported endorsement of the Chairman's statement. In this way Members could establish a more solid foundation for further improvement.

288. The representative of Malaysia said that his delegation shared the sentiments expressed by others in respect of the hard work and commitment the Chairman had shown in dealing with this issue. He had indeed had a number of consultations, including an open-ended informal on 2 December, and his delegation had participated actively and constructively in all of the discussions held. It acknowledged and recognized that as a result of these consultations an outcome had been achieved which would greatly enhance the internal transparency and effective participation issue. However, the suggestions that were being made were not intended to unravel the package that had been presented, and he had been surprised at the Community's reference to this. He was certain that the issue of "unravelling the package" would come up very frequently as Members proceeded with the negotiating issues at a later stage. He recalled that in the Uruguay Round Members had talked about this unravelling of the package, but his delegation did not consider this to be relevant in the context of the present exercise. What was being discussed was a process and building on the progress achieved, and progress had indeed been achieved as a result of the Chairman's personal involvement in dealing with this exercise.

289. His delegation had said many times there were a couple of issues it thought needed a little more attention. Malaysia was confident that as all delegations had shown a very constructive spirit in dealing with this exercise, the same kind of spirit would prevail when dealing with these issues, which were the following: Many delegations had alluded to the draft declaration to be forwarded to Ministers. It was of the utmost importance to forward to Ministers a draft that was a fair reflection of the situation at hand. This principle was embodied in Section 1 of the Chair's statement, "chairperson's are also instructed to reflect areas of consensus as well as different position on issues". As this principle had been agreed by all, it was only logical that the same principle should apply to the kind of draft to be forwarded to Ministers. On chairpersons and facilitators, Malaysia was not against appointing facilitators to help the Chair of the Ministerial Conference to facilitate the process of consensus-building on the negotiating issues. What was needed for the sake of transparency was that there should be consultations on who the facilitators would be. This was not an unreasonable request, because consultations were always held when a post of Chairman was to be filled.

290. It had been said that it was very difficult to ascertain the dynamics of the negotiations. Malaysia accepted that it was very difficult to predict the work and process that would take place in the last 24 hours of a Ministerial Conference. However, it was important that Members not be put in a situation where they were surprised with last-minute drafts. This should not become the norm. It had not been so in the past, but unfortunately it had happened in Doha. There had to be an agreed process that would allow some time for delegations at least to consider the last-minute draft or even consult with the members of regional groupings. These were some of the issues on which a little more time to consult was needed. Many delegations had suggested there be further consultations on these issues and his delegation encouraged the Chairman to continue these consultations with a view to finding an amicable solution for all Members. The Chairman had not only been a good architect, but was a good engineer and on top of that a good plumber. His delegation was confident that he would be able to fix the problems, and was prepared to work with him in a very constructive way to find an amicable solution to these issues.

291. The representative of Hungary said that the process leading to the present draft text had been useful and there had been a thorough discussion on the issues. Although this was certainly not a perfect text, his delegation wondered if there would ever be a perfect text in this organization. The present text was definitely an improvement over what Members had had thus far. On substance, the question of transparency was a difficult issue. One could say it was as old as the organization or even its predecessor, GATT. The question was how to ensure both transparency and inclusiveness, on the one hand, and at the same time the efficiency of the negotiating process. He knew from firsthand

experience as a Chairman the problems involved in meeting these twin objectives. This problem was that it was extremely difficult to find, especially when it came to drafting, solutions in large groups. It had been said that the definition of a camel was a horse designed by a committee, and this might be the case – or worse, as in the case of the text sent to Seattle – for many WTO texts. Repetition of the Seattle experience had to be avoided. The question was how. A number of delegations had said it would be necessary to show in a draft declaration where there were differences in position. This was exactly what had happened in Seattle, and the General Council Chairman at that point had found it impossible to do otherwise than show all the differences, resulting in hundreds of square brackets. This was an experience every Member wanted to avoid repeating. The problem was how to show that there were differences but avoid the situation of hundreds of brackets. His delegation had no answer and wondered whether it was possible to give any prescriptive answer for this kind of situation. Some delegations had suggested that perhaps not all, but just the major differences on the few really important issues should be shown. The problem was that for each proponent its own issues were the most important, and a separate negotiation would be necessary to try to settle which were the really important differences that should be taken to Ministers. In Hungary's view, this would have to be left to next year's Chair, and it wondered how much further Members could go in this process.

292. Malaysia had said that some time would be needed at Ministerial Conferences for a final draft to be looked at and digested by delegations. This was a fair request. However, this was all that could be included in the text, and it was perhaps not necessary to specify it in the text, but rather for it to be understood in the process. His delegation had doubts about how far one could go in the details of these guidelines. Hungary recognized that there seemed to be no consensus on endorsing these guidelines at the present meeting, as a number of delegations had said they were not ready. He asked these delegations to consider how much time they wanted to spend in 2003 on designing the process when they should already be dealing with the substantive issues going to Cancún.

293. The representative of Chile said that when things were looked at in perspective, it could not be said there had been no great improvements on this issue. Members had certainly drawn lessons and learned since Seattle, and had devised better procedures and better working habits which had produced a successful result in Doha. That result had certainly not been perfect, but it was credible and necessarily so in terms of the transparency needed. This transparency referred mainly to the preparatory process which Members were currently embarked on. What the Chairman seemed to be proposing was to pick up on and improve upon this good experience, project it into the future, and take a further step towards looking for greater stability, greater certainty, and greater guarantees regarding internal transparency with respect to the working procedures in the organization. As had been said by various delegations, including New Zealand at the present meeting, there was a need to be sufficiently flexible. Each Ministerial Conference was different from any other, and consequently the instruments and tools had to be sufficiently flexible to adapt to varying situations. It seemed that the result of the consultations on this issue was fairly reasonable, fairly sound, and something which did contain common sense and judgement. Chile would be very ready to endorse these procedures as they stood, or to adopt them or take note of them or endorse them.

294. His delegation gathered, however, that there were some who wanted to improve these procedures even further. Perhaps that possibility existed or should exist, and his delegation would therefore suggest that there was perhaps a need for further consultations, and Members should set as their target a decision to be taken on this matter at the next General Council meeting in February 2003, but not later. To go beyond February would mean Members would be arriving in Cancún with the existing procedures. It was not a good idea to replace the substantive work that had to be done in Cancún with procedural discussions and debates. His delegation was simply not ready to do that. Thus, the level of flexibility had to be great, but not to the extent that it would affect the substantive work and delay the preparations Members had to make for Cancún, to which Chile attached great importance. Chile wished to endorse these procedures at the present meeting, but if an additional

effort was necessary this should not go beyond the middle of February. At that point, Members would have to settle with the results they had achieved by then, whether there was complete consensus or not.

295. The representative of Egypt said that the current outcome of the consultation process was only a Chairman's statement which lacked the necessary legal power for enforcement in this organization. Indeed, there was no decision by the General Council on any structure or method for the preparations for Ministerial Conferences that ensured predictability and clarity. However, with the necessary commitment and political will from all parties, the elements contained in the Chairman's statement could be observed. Egypt recalled the efforts and improvements that had been made by the General Council Chair in 2000 to make the consultation process more inclusive. A subsequent Chairman, Mr. Harbinson, had also followed suit. Egypt supported the statement by India that there was scope for improvement and that further consultations were required in order to bridge the gap and to come up with a text that reflected wider consensus. It also hoped that the outcome would serve as a guideline to help Members avoid the recurrence of the difficulties encountered to date in the preparatory process for Ministerial Conferences and during those conferences, and particularly with regard to the next Ministerial in Cancún, thus ensuring a smooth preparatory process. Nevertheless, his delegation would have liked to see some other elements addressed in the outcome, such as guidelines concerning the work in regular bodies of the General Council not covered by the existing principles and practices of the TNC (TN/C/1), and on where the authority lay for transmitting texts to the Ministerial Conference.

296. The representative of Australia said his delegation would not repeat all the points it had made at the July General Council meeting and at the subsequent discussions when it had introduced the paper in WT/GC/W/477. Australia remained convinced that decision-making machinery for the conduct of Ministerial Conferences should be as light and as flexible as possible and that any attempt to be overly prescriptive had to be avoided. The statement the Chairman had asked Members to endorse reflected what Australia considered to be a reasonable balance of the views among Members and his delegation welcomed the opportunity to endorse it. Australia also encouraged others to endorse it. As many delegations had said, any attempt to review or revise the current text risked the chance of unraveling it, and it might take a long time to put it together again. He wished to make two points about some of the comments he had heard at the present meeting. China had made a further plea for the use of square brackets in texts transmitted to Ministers. It had pointed out that in its view, this was a well accepted practice in other international organizations, and questioned why it should not be adopted in the WTO. Australia recognized that in China's view the aim of the exercise was to use square brackets only where absolutely necessary, and that Members should focus much only on major differences. However, having being a Member of the WTO and its predecessor the GATT since its inception in 1947, Australia had a different perspective on the approach of delegations to square-bracket game theory. WTO delegations played with square brackets with great gusto. It was the second most popular preoccupation after rules of procedure.

297. He asked where Members would be at present on the negotiations over paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health and on S&D, if they were playing according to the square-bracket game theory. Certainly the Chairmen of the TRIPS Council and the Committee on Trade and Development in Special Session would not be engaging in detailed consultations working to hammer out a compromise. Instead, they would be presiding over a group of Ambassadors haggling over a Chinese checkers game with square brackets. The likelihood was that a result would take twice as long to achieve and Members would find themselves in six months exactly where they were now. The fact was that the culture of the organization was that Members could not resist playing games with square brackets. This had been seen in the lead-up to Seattle. The result there had not been simply another failed Ministerial Conference. In his view, Seattle had resulted in a paradigm shift in attitudes towards multilateralism. A number of delegations who had previously wholeheartedly supported multilateralism, finally decided they had better take the route of bilateralism, preferential trade arrangements and regional trade agreements. Thus, he appealed to

China to think very seriously about the practicability and the consequences of going back to thinking that issues could be resolved by putting things in square brackets. It would never be possible to have simply two square brackets on an issue that was going to Ministers, but rather 145, reflecting all Members' positions. Delegations would get in the trenches and this would make it harder for Ministers to find their way out.

