Different Scenarios in MC11 on E-Commerce

1)Nairobi Work Programme on Electronic Commerce

<u>Ministerial Decision of 19 December 2015</u>   WT/MIN(15)/42, WT/L/977

The Ministerial Conference,

Recalling the "Work Programme on Electronic Commerce" adopted on 25 September 1998 and reaffirming subsequent Ministerial Declarations and Decisions on the Work Programme,

Decides:

> 1. To continue the work under the Work Programme on Electronic Commerce since our last session, based on the existing mandate and guidelines and on the basis of proposals submitted by Members in the relevant WTO bodies as set out in paragraphs 2 to 5 of the Work Programme,

> 2. To instruct the General Council to hold periodic reviews in its sessions of July and December 2016 and July 2017 based on the reports that may be submitted by the WTO bodies entrusted with the implementation of the Work Programme and report to the next session of the Ministerial Conference,

> 3. That Members will maintain the current practice of not imposing customs duties on electronic transmissions until our next session which we have decided to hold in 2017.

2) Japan's Proposal (JOB/GC/130, 14 July 2017)

2.2.To fulfill the above objectives, initiating negotiations at the WTO and establishing new rules in this area is straightforward. However, Japan recognizes that Members have a variety of views on this matter. Bearing this in mind, this paper suggests that, based on the Work Programme of 1998, Members comprehensively evaluate whether the clarification or strengthening of the existing WTO rules are necessary over the course of next one year after MC11.Members may then decide to initiate negotiations without delay depending on the result of the evaluation.

2.3.In the course of conducting the evaluation, Members may use the aforementioned illustrative list of issues as reference. In particular, Members are encouraged to take into account the reality that developing countries and SMEs face a number of challenges and that it is incumbent on the WTO to effectively address those challenges by fully exploiting its competencies, including capacity building assistance and technical assistance.

<div align="center">ILLUSTRATIVE LIST OF ISSUES</div>

ENHANCED TRANSPARENCY
- Greater focus on e-commerce/digital trade in Trade Policy Reviews
- DG Monitoring Report on protectionism could include a digital focus
- Exchange of information on e-commerce/digital trade related issues in regular WTO Committees

REGULATORY FRAMEWORKS FACILITATING ELECTRONIC COMMERCE/DIGITAL TRADE
- Recognition of electronic signatures/authentication and electronic contracts
- Addressing electronic payments and settlements
- Regulatory framework for consumer protection
- Regulatory framework for cyber security
- Regulation of unsolicited communications
- Removing regulatory bottlenecks at borders and unnecessary trade barriers
- Expediting movement of goods

OPEN AND FAIR TRADING ENVIRONMENT
- Non-discriminatory treatment in the formulation and application of the measures affecting e-commerce/digital trade
- Disciplines ensuring the cross-border flow of information, ideas, and knowledge
- Disciplines allowing users to access, process and store online information, ideas, knowledge, and services of their choice
- Ensuring internet users/service suppliers a choice of where to transfer, process, and store information
- Protecting necessary source code confidentiality
- Trade-related aspects of intellectual property rights
- Use of particular technology including encryption technology
- Tariff reduction/elimination for products related to e-commerce/digital trade
- Prohibition of custom duties on electronic transmissions

INTERNATIONAL COOPERATION AND DEVELOPMENT
- Aid for Trade/technical assistance
- Collaboration with relevant stakeholders.
- Addressing inadequate infrastructure and connectivity
- Addressing insufficient trade logistics
- Addressing lack of payment and settlement solutions
- Addressing insufficient human capacity
- Special and differential treatment provisions for developing and least developed members, including the possibility of adopting the approach prescribed in Section II of the TFA

3) Russia's Proposal (JOB/GC/131, 14 July 2017)

1 GAPS RELATING TO E-COMMERCE IN THE WTO LEGAL FRAMEWORK

1.1. To facilitate, we list below some examples of gaps with regard to e-commerce regulation in the WTO agreements.

1.2. Members in their communications use different terms (e.g. digital products, digitized products, e-commerce, digital trade, trade via the Internet etc.) and approaches to determination of e-commerce subject matter. Based on recent discussions and communications we have tried to illustrate the gaps relating to the absence of clarity in respect of e-commerce subject matter.

