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General Council

AGENDA ITEM 7.B: WTO RESPONSE TO THE COVID-19 PANDEMIC

REPORT BY THE FACILITATOR, H.E. DR. DAVID WALKER (NEW ZEALAND)

22 NOVEMBER 2021

1.1. I am pleased to provide my report to the General Council on the WTO's multilateral response to the pandemic, in view of the forthcoming 12th Ministerial Conference.

1.2. Let me first recap the road that took us here today. Since my appointment as Facilitator on 22 June at an informal meeting of the General Council, I have undertaken consultations and convened meetings in a range of formats, and I provided my first report to the General Council on 27 July (JOB/GC/269). As I have done throughout this process, I have met with and listened to any delegation that wanted to consult with me and convey its views.

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

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

1.5. At the Heads of Delegations meeting of 25 October, I shared draft text for a Ministerial Declaration on the WTO Response to the COVID-19 Pandemic, accompanied by a post-MC12 Plan on Pandemic Preparedness and Resilience. This is contained in JOB/GC/279.

1.6. While prepared under my own responsibility, that draft text was rooted in discussions held by delegations over the last months. It was inspired by the report I provided to the General Council in JOB/GC/273, which itself was based on discussions and consultations that had taken place in the thematic sessions in September. Those discussions and consultations, in turn, drew inspiration from the proposals put forward by Members as well as from the compilation of elements gleaned from the consultations undertaken by Ambassadors Spencer and Tan, contained in RD/GC/14.

1.7. After my report to Heads of Delegations on 25 October, I convened meetings on 28 October and 9 November with Group Coordinators and other delegations. At those meetings, I recalled that the draft text circulated in JOB/GC/279 aimed to reflect areas of emerging convergence, in light of what I had heard. However, a number of outstanding issues remained, where delegations still had very different views.

1.8. Indeed, there were issues that some Members wanted to see included or that they wanted to see addressed quite differently, while others disagreed. Also, on various parts of the draft text, there were questions about what aspects might be addressed in the Declaration and what should rather be reflected in the post-MC12 plan. In order to achieve a multilateral outcome, I then stressed the need for delegations to engage with those that had different views and to find common ground.

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

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

1.11. The draft text that I am presenting today will be attached to the written copy of my report, which will be circulated later today. This draft text is again submitted under my own responsibility. This revision from the October 25 text aims to reflect my best assessment of possible landing zones on outstanding issues, in light of what I have so far heard from Members from different corners.

1.12. Naturally, some will think that the draft is not sufficiently ambitious, while others will have opposite views. Nobody will think that it reflects their own national preferences. I think that the text is now hopefully much closer to a possible landing zone and acceptance by Members at MC12.

1.13. I would now like to highlight some of the changes to the draft text since my report to Heads of Delegations. But before that, let me point to two important aspects that have not changed.

1.14. First, preambular language continues to confirm that the draft Declaration would not alter the rights and obligations provided in WTO agreements. The focus is on political language to reaffirm shared values and help guide our collective response to the pandemic. The intention is not to develop, for the Ministerial Conference, a new legal instrument that would modify existing rights and obligations under the WTO agreements.

1.15. Second, as indicated from the start of my work as Facilitator, proposals under significant consideration in the TRIPS Council have not been the subject of the discussions that I have convened. Throughout this process, however, delegations have acknowledged the relevance of making an outcome of the TRIPS Council considerations part of the WTO Response to the Pandemic and a number of delegations have made clear that an outcome in that area was of critical importance.

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

1.17. While the draft text does not aim to duplicate discussions that are ongoing in the TRIPS Council, it now includes a placeholder in the preamble to refer to an outcome of those discussions. In addition, I have included language that does not interfere with the TRIPS Council process and that I had orally shared with delegations on earlier occasions. Preambular language thus notes the shared desire to ensure that the intellectual property system supports Members' responses to the pandemic and the Action Plan includes IP issues in the list of areas for discussion post-MC12. Finally,

to reflect an area where there seems to be emerging convergence, the draft text also recalls the Doha Declaration on the TRIPS Agreement and Public Health of 2001.