298. The second point he wished to make was to address those who were advocating further consultations. His delegation could not oppose the requests further consultations if the Chairman agreed to take these on board, but cautioned those suggesting this that opening up the text risked the problem that there would not be agreement. In another meeting, Mexico had pleaded with Members not to crowd the agenda for Cancún, but given the direction some Members were taking, there was a good chance of a real log-jam for Ministers in Cancún. His delegation was most reluctant to spend more time in 2003 consulting on this issue, if this meant crowding out the negotiations Ministers had mandated in Doha. Members had already seen the consequences of deferring action until the end of 2002, as they were mired in a lot of work and many were saying they could not keep up with the process. But if Members did not agree to something very soon – and he would suggest endorsing the text at the present meeting – they were going to find themselves in more trouble in 2003, with the consequence that Ministers would again not thank them for not having resolved this matter promptly.

299. The representative of Argentina said that after Australia's statement, his delegation had a clearer picture of the enormous difficulties in this area. The Chairman had tried to include within his statement certain principles and practices regarding transparency. That, in Argentina's view, was a new and important step in the right direction. His delegation had participated in the discussions on this issue, and some of its suggestions and thoughts, along with those of other delegations, had been incorporated in the draft text. A key point in the draft text, which Argentina greatly appreciated, was the reference to the effect that Members should continue to pursue further improvements on these issues. All were aware that decisions taken at Ministerial Conferences were extremely important to all Members. As a consequence, his delegation felt that no effort should be spared to ensure that the results of Ministerial Conferences were seen as emanating from an open, transparent and inclusive process. The difficulty was that there were very divergent views as to how to proceed. His delegation could understand Australia's statement about the square-brackets game. At this time, he found it very difficult to understand how the Chairman's proposed text could state that the language of draft Ministerial Declarations should be clear and unambiguous, when positions of Members were strongly divergent.

300. On the question of facilitators, his delegation believed that the suggestion by New Zealand could solve the second difficulty raised by China in its intervention. The other issue, regarding the text of the draft declarations, was key, and the problem with the existing language on this issue in the draft text was that it ran against a basic principle of the negotiating process, i.e. that each subsidiary body should report upwards on the basis of consensus, and where there was no consensus, on the basis of reporting the alternative views. He understood well what had been said by Australia regarding the possibility of operating with hundreds of square brackets, but perhaps the General Council could find some way to narrow down these differences and reduce their number. China had perhaps been too optimistic when it had said that such differences could be reduced to three or four. His opinion was that it should be possible to narrow the differences down to a reasonable number, higher than three or four, but reasonably manageable anyhow. Obviously, Ministers were sovereign and in the face of counter-proposals could decide on a middle road. The General Council would not be preventing that. The point he wished to make was that there was a wide margin for compromise between the extreme options of a text with hundreds of brackets and a "clear and unambiguous" draft. It would be very difficult for the General Council to produce such a draft. His delegation was willing to leave the redrafting of the statement by the Chairman in the Chairman's hands. It did not believe that the General Council was in a position to redraft it, but trusted fully in the Chairman. If Argentina's

position regarding the draft Ministerial Declaration was recognized, his delegation would be in a position to endorse the statement by the Chairman.

301. The representative of Pakistan said that in general his delegation agreed with the Chairman's analyses of the proposals and felt that the draft text reflected a lot of painstaking effort and was the way forward. As time went on, the text would perhaps have to evolve. However, he wished to make two points: he did not know how Members were going to ensure that what was in the text would be implemented, and there was also the question of mini-Ministerials. The latter were part of the preparatory process for Ministerial Conferences and to the majority of Members who did not attend them, they were very opaque. Pakistan wished to see some of the guidelines the Chairman had prepared, especially regarding the outcome of such consultations to be reported back to the full membership to be followed in this regard. The last time there had been such a mini-Ministerial, most Members had known nothing about it except what they had learned through the press.

302. The representative of Switzerland said that regarding internal transparency, his delegation's impression was that the WTO's working methods had considerably improved since the unfortunate experience in the preparation for the Seattle Ministerial Conference. In its view, noteworthy progress had been made towards greater transparency. The Chairman's proposal was moving Members in the right direction. It would make it possible to have more certainty regarding these improved practices in the context of preparations for Doha, and this was why Switzerland was willing to support these procedures. These procedures would better signpost the preparatory processes for Ministerial Conferences and would provide a necessary dose of transparency. His delegation had taken note that some delegations had expressed doubts on the Chairman's proposal and that in all likelihood, consultations would have to continue. Switzerland was entirely willing to participate constructively in any such consultations and, as Chile had said, hoped that these consultations could be completed as soon as possible and not encroach on the important substantive work this organization had to accomplish in the first half of 2003. There was one point of substance which particularly concerned Switzerland and which was the most controversial point in the discussion at the present meeting. This was the form and nature of the text to be sent to Ministers by the TNC. Switzerland shared the view that this text had to constitute a practical and operational basis for a decision, and that any drafts of these texts had to be clear and unambiguous as much as possible. This meant that Members had to accept that individuals who held consultations and who directed the preparatory process had to have the necessary flexibility for the preparation of this text, so that it would be an operational basis for a decision. Regarding the problem of square brackets, Switzerland's position was that any measure taken should make it possible to avoid a proliferation of such square brackets such as in the text sent to Seattle. The nature of that text had actually sunk any hopes Switzerland had had in the outcome of Seattle. His delegation fully endorsed the comments on square-brackets by Australia.

303. The representative of Haiti said that the draft text was a result of the consultations the Chairman had conducted. While Haiti had not been able to participate in all of the consultations, having seen the revised draft text and having heard the statements made, his delegation wished to support the suggestion by India and many other countries. Since this text had not been fully negotiated it would be better to work on it further so that consensus could be reached. The text did contain the foundations which could take Members towards this consensus, but having heard Australia's statement regarding China's proposal, Haiti felt that it was even more pressing to postpone endorsing the text until a later stage. China was proposing just one formula for providing clarity in the text to be sent to Ministers. Members should not try to attempt to submit a perfect text to Ministers, but rather a text containing the points of convergence and the points of divergence. This was Haiti's analysis of the last point in paragraph 2 of JOB(02)/197/Rev.1, that Ministers should be given a text which was clear and unambiguous. This meant that where there was consensus, Ministers would know there was a consensus, and where consensus had not yet been reached, Ministers would also know. This way Ministers would be able to take political decisions on the unresolved issues as well as on the resolved ones. Regarding what the Chairman was proposing in the draft text, he said

that China's proposal was not out of context. It was one formula, and there might be other approaches, but Members needed to work on being able to submit to Ministers a text which reflected the state of thinking of Members. Members could not aim to submit a consensus text while divergences still remained. The purpose of a Ministerial Conference was precisely to be able to bring all Members to a consensus. He asked why, if a completed text was to be sent Ministers at the Ministerial Conference without it being open for any discussion, a Ministerial Conference should be held. While the text in JOB(02)/197/Rev.1 contained the main points, further consultations were needed in order to achieve a consensus on it. This would avoid a re-run of Seattle. Members should be able to reach an understanding on this. Therefore, he reiterated his delegation's position supporting the suggestion that the text be taken back to the drawing board, as a decision on it did not seem to be ripe yet.

304. The representative of China recalled his earlier intervention that any draft presented to Ministers should be clear. If there was consensus on it this would be clear, and if there was no consensus the draft had to reflect the differences, whether there were square brackets or not. The latter was not the issue. The issue was that if there were different opinions, a clean text could not be sent to Ministers pretending to reflect consensus. The facts had to be reflected. Even if there were no square brackets but there were still differences, Ministers had to talk with each other and to have consultations. The draft text presented to the Ministers had to reflect the actual status of the discussions carried out, whether in the preparatory informal consultations or at different levels. This reflection had to be objective and could not be misleading for Ministers.

305. The representative of India said his delegation had listened to the discussion and was very pleased that there was a convergence of thinking that a lot of work had been done by the Chairman and by delegations and that Members should move forward and try to tie up this work as quickly as possible. India would fully and constructively engage in this task and was sure that even Australia would fully and constructively engage in it. India was totally confident that Members could go forward and achieve results within the shortest possible time, and had complete confidence in the Chairman and in all the other Members.

306. The representative of Australia said that he accepted totally the view expressed by China that any communication that went to Ministers had to reflect the positions of delegations if there was no consensus. However, this seemed to reflect a lack of confidence that the Chairman could reflect the positions of delegations, a lack of confidence that was badly misplaced. There also seemed to be a sneaking element of lack of confidence that China would be able to ensure that its positions were reflected. Australia had no doubt that China would ensure that its views were accurately reflected in any document that went to Ministers, and was rather surprised that China did not seem to have that confidence. He said that the more Members tried to make the text proposed by the Chairman more prescriptive, the more they would be dragged into a never-ending morass of playing with words. There had to be flexibility and Members had to express full confidence in the Chairs that were elected or appointed to head committees.

307. The representative of Malaysia said that his delegation did not hold the view that Members had no confidence in the Chairpersons. It had full confidence in all the Chairpersons appointed, as it had participated in appointing them. He did not think that when China had talked about reflecting positions he had been thinking in terms of having 100 or 200 brackets. Several delegations had made reference to the Seattle experience, but his delegation did not understand why these delegations had not explained how Members had ended up with so many square brackets on the road to Seattle. He himself had been surprised at the text that had been sent to Seattle, as it was a recipe for disaster. However, drawing references to Seattle in the present context was totally irrelevant because since Seattle there had been tremendous improvements in terms of internal transparency and in terms of working on the issues, whether it was in small groups or in big groups, and Members had resolved a large number of issues on the basis of consensus. He also wished to clarify that the text that had gone to Doha had been a good text, in the most part. There had been, at least in one or two instances, an

initial draft that had been produced by the Chairman with two options, but subsequent texts had had no options at all. Apart from one particular area, his delegation had thought the text was good. This issue needed to be approached in the proper context, without merely referring to the Seattle experience. In the run-up to Seattle, Members had spent almost six months trying to resolve the issue of the selection of a Director-General, and there had been little time to focus on the draft declaration. Had there been then the number of consultations there had been in the run-up to Doha, there would not have been so many brackets in the text. Members needed to look at this issue in the proper perspective. Australia's analogy about square brackets was overly simplistic and grossly exaggerated. All Members had a sense of responsibility and would certainly work towards reaching consensus on as many issues as possible.