1. *E-commerce – trade in goods.* It is important to understand what kind of regime could be applied to goods that are traded via the Internet or other electronic means: custom duties, customs valuation, rules of origin, import licensing, certification, labeling, and technical regulation and SPS measures. Also, we should reach a common understanding whether "traditional trade in goods" differs from "trade in goods via the Internet or other electronic means".

2. *E-commerce – trade in services.* Under these circumstances classification of "new" services (e.g. search engines, mobile applications, cloud computing, other digital products) is important issue for consideration. It is not clear where such services fit within the existing UNCPC.

3. *E-commerce – trade in objects of intellectual property.* In this case, gaps in WTO regulation can be caused by the following circumstances.

   Cross-border nature of e-commerce often contradicts with traditional principle of exhaustion of intellectual property rights. This situation ultimately leads to questions about the choice of applicable law and jurisdiction in e–transactions.

   Also, the fast distribution of digital content creates additional oppor*tunities for the right holder, but at the same time, it leads to the lack of technical protection* of such content and significantly reduces the income of the right holder.

4. *Specific issues relating to e-commerce.* Regardless of e-commerce subject matter there are specific issues considered to be relevant to e-commerce, i.e. network access, recognition of e-signature, authentication, encryption, interoperability, e-payments, privacy and personal data protection, secure data flow, consumer protection, SPAM, security issues in the use of ICT. Such issues directly or indirectly affect trade, and are closely interconnected with e-commerce. Some elements are partially covered by existing WTO rules (i.e. consumer protection in the TBT Agreement and SPS Agreement, e-payment and e-documents in the TFA). However, in order to facilitate international trade, particularly via e-commerce, and gain benefits from e-commerce it is necessary to clarify these issues in the WTO legal framework.

1.3. We consider that it is important for future discussions to determine such gaps in order to understand which next steps should be taken.

2 POSSIBLE OUTCOMES AND POST MC11 FRAMEWORK

2.1. Over the past year, discussions on e-commerce related issues in the WTO proved the fact that this topic is of a horizontal nature. Only a holistic approach could bring substance to the process. Today work on e-commerce is becoming more chaotic than ever. Some very interesting and valuable submissions from Members were circulated, but we still lack a proper forum to discuss it. Therefore, Members have not yet made any significant progress on this issue. In this situation, a Working Group on Electronic Commerce under the auspices of the General Council could be a platform to advance discussions on e-commerce issues in order to make substantial progress. The core of discussions should be based on the Work Programme on Electronic Commerce and relevant submissions from Members. In this regard, a Ministerial decision establishing a Working Group on Electronic Commerce could be a pragmatic deliverable of MC11.

2.2. The establishment of a horizontal Working Group on Electronic Commerce would serve as a unified platform to explore initiative and ideas on e-commerce issues, which are cross-cutting in nature. After initial discussions in the Working Group, authorized WTO bodies (CTG, CTS, CTD and TRIPS Council) could consider specific elements further within their respective mandates and report back to the Working Group on Electronic Commerce on the results of technical exchange of views and ideas.

2.3. The formalization of work on e-commerce in the form of schedule of meetings, minutes of meetings and side events (for example, seminars or workshops on particular topics) could help to bridge Members' understanding and solve the existing knowledge gap on e-commerce.

2.4. We suggest that the Working Group on Electronic Commerce should have a mandate to fulfill the following tasks:

- discussion of basic terminology relating to e-commerce (e.g. "digital trade", "e-trade", "digital economy", "digital products", "electronic transmissions" etc.) in order to reach a common understanding relating to the scope and meaning of these terms;

- analysis of the scope and coverage of e-commerce;

- examination and analysis of gaps in WTO Agreements relating to e-commerce;

- exploration of addressing cross-cutting issues;

- analyses of existing barriers to e-commerce;

- preparation of recommendations on how to proceed further, including examination of developing multilateral regulative rules.

2.5. The Working Group on Electronic Commerce will report on the progress made in examination and analysis by MC12. Further decisions with regard to the future work or negotiation process on e-commerce should be based on recommendations of the Working Group on Electronic Commerce.