1.18. In the preamble, a number of additions were made, aiming to capture elements of convergence in the reference group, for example to acknowledge the impact of the pandemic on food and economic insecurity, particularly in developing countries and LDCs, and to highlight the differing challenges posed by the recovery.

1.19. Additional language was also included in the introduction, so as to reflect emerging convergence in recent discussions. One such addition aims to carefully recognize the impact of issues related to vaccine certificates, drawing from the language in the recent G20 Leaders' Declaration. Given the different views among delegations on this aspect, this seems to be, in my view, a possible landing zone, and to reflect what the traffic could bear.

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

1.21. The draft Declaration also includes a new section on "Supporting Inclusive Recovery and Resilience", which draws from discussions in the reference group. The section underscores the critical role of the WTO in promoting inclusive growth and development and the importance of understanding how WTO rules have supported Members, notably developing and least-developed countries, during the COVID-19 pandemic and their role in future pandemics. It also includes text on food security in the context of resilience-building. Clearly, views remain different on the substance of a number of these issues, but the draft text aims to acknowledge these issues and to highlight the contours of a possible landing zone for the purpose of this document. On this aspect, like on others, Members will need to continue engaging in a constructive manner to find ways to converge.

1.22. Finally, the Action Plan has been expanded and provides additional detail and information on the various issues relevant to addressing the response to the current pandemic and to enhancing future preparedness and resilience. The Action Plan lists various substantive areas of discussion and focus. It also suggests some aspects of orientation that each WTO body would seek to address in light of factors they may consider relevant. Such factors may include levels of development or the situation of import-dependent Members, for example.

1.23. The basic structure and operation of the Action Plan has also been clarified. One aspect that remains to be decided is whether the entity overseeing work under the Action Plan will be the General Council or a newly created Body. Throughout the text, these two alternatives are reflected, and in brackets, pending Members' agreement on which entity should lead the work.

1.24. Chair, Members need to get to landing zones and to bridge the differences of views that had been expressed over the last weeks. I hope that the draft text that I just described, and which will be circulated with my report, will help us to that.

1.25. The world is watching, and we need to focus on what can be agreed, not on issues that will make it more difficult to reach convergence. The plight of the many small and import-dependent Members has grown louder in recent weeks and all Members will surely have listened carefully. The importance of a meaningful and credible multilateral outcome on this topic for the forthcoming Ministerial Conference has never been clearer. Chair, I convey this draft text to you and Members for consideration in capitals. I hope that Members can continue to narrow gaps under your guidance so as to help bring to Ministers a text that is as close to being agreed as possible.

**GENERAL COUNCIL FACILITATOR PROCESS ON THE
WTO RESPONSE TO THE COVID-19 PANDEMIC**

DRAFT MINISTERIAL DECLARATION

We, the Ministers, having met in Geneva, Switzerland, at our Twelfth Session,

Desiring to promote strong multilateral cooperation towards tackling the COVID-19 pandemic and supporting response and recovery, and to continue contributing with our joint efforts to build resilience and to better prepare for future pandemics;

Regretting that the COVID-19 pandemic continues to have profound impacts on human health and livelihoods worldwide and expressing our sympathies for those whose lives have been lost;

Recognizing with concern the ongoing global public health, social and economic impacts of COVID-19, particularly on developing countries including least-developed countries, including food and economic insecurity challenges aggravated by the pandemic;

Conscious that the global recovery remains highly divergent across the Membership, and that the pandemic continues to pose evolving challenges, in particular related to the possible spread of new variants of COVID-19 and uneven paces of vaccination;

Regretting the inequity in access to COVID-19 products, notably vaccines, therapeutics and diagnostics, and *affirming* our commitment towards timely, equitable and universal access to safe, affordable, quality, and effective vaccines, therapeutics and diagnostics, with particular regard to the needs of developing countries including least-developed countries;

Noting the shared desire to ensure that the intellectual property system supports Members' responses to the pandemic, including through international efforts to develop, manufacture and distribute COVID-19 products;

[*Taking note* of the decision of [...]]