308. The representative of Australia said that no one had the intention of ever having more than maybe one or two square brackets, but all knew what it was like, and that Members could not resist the temptation to include square brackets in an attempt to reflect their respective positions. This was exactly what had happened in Seattle. Once the square brackets were there, delegations felt obliged to defend them. He agreed that things had changed, and his delegation felt that the Chairman's proposal reflected some very good changes, but to go that one step further and to admit having just two or three square brackets would result in a mess.

309. The Chairman said that Members had again had another thorough discussion at General Council level on this issue. He would try to summarize that discussion, and then perhaps respond to the proposal by India which quite a few Members had supported. First, many delegations had pointed to the desire to harvest what was before the General Council at the present meeting, which they felt represented improvements. It could be argued how big the improvements were or why other improvements had not been made, but there were improvements. If these were gavelled it would improve, starting immediately, the preparatory process in Geneva leading to the next Ministerial Conference, and it built on the improvements made in 2000. Many delegations had asked, quite fairly, why those improvements, which were the fruits of so many hours of work, should be denied. One of the things people outside the WTO did not understand was that type of logic. Several Members had said that Members could implement the improvements on the table while continuing to work. This was a practical question Members should answer in the affirmative.

310. Second, a number of delegations had argued for continuing the discussions because a number of issues had not been settled. They had said they had great confidence in him to fix it. However, he had worked on this issue with delegations for almost a year, and there were some issues on which there was no consensus after almost a year of working and discussing, for example, on the transmission of documents to Ministers. Did Members expect him to be able to solve this the following week or before the last Council meeting he would preside over? Members had had this discussion before Seattle and before Doha. It was a difficult issue and there had been no consensus on it for several years. Members should not expect consensus the following week, regardless of how capable a given Chairman might be. He asked Members to reflect on the fact that when they had sent the draft text to Doha, there had been a covering note, signed by the Chair at the time and by the then Director-General explaining that the text did not pretend to be a consensus document. Indeed, the covering note was a political note for Ministers to read in plain language, indicating that there were considerable differences still to be resolved regarding the draft text. At the time that had seemed to his delegation to be a common-sense pragmatic approach which addressed a number of delegations' concerns, such as China's, that Ministers should be made aware – if this were the case – that there were issues on which Members had differing positions. His predecessor in the Chair had run a great process and this had been acknowledged by all. New Zealand had asked whether it was a question of bad process or of where Members did not see eye to eye on some issues. Ministers in Seattle had not been happy with a 35-page document that had hundreds of brackets.

311. Several delegations had asked him to fix the so-called "Green Room" problem. This was ironic because Members had asked him in October to consult on internal transparency with a small group of delegations. He had done that and it had been successful. Regarding the last 24 hours of a Ministerial Conference, no one could predict what would happen. This was not a science, nor was it orderly sometimes. There was no ready formula. It was impossible to predict what documents would come out on the last day of a Ministerial, but ultimately the WTO was still a consensus-based organization and ultimately in the Committee of the Whole and in the Plenary delegations could raise their flag and say they could not accept a document produced by a small number of delegations. That was the power all Members had. However, to try to get a guideline to predict Ministers' action was impossible.

312. Regarding the issue of facilitators at Ministerial Conferences, he asked what more could be done. His Minister had served as a facilitator both in Seattle and Doha, but had been approached to do so only at the Ministerial Conference itself by the Conference Chair. He asked what delegations in Geneva were supposed to do. Were they to inform the Chair of the Ministerial of the facilitators he or she was to choose, and on what issues? Ministers would do what they wished and not what delegations in Geneva told them to do. Nor could they be asked to inform delegations in Geneva in advance of what they would do. This was not an issue he could simply fix. He was flexible and was prepared to accept the proposal by India and others to continue consultations, provided Members could harvest what was on the table at the present meeting – to implement the agreed improvements and continue to consult on other issues. He noted that the last paragraph of his proposed statement read as follows: "I believe that through the endorsement of these principles and practices Members are establishing a foundation of convergence upon which further improvements should continue to be made taking into account the views that have been expressed in this ongoing discussion". If Members were not able to endorse the text in JOB(02)/197/Rev.1 at the present meeting, he would simply have to acknowledge that view, and to wish his successor well. He asked India if this would be a fair trade-off for all the work that all delegations had done and for the work to be done.

313. The representative of India said that on this issue as in other areas, his delegation had a lot of admiration for the way the Chairman had conducted the proceedings. India had tried to be as flexible and constructive as possible on most issues. However, there could be certain issues where there were certain cardinal interests which many Members had, particularly going into a stage of negotiating very important matters that would have a tremendous impact on their economies and on the well-being of their people. A certain degree of clarity was inevitable and unavoidable. His delegation would be very unhappy should the Chairman take the view that Members had to take whatever was given and then look for more in the future, because the general view of the entire membership had to be taken into account. There might be one or two who had a different opinion, but the general view was that the text should be further considered. India appreciated what had been done and there were just one or two issues where Members needed to discuss a little more. India would like the opportunity to discuss with Members on one or two cardinal issues that were very important, in order to see if a solution could be found. Members should not get stuck on one text, but should go forward. There should be a package which all delegations and capitals felt more comfortable with. This was not to say that in any way India doubted the Chairman's ability to lead Members. The Chairman had led Members very well in the past and would certainly continue to do so in the future. However, it would be an extremely unfortunate development if the Chairman took the position that unless the text in JOB(02)/197/Rev.1 were accepted he would wash his hands of it. He suggested that the Chairman take the sense of the house that all were interested in further discussing this issue and in trying to find a solution as quickly as possible. It would not take much, and India was sure that a solution could be found.

314. The representative of Australia said that if Members took the attitude that they could not reach agreements and move forward on these issues because a couple of delegations wanted just a little bit more, it made a mockery of paragraph 47 of the Doha Declaration which talked about the

idea of an early harvest. He asked if what India was saying was that on S&D, for example, if there was no agreement on all issues none could be harvested, or that on implementation, if there were not answers to every implementation issue, none could be resolved, or that on the Dispute Settlement Understanding, if agreement could not be reached in May on an early harvest, Members should give up. Members were doing what Mexico had asked them not to do, which was stack things up for Ministers in Cancún. The Chairman's proposal was eminently sensible, and his explanation of some of the history of Seattle and Doha was correct. Australia urged all Members to work on the basis suggested by the Chairman.

315. The Chairman asked if delegations would be in a position to harvest what they had been able to agree to date, even as they continued consultations to try to resolve the issues on which they had thus far been unable to agree, or whether they wished to continue toiling on the basis of the current draft text. He said that he was putting this question to Members out of respect for a majority of delegations who had worked long and hard on this issue.

316. The representative of India said that Members should toil a little more.

317. The Chairman said that in the light of the discussion, he would propose that the General Council take note of his statement and of the statements by delegations.

318. The General Council so agreed.

20. Work programme on electronic commerce – Report on the third dedicated discussion on cross-cutting issues

319. The Chairman recalled that Ministers at Doha had agreed to continue the Work Programme on Electronic Commerce, and had instructed the General Council to consider the most appropriate institutional arrangements for handling the Work Programme and to report on further progress to the Fifth Session of the Ministerial Conference. At its meeting in October 2002, the General Council had agreed to maintain, for the duration of the work until the Fifth Ministerial Conference, the current institutional arrangements for handling the Work Programme on Electronic Commerce, namely, that the Councils for Trade in Services, Trade in Goods and TRIPS, and the Committee on Trade and Development would examine and report on aspects of electronic commerce relevant to their respective areas of competence, and that the General Council would play a central role in the entire process, would keep the Work Programme under continuous review and would consider any trade-related issue of a cross-cutting nature. There had also been agreement on a notional schedule of future dedicated discussions on cross-cutting issues under the auspices of the General Council. In accordance with this schedule, the third Dedicated Discussion on cross-cutting issues had been held on 25 October under the Chairmanship of Deputy Director-General Mr. Yerxa.

320. Mr. Yerxa, Deputy Director-General, said that as the Chairman had just noted, the third Dedicated Discussion under General Council auspices on those cross-cutting issues identified in the course of the WTO Work Programme on Electronic Commerce had been held on 25 October. In line with Members' decision at the July 2002 General Council meeting that the agenda for future dedicated discussions should be narrowed in order to focus the debate, the agenda for this discussion had included only two items: (i) "classification" issues, and (ii) fiscal and other revenue-related issues. Also as agreed in July, Members had taken up the question of the appropriate format for the reports on these discussions. The classification issue – i.e. whether a product that could be traded electronically should be considered a good and subject to the disciplines of the GATT, or a service and subject to the disciplines of the GATS – continued to elicit a wide range of views. However, there did seem to be broad agreement that what was at issue was a very narrow range of products that could be traded either physically or electronically. In this regard, a large part of the October discussion had centered on the treatment of software.

321. While the discussion had enabled Members to deepen their appreciation in this area, there were still very different views on how this issue might be resolved, and thus a clear need for further discussion on this question. Regarding the fiscal implications of e-commerce, while there had been no discussion under this item, it had been suggested that the focus under this item – which was typically on the imposition of customs duties on electronic transmissions – should instead be on how liberalizing key services sectors could help improve overall economic efficiencies and thereby increase GDP. On the question of the appropriate format for the reports on these Dedicated Discussions, Members had agreed that for the time being, the Secretariat should continue to produce a short factual note, but that in future they might wish to consider changing that format, for example to include attribution of positions to delegations. In line with this decision, a factual summary of the October dedicated discussion had been prepared by the Secretariat on its own responsibility (WT/GC/W/486).

322. The General Council took note of Deputy Director-General Mr. Yerxa's report.

21. Review of the exemption provided under Paragraph 3 of GATT 1994 (WT/L/444)

323. The Chairman recalled that paragraph 3(a) of GATT 1994 provided an exemption from Part II of GATT 1994 for measures under specific mandatory legislation, enacted by a Member before it became a contracting party to GATT 1947, which prohibited the use, sale or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or waters of an exclusive economic zone. On 20 December 1994, the United States had invoked the provisions of paragraph 3(a) with respect to specific legislation that met the requirements of that paragraph. Paragraph 3(b) of GATT 1994 called for a review of this exemption five years after the date of entry into force of the WTO Agreement, and thereafter every two years for as long as the exemption was in force, in order to examine whether the conditions which created the need for the exemption still prevailed. The General Council had last considered this matter at its meetings in May and July 2002. In July the General Council had agreed to revert to this matter at a future meeting before the end of the year, and that consultations would be held in the meantime with the aim of trying to get a sense of the way forward and to bring some closure to this issue at a future meeting.

324. At his request, Deputy Director-General Mr. Thompson-Flôres had held consultations in the past month to which all delegations who had spoken on this matter in the General Council had been invited. Mr. Thompson-Flôres had reported that given the short time available to him since his taking office, and given the firm differences of view on the nature of the review, he had focused in his two consultations on trying to reach some understandings on the conduct of the process. Unfortunately, Mr. Thompson-Flôres was on mission for the WTO and thus not available to report himself on the results of his consultations. However, Mr. Thompson-Flôres had reported to him that delegations were agreeable to proceeding along the following lines:

First, that the General Council would take note that under the two-yearly cycle provided in paragraph 3(b) of GATT 1994, this exemption would have to be reviewed again in 2003.

Second, that at the present meeting delegations would be invited to speak for the record with regard to the review under the current cycle. The General Council would take note of the views expressed and agree to come back to the issues in the context of the review to be conducted under the next cycle in 2003.

Third, that the General Council would agree that this review would be on the agenda of the General Council at its first meeting in 2003. At that meeting, the Chairman would draw attention to the review to be conducted pursuant to paragraph 3 of GATT 1994. The Chairman would invite interested delegations to submit comments and questions to the US

regarding the operation of the legislation under the exemption, to which the US would be invited to respond. These questions and responses, together with the annual report to be provided by the US under paragraph 3(c) of GATT 1994, would form the basis for the review.

Finally, for the purposes of the review, this matter would be on the agenda of subsequent General Council meetings in the course of 2003 as the Chairman deemed appropriate or at the request of a Member. At its meeting in December 2003, the General Council would be invited to take note of the discussions held in the course of the review until then, and take any other action it might agree on. It would also take note that the subsequent review would normally be held in 2005.

He also invited the General Council to note that, as provided in paragraph 3(e) of GATT 1994, this exemption was without prejudice to solutions concerning specific aspects of the legislation covered by this exemption negotiated in sectoral agreements or in other fora.

325. The representative of Panama said that his delegation had on previous occasions expressed, as it wished to do at the present meeting, its concern over the way in which the legislation notified by the United States pursuant to paragraph 3 of GATT 1994 was being interpreted and implemented. His delegation wished to reaffirm to the United States its willingness to examine the interpretation and implementation of the notified legislation. Several years subsequent to the notification of the legislation, a substantive review had still not been initiated in this multilateral forum. His delegation had, on other occasions, expressed the need to explore other options available under paragraph 3 of GATT 1994. It had previously mentioned the importance of seeking solutions to the specific issues raised by the notified legislation in other fora or even at the bilateral level. In this respect, Panama had held constructive technical discussions with the United States. Although it could not at present announce a settlement of its differences with the United States, it wished to thank the United States for the opportunity to hold talks with authorities from its capital on the technical aspects of the issue in dispute. Panama urged the United States to continue to use such options with a view to seeking solutions to the specific issues raised by the notified legislation, and was convinced that the use of these options would also prove an effective tool for narrowing the existing differences.

326. The representative of Chile said in his delegations's view this was a worrying and highly unsatisfactory situation. This was perhaps a good example of special and differential treatment in operation for a given Member. Members had tried to remove this S&D in agriculture and textiles, and yet it continued to benefit a given Member. The United States and other delegations should be thinking about flexibility and a sensitive approach to the needs of other countries in areas which did require effective S&D treatment. It should be questioned whether the examination of the measures invoked by the United States should be distinct from the examination of other issues or other situations facing other countries. For example, the review of China's implementation of its accession commitments had been extremely exhaustive, and Chile saw no reason why in the case at hand, the type of review should be different. Chile found it difficult to accept that the Member whose measures were to be examined should decide both the substance and form of the review process. This seemed to be a very unfair situation. Chile wished the review or examination to be such as to enable Members to understand all matters of form and substance, and to enable them to take a decision as to whether the conditions which had given rise to the need for the exemption still prevailed. To do otherwise would be to depart from the principles of non-discrimination and basic transparency. This situation did not seem to be satisfactory and could be greatly improved upon. If what the Chairman had suggested was all that could be done, Chile was grateful for the effort but wished to register its grave dissatisfaction with the prevailing situation.

327. The representative of the European Communities said his delegation largely agreed with Chile's statement. The Community had repeatedly said there was a need for a substantive review, an objective which thus far had not been achieved. The United States had to do more than just submit

statistics. It had to respond on the substance which had been raised by WTO Members and justify its case for continuing to benefit from this exception. The Community had agreed in July that there should be informal consultations on how to take the review forward. Some meetings had taken place but had not led anywhere. His delegation thus urged a substantive consultation and a substantive review on this exception.

328. The representative of Japan said that his delegation attached the greatest importance to the substance of this issue, on which it had very strong feelings. Japan appreciated the efforts made by the Chairman and by Deputy Director-General Mr. Thompson-Flôres on this issue, and regretted that it had not received an explanation of the Jones Act to its satisfaction. Japan hoped that Members would be able to engage in the review in 2003 with substantive inputs from the US, and on this basis could support Mr. Thompson-Flôres' proposal.

329. The representative of Hong Kong, China said his delegation considered the steps outlined by the Chairman to represent an acceptable basis for the process. Regarding the review under the current cycle, his delegation wished to associate with the statements by the EC, Japan and Panama regarding the review itself, and wished to state for the record, once again, the following views of his delegation: The Jones Act was an outdated piece of legislation which was inconsistent with the fundamental principles of the GATT/WTO and did not meet modern business needs. It was also incompatible with the United States' generally liberal services regime and its call for further substantial liberalization of trade in services in the current round of multilateral trade negotiations. Maritime transport was a major service sector. His delegation wished to note that the guidelines and procedures for negotiations on trade in services stated that "[t]here shall be no *a priori* exclusion of any service sector". However, the exemption under paragraph 3(b) of GATT 1994 represented a major impediment to any meaningful market access and national treatment commitments in the maritime transport services sector. His delegation therefore considered it important for the US to engage in a meaningful and substantive review of the exemption provided under paragraph 3 of GATT 1994, commensurate with the great importance it attached to the services negotiations, of which maritime transport services was a crucial component. Hong Kong, China was disappointed that up to the present, a meaningful and substantive review of the exemption had not been undertaken. It hoped that such deficiencies could be redressed in the upcoming cycle of the mandated review due to be undertaken by the General Council in 2003.

330. The representative of Australia said that, as his delegation had observed when this item had been on the General Council's agenda in the past, this was a significant derogation granted to one Member of the WTO. Whether it was special and differential treatment remained to be seen. The condition attaching to that derogation as reflected in paragraph 3(b) of GATT 1994 was that there had to be a proper review of the derogation five years after the date of entry into force of the WTO Agreement, and every two years thereafter. In the period since the Marrakesh Ministerial Conference there should have been two such reviews, and Members should be about to enter the third review in 2003. Australia regretted that in this seven-year period there had not been what it would regard as a substantive engagement with the US on the justification for the maintenance of this derogation, and that the exchanges to date had been rather sterile. As Members entered the third scheduled review cycle, Australia hoped that all parties with an interest in this important issue would have an opportunity for a more meaningful exploration of the circumstances justifying the derogation. As it had said on previous occasions, Australia's concerns in this area were not only those of important issues of principle, but also of important commercial opportunities.

331. The representative of Norway said that this was an important issue for Norway, as the exemption in Article 3(b) in GATT 1994 in essence made it impossible to sell ships to the US. It had therefore participated actively in the consultations. Norway believed that the review should focus on the salient point of paragraph 3(b), which was the examination of whether the conditions which had created the need for the exemption still prevailed. Unfortunately, this had not been possible, as the

US had refused to discuss anything but the statistical information it had submitted under paragraph 3(c). That being said, Norway could go along with the procedures suggested by the Chairman, to the effect that Members would revisit this issue at the first meeting of the General Council in 2003. His delegation would present its questions to the United States after receiving the new statistical information. These questions would, however, also go to the core of the question of whether the conditions which had created the need for the exemption still prevailed, which Norway doubted.

332. The representative of New Zealand said that while his delegation had not been able to participate fully in consultations held on this issue, this was not an indication of the importance it attached to it. This remained an important issue of principle for the organization, as Chile and others had said. In addition, there were very important commercial issues at stake. Therefore, under the process outlined by the Chairman, it seemed that the critical thing was to achieve a substantive review rather than the unsatisfactory exchange Members had had to date, and his delegation wished to participate in this review on that basis.

333. The representative of the United States said that paragraph 3(b) of GATT 1994 required the General Council to review this exemption for the purpose of examining whether the conditions which had created the need for the exemption still prevailed. Those conditions still existed. There had been no changes to the legislation, and the conditions which had created the need for the exemption still existed. Since the last review – indeed, since the United States had invoked this exemption in 1994 – there had been no statutory or other changes in any way decreasing the conformity of the notified legislation with Part II of GATT 1994. The United States had continued to provide WTO Members with annual statistical reports pursuant to the requirements of paragraph 3(c) of GATT 1994, submitting reports for 1999 in WT/L/341, 2000 in WT/L/387 and 2001 in WT/L/444. These reports provided detailed annual reporting of vessel orders and deliveries from US shipyards as required by paragraph 3(c). The next report would be submitted shortly, i.e., by the end of 2002. While it was clear that Members held differing views on the nature of the review provided for under paragraph 3 of GATT 1994, the United States was looking for ways to make these reviews a more satisfying experience for all concerned without prejudice to any Member's position.

334. The General Council took note of the statements and agreed to the procedure for the conduct of the review under the next cycle starting in 2003 as outlined by the Chairman.

22. Committee on Balance-of-Payments Restrictions

(a) Consultations with Bangladesh (WT/BOP/R/64)

335. Mrs. Campano (Romania), speaking on behalf of the Chairperson of the Committee on Balance-of-Payments Restrictions, introduced the Committee's report on its consultations with Bangladesh. The Committee had met on 2 October to resume and conclude consultations with Bangladesh. It had approved the maintenance of import restrictions for balance-of-payments purposes under Article XVIII:B on four additional products until 2009: chicks (01.05), eggs (04.07), cartons (48.19), and common salt (25.01). Members had recognized the unique circumstances of Bangladesh's least-developed country status and the continuing balance-of-payments difficulties it faced. Members had also recalled the conclusions agreed on 15 December 2000 (WT/BOP/R/57) with regard to Bangladesh's maintenance of import restrictions for balance-of-payments purposes, and had welcomed the fact that Bangladesh had already begun the removal of these restrictions under the agreed timetable. They had understood that Bangladesh would continue to consult on a regular basis with the Committee as required under the WTO provisions, biennially in 2004 and 2006. It was agreed that Bangladesh would present a phase-out plan to the Committee not later than 2007. Members had encouraged Bangladesh, should there be any improvement in its balance-of-payments situation, to consider bringing forward the phase-out of its restrictions.

336. The representative of Bangladesh said that recognizing the unique circumstances of Bangladesh's least-developed country status and the continuing difficulties it faced, the Committee on Balance of Payments Restrictions, at its meeting on 2 October 2002, had approved the maintenance of import restrictions under Article XVIII:B on four products – chicks, eggs, cartons and common salt – until 2009. It had been agreed in the meeting that Bangladesh would continue to consult on a regular basis with the Committee, biennially in 2004 and 2006, and would present a phase-out plan to the Committee in 2007. Bangladesh welcomed the decision of the Committee. At the same time, it wished to draw the General Council's attention to the background for seeking import restrictions on the four products mentioned. The products chicks and eggs had begun to be produced within the country on a large scale only recently. The production was solely for domestic consumption and sale in the local market. It was expected that this sector would grow in importance, in order to provide cheap protein to the very large population Bangladesh had. The sector had been identified as a key sector, with good potential to create employment opportunities in rural areas and thereby contribute to the Government's effort to alleviate poverty. A large number of non-governmental organizations were involved in this sector, primarily providing credit and technical assistance. Bangladesh hoped the coordinated efforts of the Government and NGOs would lead to growth of private poultry firms within the country. Given the large and growing population, it had been felt that restrictions on imports were required, without which there would be a major drain on the country's foreign exchange reserves.

337. The product carton was produced, to a large extent, by small- and medium-sized enterprises and employed about seven per cent of the labor force. The carton manufacturing industry was based on paper made from locally produced sugarcane waste and thus was linked to the cane-growing segment of the agricultural sector. The industry had emerged recently and was developing fast to meet the domestic needs. The Government considered it necessary to continue import restrictions on this product until the industry reached a certain level of efficiency, and in order to avoid a drain on its foreign exchange. The product salt had traditionally been produced in the small and cottage industry in the coastal areas of Bangladesh. The industry employed a large number of low income, poor people in the coastal areas. The salt produced was solely for domestic consumption. Restrictions on salt imports would facilitate the development of this industry, and also ease a potential drain on the country's foreign exchange. These four categories of products had initially been under the coverage of GATT Article XVIII: B. Taking into account the special circumstances faced by these industries, it was his Government's intention to maintain restrictions on imports for a longer period of time than was traditionally done under Article XVIII: B. In exploring the provisions of GATT, Bangladesh had thought that Article XVIII:C was appropriate for use by the least-developed countries in the circumstances Bangladesh faced. However, following consultations with the interested delegations, it had become apparent to Bangladesh that its requirement for import restrictions on the four products for a longer period of time could be met under Article XVIII: B.

338. The balance-of-payments situation in Bangladesh was in a difficult position, following a fall in export revenue in fiscal year 2001-2002, after rising steadily for many years. In comparison to exports, imports had continued to surge. This placed severe strains on the country's balance of payments. Unless there was an expansion of the export base, the situation was not likely to improve in the near future. Under the circumstances, Bangladesh deeply appreciated the cooperation of the Members in reaching the understanding that was reflected in the report of the Committee on Balance of Payments Restrictions contained in WT/BOP/R/64. It would continue to consult with the Committee, as required under the WTO provisions and the decisions referred to, and would present an appropriate phase-out plan not later than 2007.

339. The representative of the United States said that her delegation welcomed the approval by the Committee of the maintenance by Bangladesh of import restrictions for balance-of-payments purposes under Article XVIII:B on four sensitive products until 2009. It looked forward to the phase-out plan Bangladesh would submit for consideration by the Committee in accordance with its decision. Her

delegation had listened to the statement by Bangladesh and understood the difficult balance-of-payments situation in which Bangladesh, a least-developed country Member of the organization, found itself. Furthermore, it could well appreciate how a unique combination of circumstances had led Bangladesh to have to request the maintenance of restrictions on the four products in question. Those circumstances had convinced the United States that it was necessary for Bangladesh to be able to maintain those restrictions in place for a prolonged period, as the Committee had concluded. The United States welcomed the Committee's approval of the maintenance by Bangladesh of import restrictions for balance-of-payments purposes under Article XVIII:B on four products until 2009, and looked forward to the phase-out plan Bangladesh would submit for consideration by the Committee in accordance with its decision.

340. The General Council took note of the statements and adopted the report on the consultations with Bangladesh (WT/BOP/R/64).

(b) Note on meeting of 18 November (WT/BOP/R/69)

341. The Chairman drew attention to the Note on the Committee's meeting of 18 November (WT/BOP/R/69).

342. The General Council took note of the information in the Note on the Committee's meeting of 18 November (WT/BOP/R/69).

23. WTO pension plan

(a) Annual Report of the Management Board for 2001 (WT/L/497)

343. The Chairman drew attention to the Annual Report of the Management Board for 2001 (WT/L/497), which was being submitted to the General Council in accordance with Article 5(d) of the Regulations of the Pension Plan (WT/L/282). This was the third report of the Management Board since the establishment of the Pension Plan on 1 January 1999.

344. Mrs. Whelan (Ireland), Chairperson of the Management Board, introducing the report, said that 2001 had not been an easy year for the WTO Pension Plan. As a result of the difficult economic situation and continuing uncertainty in the investment markets, the Pension Plan had recorded its first negative real rate of return since the establishment of the Plan in 1999. The WTO Pension Plan had not been alone in producing a poor performance in 2001. A survey of Swiss plans had shown that pension funds generally had recorded negative results in 2001. The United Nations Joint Staff Pension Fund had recorded a real rate of return of -17.4 per cent for the period ending 31 March 2001 and -0.8 per cent for the period ending 31 March 2002. She said it was important to remember that short-term results were not meaningful in the context of a long-term investment strategy. The Management Board continued to pursue an investment strategy designed to maintain a careful balance between risk and return over the medium-to-long term rather than taking the risk inherent in seeking very high short-term returns.

345. 2001 had marked the third year of the Pension Plan's existence and therefore the first three-yearly actuarial valuation. That valuation had shown that the rate of contribution required to ensure the long-term balance of the Pension Plan had increased slightly but was still below the actual rate of contribution of 22.5 per cent. The Management Board had decided that the actuarial balance should continue to be monitored on a yearly basis in view of the continuing difficult economic situation. The Management Board was now assisted by an Investment Committee comprising three members who provided their expert services on a *pro bono* basis. The Investment Committee was currently reviewing the Plan's investment strategy in light of the experience gained over the first years of the Plan's existence. The Management Board had been studying the need to take out what was known as

a stop-loss insurance in order to protect the Pension Plan against major death and disability claims. Following the decision to outsource a significant part of the administrative services of the Pension Plan to a specialized firm, work had been continuing on the adaptation of the firm's software to the Plan Regulations and Administrative Rules. It was now expected that the firm would take over the administration of the Pension Plan in 2003. The Pension Plan Secretariat would continue to provide the link with participants and beneficiaries and would have direct access to the outsourced database. The number of participants in the Pension Plan had increased from 581 to 618 in 2001 and the number of beneficiaries from 6 to 16.

346. She wished to draw attention to a problem which had been confronting the Board over the past few months. It had become increasingly difficult to assemble the necessary quorum for Board meetings. In order to function, the Board had to have present at least three representatives from the General Council side and three representatives from the participants' side. The Board was composed of four members and four alternates representing the General Council, and four members and four alternates representing the participants. It had been necessary recently to cancel a Board meeting owing to a lack of representation on the General Council side. She appealed to the General Council to ensure that it was fully represented at Board meetings in order not to prejudice the smooth functioning of the Pension Plan.

347. The Chairman said he wished to support what the Chairperson of the Management Board had just said, particularly on the issue of quorum. She had brought this matter to his attention in the past and he had tried to be as helpful as possible and to be in touch with the representatives from the General Council on the Management Board, in order to encourage them to attend Board meetings, notwithstanding the workload everyone faced. He appreciated the work and the leadership the Chairperson of the Management Board had given to this issue under, as she had said, trying circumstances.

348. The General Council took note of the statements and of the Annual Report of the Management Board for 2001 (WT/L/497).

(b) Agreements on the transfer of pension rights between the pension plan of the WTO and the pension schemes of the coordinated organizations⁶ (WT/GC/W/483)

349. The Chairman recalled that Article 10 of the Regulations of the WTO Pension Plan (WT/L/282) provided for the conclusion of transfer agreements with Member governments and intergovernmental organizations in order to secure the continuity of pension rights for participants in the Pension Plan. Transfer agreements had been drawn up by the Management Board of the WTO Pension Plan with the Pension Schemes of the following coordinated organizations: the Council of Europe, the European Centre for Medium-Range Weather Forecasts, the European Space Agency, the North Atlantic Treaty Organization, and the Western European Union. These had been submitted in WT/GC/W/483 for the concurrence of the General Council.

350. Mrs. Whelan (Ireland), Chairperson of the Management Board, said that WT/GC/W/483 contained the transfer agreements with five of the six organizations. An agreement with the sixth coordinated organization, the OECD, had been endorsed by the General Council in December 2001. The present five agreements were identical to what had been endorsed by the General Council in 2001. The Pension Plan's consulting actuary had confirmed that the Plan's interests were fully protected under the proposed agreements, which had been approved by the Management Board at its meeting in November. She recalled that Article 10 of the Pension Plan Regulations stated that the Management

⁶ These are the Council of Europe, European Centre for Medium-Range Weather Forecasts, European Space Agency, North Atlantic Treaty Organization, Western European Union.

Board might, subject to the concurrence of the General Council, approve transfer agreements with Member Governments and with intergovernmental organizations with a view to securing continuity of pension rights for participants in the Pension Plan. As in the case of the transfer agreements already concluded with the United Nations Joint Staff Pension Fund in December 2000 and the OECD Pension Scheme in December 2001, the five agreements currently before the General Council were of the “outer circle” rather than “inner circle” type. In other words, the transferring participant was credited by the receiving Plan with the strict actuarial value of his or her accumulated pension rights in the releasing Plan, calculated according to the Regulations of the receiving Plan. In the case of “inner circle” agreements concluded by Plans with identical benefit structures, such rights were transferred on a one-to-one basis. Such transfer agreements formed an important part of the organization’s policy to facilitate the mobility and interchange of staff. Although the five organizations concerned might not be directly comparable with the WTO on the operational side, they certainly employed similar categories of staff on the administrative and support side.

351. The General Council took note of the statement and concurred with the transfer agreements contained in WT/GC/W/483.⁷

24. Committee on Budget, Finance and Administration – Report of the Committee (WT/BFA/62)

352. The Chairman drew attention to the recommendations of the Committee on Budget, Finance and Administration which had resulted from the Committee's extensive meetings in October, November and December. These recommendations had been circulated in document WT/BFA/62.

353. Mr. McMillan (United Kingdom), Chairman of the Committee on Budget, Finance and Administration, said that this had been an exceptionally difficult budget year. These difficulties had prompted the Committee to think about some wider issues. While there had been no formal recommendations on these in WT/BFA/62, he nonetheless wished to bring them to Members' attention. It was clear that the annual budget process could not, due to the present constraints in a large number of Members' economies and the need for financial planning stability, deliver more than incremental changes in the resources provided to the WTO. Those same planning constraints also created difficulties when finance ministers faced what they might regard as repeated annual requests for increased resources. At the same time, it was clear that the demands placed on the Secretariat by increased membership and wider negotiations were ever growing. In the light of this, he said that it might be useful for the Committee in 2003 to undertake a review of resources available to the Secretariat against the tasks it needed to fulfil. This review could also examine, taking into account the report of Mr. Slater in 2001, whether some of the tasks in question might be better carried out in a different fashion so as to reduce the direct workload of the staff involved. It could indeed look at whether some tasks inherited from the GATT still required the same level of commitment. Such a review could provide recommendations to the General Council and the Director-General. However, he cautioned that international organizations could easily end up with an infinite number of priorities, according to the varying interests of the membership. Any high-level decision on resources and the work of the organization would thus need to be rigorous in its differentiation between the desirable and the necessary. It would also need to be made on the basis of the possible, with a clear understanding that those who held the domestic purse strings had fully bought into the proposition.

354. The WTO had been spending some SwF 17 million a year on temporary staff. It would make a lot of sense to look, particularly, at those posts which had been filled for a number of years by temporary staff, and for which there was a need for staff in the foreseeable future, and to consider whether, in the 2004 budget, at least some of these posts should be converted into permanent posts. The cost of this would be minimal. The budget still included some SwF 1.5 million for postage, and

⁷ The transfer agreements were subsequently circulated in WT/L/513.

SwF 1.4 million for expendable equipment, of which a sizeable proportion was paper. Over 80 per cent of Members had functioning e-mail systems, and he urged Members, including non-residents, to think about whether they could receive the majority of WTO papers electronically. However, one had to remain sensitive to the needs of smaller and poorer countries, and delegations with no alternatives should not be forced to give up the paper option. Nevertheless, a saving of even 25 per cent on these two headings could have provided the Director-General with five extra posts in 2002. Turning to the report of the Committee and the recommendations therein, in what had been a difficult discussion a number of delegations had underlined the need for at least some focusing of priorities to support the negotiations in the run-up to Cancún. In this respect, he was assured that the required reallocations and savings would be effected. The Committee had also allocated a matching amount from the savings made on the Director-General's revised proposal to release altogether SwF 480,000 for this purpose. In this the Committee had been conscious of the vital importance of trade policy reviews in aiding developing countries to participate more fully in WTO negotiations.

355. He wished to draw attention to the fact that the Secretariat did not intend for the moment to organize a pledging conference in order to gather the resources necessary to reach the target amount proposed at the present meeting for the General Council's approval for the DDAGTF in 2003. He therefore wished to further emphasize the call for new contributions contained in paragraph 7(e) of the recommendations of the Budget Committee. According to the terms of reference of the DDAGTF, the Budget Committee, together with the Committee on Trade and Development, would closely monitor the availability of funds for the implementation of the 2003 Technical Assistance Plan and would report back to the General Council as necessary.

356. The Chairman, on behalf of the entire membership, extended his appreciation and compliments for the hard work the Chairman and members of the Budget Committee, together with the Secretariat, had put into this report. As in many administrations, the budget cycle involved a very concentrated period of work involving matters of complexity and sensitivity. In this regard, he was aware that many Members felt it would be helpful to work towards a more long-term budgetary planning process, which could encompass broader considerations and aid a smoother handling of the work. Concerning the elements in the Committee's report dealing with Secretariat staff salaries and allowances, he had had some consultations with the Director-General, with Members, and with representatives of the Staff Council. He wished to underline that these consultations had been marked by a positive and constructive spirit on all sides. It was widely recognized that, while the WTO was a member-driven organization, a close partnership between Members and the Secretariat had always been essential to its success, and would remain so in the future. The General Council would take a decision at the present meeting on the overall budget and its components. The proposed increase of 8.3 per cent over 2002 represented a considerable effort by Members. At the same time, he was confident that Members would continue to receive a very good return on their investment in this organization, at this crucial stage in its life. As Members were aware, the budget provisions included a salary adjustment for the Secretariat of four per cent: three per cent awarded on 1 January 2003 and the remaining one per cent on 1 July 2003. The Budget Committee had also recommended such further adjustment as was necessary to restore parity with the UN Common System. In addition, the Committee had recommended that it carry out a review of the methodologies for future pay adjustments, to be completed by 31 March 2003.

357. In reviewing these methodologies, the Committee would have to undertake a very important task in a rather short time. All had an interest in an objective and credible process which produced a fair outcome. To help guide the Committee's work, the following elements should be taken into account:

- (a) the work should begin as soon as possible in the new year and the recommendations which resulted from it should be forwarded to the General Council not later than

31 March 2003. In addition, the Committee was requested to make a progress report to the General Council at its meeting on 10/11 February 2003;

- (b) to assist the Committee, appropriate opportunity should be given to the Secretariat staff to be fully consulted and to express their views;
- (c) in developing methodologies, the Committee should aim to provide WTO staff salaries, benefits and other conditions that were sufficiently competitive internationally to attract and retain a highly skilled and motivated staff;
- (d) to enhance the predictability of the remuneration system, the methodologies that resulted from the Committee's work should be implemented fully and in good faith by all concerned; and
- (e) in order to ensure a smoother evolution in salary levels and facilitate overall budgetary planning for Members, salary adjustments based on the agreed methodology should be made on an annual basis.

358. He believed that these elements would help the Committee to arrive at a remuneration system which would be equitable and forward-looking. He spoke for all Members when he said that they looked forward to seeing this work on salary review methodology carried out in a way which reinforced partnership and mutual respect, and he was saying this in the knowledge that the membership and the Secretariat staff were united in their commitment to this organization and what it stood for.

359. He then proposed that the General Council take note of the statement by the Chairman of the Budget Committee and of his own statement and approve the recommendations contained in WT/BFA/62, and said the General Council looked forward to receiving the Budget Committee's progress report in February.

360. The General Council so agreed.

361. The Director-General said that the consensus on the budget was welcome and necessary. He wished to highlight his appreciation for the work and efforts of the Chairman of the Budget Committee. He also fully appreciated the efforts of delegations who had, despite the prevailing climate of financial stringency, taken into account to the maximum extent possible the wider context of the WTO's human resources needs, even if it had not been possible to meet in full what had been asked for as a reasonable increase. He was particularly grateful to the General Council Chairman for his own active and constructive influence on the budget discussions. The statement the latter had made complemented in a very useful way the recommendations of the Budget Committee. He would do his best to ensure that the resources made available to the Secretariat would be optimally used, in particular for work related to the Doha Development Agenda. It would be a challenge to manage this workload up to and beyond Cancún. He had noted the interim measures agreed by the Budget Committee which would allow WTO Secretariat pay to catch up with UN rates by, at the latest, 1 July 2003. Now that the UN pay increases for professional staff had been decided, it would be discussed with Members how to factor that into the Budget Committee's package. Interim measures, by definition, were not intended to solve the whole set of problems which had arisen following the 1998 decision to take the WTO out of the UN Common System and to set up a fully independent organization. The methodology review, which was to be completed by 31 March 2003, would be a vitally important next step. He said that he could not emphasize strongly enough the importance of an agreed-upon methodology in settling the terms and conditions of employment for the Secretariat. A reasonable outcome that reflected the value Members placed on a highly trained and internationally recruited staff was the best way to forestall future problems. He looked forward to working closely

with Members in that process, to defining objective criteria and parameters for the review, to determining future pay scales, and to setting up a system for more regular annual adjustments. He had noted and welcomed some helpful references in the General Council Chairman's statement to various aspects of the methodology review, and looked forward to the progress report which would be made to the General Council at its next meeting in February 2003.

362. As Members were aware, many staff felt – he believed with some justification – that there had been a tendency in recent years for the Members to demand greatly increased output for modestly increased input. All had to recognize that this approach ultimately had its limits. He said that he had considerable sympathy with a number of the issues raised by the staff. The Secretariat did need more resources overall. It did need to attract and retain high-quality staff. Surely by now the Secretariat should already have a settled and equitable mechanism to adjust salaries regularly. It was certainly not the best budget practice – and it was certainly inappropriate human-resource practice – to rely so heavily from year to year on temporary assistance to perform work which was of a permanent nature. Having said this, as the person responsible for making sure that the Secretariat carried out the Members' directions in an efficient manner, he had always called, and would continue to call, for moderation and discussion. In particular, the Doha Development Agenda could not be put at risk. The following year Members faced important deadlines and a vital Ministerial Conference. He also had to recognise that the Members had their own constraints. He believed that at the present stage, all should be forward-looking. He appealed to all to concentrate on carrying out the Budget Committee's recommendations, as complemented by the General Council Chairman's statement, adding substance along the way to the various important tasks set out for 2003. As had already been suggested, the annual ad hoc bargaining exercise which was called the budget was no longer good enough for an organization as important as the WTO now was. There should be more planning and strategic thinking for the future. That way, both the Secretariat and Members would have greater predictability and fewer surprises.

363. All representatives who spoke expressed their delegations' appreciation to the Chairman of the Budget Committee for his hard and effective work, and to the General Council Chairman for his participation in bringing this matter to a successful conclusion.

364. The representative of China said that his Government had reservations regarding the 8.3 per cent budget increase which added to China's already sharp increase in its budget contribution due to the expansion of its total trade. In the interests of the system, his Government did not intend to block a consensus on this matter, but wished nevertheless to place its reservations on record.

365. The representative Chile said that his delegation sympathized with the difficult tasks the Budget Committee Chairman had had over the past week and thanked the General Council Chairman and the Director-General for their statements. The WTO was an important organization and a very poor one by the standard of other international organizations. His delegation agreed on the need for considerable improvement in terms of management and budget practices. As the Director-General had said, the organization could not continue this way. There should be a strategic, long-term view and more planning, and there was a lot to be done in these respects. He had also taken note that there had been a good atmosphere in the contacts with the Secretariat staff. Chile was fully aware of the staff's concerns and had the greatest sympathy and respect for them. More had to be done in this regard. He asked if the approval of the budget and the good atmosphere and environment that had been detected meant that the organization would return to normal work, or whether the "work to rule" approach of the staff would continue. It was important to have the right atmosphere in which to work, not only regarding work related to the budget over the next month, but also work in the negotiating bodies. That good atmosphere needed to be restored. His delegation was more than willing to work closely with others in the Budget Committee over the next month to achieve these important goals and to make a reality of the vision the Director-General had outlined.

366. The representative of Djibouti expressed his delegation's satisfaction that a solution had been found regarding staff conditions and the budget. He wished to thank the African Group for their support, because Djibouti was very proud of the work done by the Secretariat on behalf of all Members and particularly on behalf of the small delegations. As Chile had said, one could not expect the organization to work properly if the staff did not have proper working conditions. It was important that whenever staff issues were discussed in the Budget Committee, a personnel or staff delegate was present, so that the Committee, the Members and the Secretariat could all work together and find solutions.

367. The representative of Haiti expressed his delegation's satisfaction at the adoption of the budget. He also wished to pay tribute to the General Council Chairman and to his good offices, which in fact had saved the organization. The two contentious points in the budget concerned salary issues and the Trade Policy Review Division. Thanks to the efforts of the Committee and General Council Chairmen, Members had managed to smooth over the difficulties. Haiti welcomed this for two reasons: First, because the staff claims were based on firm recommendations made by the consultant and by the Director-General, who in all good faith wished to correct an error which the membership had been unable to correct in 1999. In 2002 the staff should have received an eight per cent salary increase which, due to Members' constraints, large and small, they had been unable to provide. Thanks to the General Council Chairman's good offices, it had been possible to get around this problem. Members were now being asked to find a solution to this problem by July 2003. The second reason was that the problem regarding the Trade Policy Review Division had been solved through the acceptance of this budget. For Haiti, the Trade Policy Review Division was the backbone of the organization. This was the Division which made it possible for even the poorest countries, as well as the most developed, to better understand each other. Through these regular trade policy reviews Members could understand their respective weaknesses and their comparative advantages, which would be impossible without them. Haiti welcomed that Members had finally managed to salvage the programme prepared for the trade policy reviews and were also solving the staff problem. While the 8.3 per cent increase seemed enormous, Members had to recognize that, if the organization was to meet Members' needs, they had to make a sacrifice in order to be able to implement the Doha Development Agenda. The minimum had been accepted – in view of the objectives Members had set for themselves, the 8.3 per cent increase was indeed a minimum. Haiti hoped that by 2003 the Budget Committee would be able to work on the basis of the recommendations from the Slater Report, so that Members would be better able to rationalize the budget and avoid reaching these stages of conflict at the end of the year.

368. The representative of Kenya, speaking on behalf of the African Group, expressed their appreciation for the General Council Chairman's efforts in resolving one of the more critical issues Members had had to deal with in 2002, and thanked the Director-General for his statement, which they fully supported. They welcomed the Budget Committee Chairman's report and hoped that it would go some way in meeting the expectations of the Secretariat staff and would allow Members to resume fully their responsibilities. This was an extremely sensitive time in the preparations for Cancún and all needed to be fully engaged. The African Group was encouraged and pleased that the Committee, in carrying out its work under very difficult circumstances and pressures, had resisted the temptation to make recommendations that would negatively impact on the excellent work the Secretariat had been doing in carrying out its tasks, especially regarding technical assistance and capacity-building needs of developing and least-developed countries.

369. As the Chairperson of the Trade Policy Review Body, she wished to thank the representative of Haiti for his statement. She was particularly concerned that the functioning of the Trade Policy Review Division and the programme of work already agreed for 2003 not be affected. These reviews, especially for developing and least-developed countries, had had a dramatic impact on identifying the technical assistance and capacity building needs of these countries. The reviews had also played a more significant role in helping countries understand the WTO and the issues under discussion, and

had contributed to the implementation process as well as to strengthening the Cancún preparatory process. The reviews played an important role in helping to mainstream trade into the economic policies of this group of countries and allowed for the sharing of best practices, while at the same time encouraging strict adherence to WTO agreements. The Trade Policy Review Division, the Technical Cooperation Division and the Training Division made the WTO relevant to the economically weaker Members of the organization. These divisions were, for many Members, the face of the WTO. The African Group believed these divisions should be continuously strengthened, especially as new Members acceded who would undoubtedly require their services and support. She therefore urged the Budget Committee to consider this a priority in its future work.

370. The representative of Chinese Taipei expressed his delegation's satisfaction that a solution had been found and adopted. His delegation endorsed the decision just taken and took note of the statement by the Director-General. It hoped that the good atmosphere created by the approval of the recommendations would continue up to and beyond Cancún.

371. The representative of Uruguay said that his delegation endorsed the previous statements, in particular by Chile. He said that through his involvement in the consideration of a number of budgets of other organizations, he had quickly reached the conclusion that Members should re-examine the budget and the levels of remuneration of WTO staff as compared to other organizations. This issue deserved a comparative review, and Uruguay was certain that the outcome would go in the right direction. His delegation sincerely hoped that having approved the Budget Committee's recommendations, Members would be able to return as soon as possible to a normal working situation. He said that without wishing to comment on the legitimacy of the staff action over the past weeks, the situation that had resulted from this had caused small delegations such as his very great difficulties in their normal functioning.

372. The representative of Barbados expressed his delegation's satisfaction that Members had been able to come to a constructive and useful solution and conclusion to the work of the Budget Committee, and wished to state for the record that Barbados supported the sentiments expressed by Kenya regarding the importance of the Trade Policy Review Division and the Technical Cooperation Division to the needs and interests of developing countries and, in Barbados' case, to small developing economies.

373. The representative of Zambia associated his delegation with the statement by Haiti, which was the focal point for the LDC group of countries in the Budget Committee, and with the statement by Kenya, which Zambia strongly supported.

374. The representative of the United States thanked all involved for their dedicated and hard work in bringing this most difficult of budget processes to a successful conclusion. Her delegation committed itself to full and constructive engagement in the continuing work Members had set out for themselves in the first quarter of 2003 on the compensation system. The United States agreed with the Budget Committee Chairman on the need to examine the way Members did business in order to ensure they made the best use of their resources. Clearly the budget process had to reflect the priorities agreed by Members, while recognizing that when everything was a priority, nothing was a priority. Her delegation welcomed the Director-General's comments on the need for more long-term planning.

375. The Chairman informed Members that he had received that day a letter from the Chair of the Staff Council enclosing a message from the staff, which he had been asked to circulate to delegations at the present meeting. He trusted that Members would read this letter and would take on board some of the concerns articulated in it. He had very much appreciated the constructive spirit with which the Members he had consulted regarding his statement under this item had approached it, admittedly at a fairly late stage and after a fairly intensive period in the Budget Committee. Regarding Chile's

question as to whether there would be a return to normal working conditions, that was not for him to answer. However, it was his hope that this could be done, and he wished to thank the Staff Council representatives with whom he had been in touch fairly regularly over the past few days, for their constructive implementation of staff feelings the past week. He had asked them, because of the important work on the General Council's agenda, to refrain from the planned "walk throughs" to end the present meeting at a certain hour. In fairness and to their credit, they had done so. He said he felt that this issue had been concluded, for the present year, on a high note, and that the challenge was to continue it into the following year.

376. The General Council took note of the statements.

25. Waivers under Article IX of the WTO Agreement

(a) Introduction of Harmonized System 2002 Changes into WTO schedules of concessions – Draft decision (GC/W/436 and Corr.1)

377. The Chairman drew attention to the draft Decision in GC/W/436 and Corr.1 concerning this matter. On behalf of the Chairman of the Council for Trade in Goods, he reported that at its meeting on 22 November 2002, the Goods Council had approved the draft Decision for the listed Members and recommended that the draft Decision in G/C/W/436 and Corr.1 be transmitted to the General Council for adoption.

378. The General Council took note of the statement and, in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the draft Decision in document G/C/W/436 and Corr.1.⁸

(b) Review of waivers under Article IX:4 of the WTO Agreement

(i) *Cuba – Article XV:6 of GATT 1994, granted on 20 December 2001 until 31 December 2006 (WT/L/440, WT/L/496)*

(ii) *Colombia – Extension of the application of Article 5.2 of the Agreement on Trade-Related Investment Measures, granted on 20 December 2001 until 31 December 2003 (WT/L/441)*

(iii) *Dominican Republic – Minimum values under the Customs Valuation Agreement, granted on 20 December 2001 until 1 July 2003 (WT/L/442)*

(iv) *EC – Autonomous preferential treatment to the countries of the Western Balkans, granted on 8 December 2000 until 31 December 2006 (WT/L/380, WT/L/503)*

(v) *EC – Transitional regime for the EC autonomous tariff rate quotas on imports of bananas, granted on 14 November 2001 until 31 December 2005 (WT/L/437)*

(vi) *EC – The ACP-EC Partnership Agreement, granted on 14 November 2001 until 31 December 2007 (WT/L/436, WT/L/504)*

(vii) *Turkey – Preferential treatment for Bosnia-Herzegovina, granted on 8 December 2000 until 31 December 2006 (WT/L/381, WT/L/499)*

(viii) *United States – Caribbean Basin Economic Recovery Act, granted on 15 November 1995 until 31 December 2005 (WT/L/104, WT/L/498)*

⁸ The Decision was subsequently circulated as WT/L/511.

- (ix) *Preferential Tariff Treatment for Least-Developed Countries, granted on 15 June 1999 until 30 June 2009 (WT/L/304)*

379. 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 nine waivers before the General Council for review. The Decisions on the waivers for Cuba, Turkey and the United States, and on two of the waivers for the EC, provided that an annual report should be submitted by these Members on the operation or implementation of the respective waivers, with a view to facilitating their annual review by the General Council under Paragraph 4 of Article IX. The reports from these delegations on the relevant waivers had been circulated in WT/L/496, 503, 504, 499 and 498 respectively.

380. The representative of Honduras said his delegation first wished to clarify that it did not wish to go into the matter of how or under what conditions the waiver for the ACP-EU Partnership Agreement had been granted at the Fourth Ministerial Conference. It did, however, wish to voice concerns in relation to the EC's banana import regime, given that the EC policy continued to be very dynamic. In particular, Honduras had noted that both the current quota and the licensing system would be affected by the accession of new members to the European Communities as of 2004 and by the decision to adopt a single tariff on a most-favoured-nation basis as of 2007, as indicated in WT/MIN(01)/15 which had been adopted at the Fourth Ministerial Conference. Honduras would closely monitor the negotiations on enlargement of European Union members and would keep a watchful eye on its development in order to ensure that the EU-15 regulatory framework was properly extended to new members. Likewise, Honduras would be taking the necessary steps to ensure that the new enlargement policies were consistent with the terms and conditions of the waiver granted. Furthermore, when the Community launched the negotiations agreed at Doha to adopt a single tariff on an MFN basis for banana imports, Honduras hoped to play an active role in both the tariff negotiations and any arbitration processes related to the waiver – rights which had already been recognized by a Panel and in the Doha Agreements of November 2001, as stated in the Annex to the Decision granting the waiver for the ACP-EU Partnership Agreement. Nevertheless, his delegation wished to reaffirm that all necessary steps would be taken to prevent an excessive tariff which could damage Honduras's vulnerable developing economy. This issue continued to be a priority for Honduras and it hoped the waiver would not create undue barriers or harm its trade interests. It was on this basis that Honduras asked the General Council to continue to oversee the implementation of this waiver with the utmost care.

381. The representative of Ecuador said that his delegation took note of and thanked the Community for its report on the waiver regarding its obligations under paragraphs 1 and 2 of Article XIII of the GATT 1994 with regard to the implementation of a separate tariff quota of 750,000 tonnes for bananas of ACP origin. Ecuador recalled that this waiver had been granted on a temporary basis to facilitate the implementation of a transitional regime for banana imports to the Community market, and that as of 1 January 2006, all tariff-rate quotas were to be eliminated and the regime replaced by a tariff-only import regime which was fully consistent with WTO rules. Ecuador would closely monitor all of the commitments made by the Community which had resulted in this exceptional treatment of imports of bananas of ACP origin to the European market. Ecuador also took note of and thanked the Community for its report on the waiver which it and the ACP States which were WTO Members had been granted in respect of their obligations under Article I.1 of the GATT 1994 with regard to the provision of preferential treatment to products originating in ACP States. Ecuador was pleased to note that the objectives of the Cotonou Agreement were being met and that trade between the Community and ACP States had increased over the past year. It hoped that this situation would continue. In view of the fact that this was the first annual report submitted by the Community pursuant to paragraph 5 of the waiver, Ecuador wished to make the following points which, in its

opinion, should be taken into consideration by WTO Members with regard to this exceptional waiver which had been granted to parties to the ACP-EC Partnership Agreement.

382. The benefits which a number of WTO Members enjoyed as a result of the implementation of this waiver were not unrelated to the multilateral trading system and therefore affected other Members, in particular certain developing countries. Ecuador wished to recall that the conditions established in the waiver did not in any way prejudice the multilateral negotiations under the Doha Development Agenda, in particular the agricultural negotiations and negotiations on market access for non-agricultural products. In view of the fact that the Community was preparing for the enlargement of its market upon the accession of new members, it was worth recalling that the conditions of this waiver could not be automatically transferred to the new EU members. The Community's transitional banana import regime would remain in force without interruption until 1 January 2006, on which date the Community was to implement a fully WTO-consistent tariff-only regime. To this end, the Community should engage in consultations on a timely basis with interested parties in accordance with the relevant procedures provided for in Article XXVIII of GATT 1994. It should be recalled that this waiver was governed by the additional provisions in paragraph 3 *bis* of the related Decision and the Annex thereto, which stated that consultations with interested parties with a view to defining the new banana import regime should commence in 2004. Agricultural negotiations would have made headway by that time and the Community would probably have enlarged its market. These elements merely confirmed what had already been stated, namely, that the waiver granted to the ACP States and the European Communities was not unrelated to the outcome of other negotiations concerning either the WTO or the multilateral trading system. However, in spite of this link, the outcome of these negotiations was not covered by this waiver, nor could the implementation of the waiver determine the development of any other negotiation.

383. The General Council took note of the statements and of the reports in WT/L/496, 498, 499, 503 and 504.

26. Review of WTO Activities

Reports of:

- (a) General Council (WT/GC/W/481), Dispute Settlement Body (WT/DSB/29 and Add.1), Trade Policy Review Body (WT/TPR/122), Sectoral Councils (G/L/595, S/C/16, IP/C/27), Committees on Trade and Development (WT/COMTD/44), Balance-of-Payments Restrictions (WT/BOP/R/67), Budget, Finance and Administration (WT/BFA/61), and Regional Trade Agreements (WT/REG/11)
- (b) Committee on Trade and Environment (WT/CTE/7)
- (c) Working Groups on the Relationship between Trade and Investment (WT/WGTI/6), the Interaction between Trade and Competition Policy (WT/WGTCP/6), and Transparency in Government Procurement (WT/WGTGP/6)
- (d) Working Groups on Trade, Debt and Finance (WT/WGTDF/1), and Trade and Transfer of Technology (WT/WGTTT/4)
- (e) Committees under the Plurilateral Trade Agreements (GPA/73, WT/L/500)

384. The Chairman, in pursuance of the Decision concerning procedures for an annual overview of WTO activities and for reporting under the WTO (WT/L/105), drew attention to the annual reports of the various Councils and Committees in the documents referred to above. He proposed that exceptionally, and in the interests of allowing Members to conclude this meeting on schedule, the

Chairpersons of the various Councils and Committees not introduce their reports orally at this meeting, unless they felt that they should draw particular attention to some aspect of the work carried out in their respective bodies.

385. The General Council took note of the statement, adopted the report of the Committee on Trade and Development in WT/COMTD/44, and took note of the following reports of the other WTO bodies, including the reports of the bodies under the Plurilateral Trade Agreements: Dispute Settlement Body (WT/DSB/29 and Add.1), Trade Policy Review Body (WT/TPR/122), Council for Trade in Goods (G/L/595), Council for Trade in Services (S/C/16), Council for TRIPS (IP/C/27), Committee on Balance-of-Payments Restrictions (WT/BOP/R/67), Committee on Budget, Finance and Administration (WT/BFA/61), Committee on Regional Trade Agreements (WT/REG/11), Committee on Trade and Environment (WT/CTE/7), Working Group on the Relationship between Trade and Investment (WT/WGTI/6), Working Group on the Interaction between Trade and Competition Policy (WT/WGTCP/6), Working Group on Transparency in Government Procurement (WT/WGTGP/6), Committee on Government Procurement (GPA/73), Committee on Trade in Civil Aircraft (WT/L/500).

386. The General Council then adopted the draft report of the General Council contained in WT/GC/W/481, on the understanding that the Secretariat would make the necessary adjustments to that draft report so as to include matters that had been considered at the present meeting.