Conscious of the critical contribution that trade and the rules-based multilateral trading system must provide to address the pandemic, and to foster recovery, resilience and stability of the global economy;

Encouraging the collaboration of the WTO with other relevant intergovernmental organizations in the context of the response to the pandemic;

Acknowledging the role that other relevant stakeholders have played in response to the pandemic;

Conscious of the need to build on the lessons learned from the COVID-19 pandemic in order to enhance the multilateral trading system's resilience in the response to and recovery from the current and future pandemics;

Resolving, with this Declaration and the Action Plan on Pandemic Response, Preparedness and Resilience (the Action Plan) contained in the Annex, to take actions to respond to the continuing pandemic and to enhance global resilience against future pandemics;

Confirming that this Declaration and the Action Plan do not alter the rights and obligations provided in the WTO agreements;

Declare that:

1 INTRODUCTION

1.1. We emphasize the central role of the multilateral trading system in promoting the availability, in a timely manner, of essential goods and services needed in the fight against the COVID-19 pandemic and in ensuring equitable access to them, especially in developing countries including

least-developed countries (LDCs), notably by promoting the diversification of essential medical goods production and supply and facilitating provision of such services, including through identifying opportunities and addressing barriers.

1.2. To further the prevention, diagnosis, treatment, and control of COVID-19, we recognize the necessity of keeping markets open, consistent with existing WTO rules, to facilitate manufacturing, and supply and distribution, of vaccines, therapeutics, and essential medical goods, including their inputs, as well as the provision of services.

1.3. We affirm our resolve to ensuring that any emergency trade measures designed to tackle COVID-19, if deemed necessary, are targeted, proportionate, transparent, and temporary; reflect our interest in protecting the most vulnerable; do not create unnecessary barriers to trade or disrupt supply chains; and are consistent with existing WTO rules.

1.4. We recall the Doha Declaration on the TRIPS Agreement and Public Health of 2001 and reiterate that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all.

1.5. Taking into consideration national public health policies, we acknowledge the relevance of shared standards to boost post-pandemic recovery and trade flows, including testing requirements and results, recognition of vaccination certificates and interoperability and mutual recognition of digital applications, while continuing to protect public health and ensuring privacy and data protection.

2 TRANSPARENCY AND MONITORING

2.1. We reiterate our commitment to transparency and inclusiveness as fundamental to the functioning of the multilateral trading system.

2.2. We note that in a pandemic access to relevant information is crucial. In this respect, we reiterate our commitment to ensuring that notifications of COVID-19-related measures are timely and comprehensive, as required under the provisions contained in WTO agreements. We also note the value of the provision of relevant information including through the WTO Trade Monitoring exercise, and encourage Members' active engagement in that work.

2.3. Timely and accurate information is important to enable the quick identification by Members of potential disruptions in related supply chains, and to assist dialogue between Members. Significant producing Members of COVID-19 vaccines, therapeutics and diagnostics or their inputs are encouraged to provide the highest level of transparency.

2.4. We note that the limited resources and institutional capacities that developing countries including LDCs have to comply with notification obligations may be further constrained during a pandemic.

2.5. We underscore the importance of technical assistance and capacity building in respect of transparency and monitoring.

3 EXPORT PROHIBITIONS OR RESTRICTIONS

3.1. We recognize the rights of each Member to temporally apply export prohibitions or restrictions to prevent or relieve critical shortages of foodstuffs or other products essential to it in accordance with WTO rules and in particular GATT 1994 Article XI. We note, however that export prohibitions or restrictions can affect the availability of and access to COVID-19 products and inputs needed to manufacture them.

3.2. We therefore encourage Members to exercise restraint in the imposition of export prohibitions or restrictions on COVID-19 products and inputs and to endeavour to have recourse to them only as a last resort, if the Member concerned deems it necessary.

3.3. In any imposition of export prohibitions or restrictions on COVID-19 products, we will give particular consideration to the interests of developing countries including LDCs who are highly dependent on imports and, where possible, will exempt them from the measures in order to avoid a negative impact of such measures on their access to COVID-19 products.

3.4. We will exempt shipments of COVID-19 products to humanitarian and equitable access mechanisms (such as COVAX) from export prohibitions or restrictions, notably for shipments from the mechanisms to developing countries including LDCs.

3.5. Each Member will review its own existing export prohibitions or restrictions on COVID-19 products with a view to removing them as soon as the Member determines that the conditions permit.

3.6. We request the WTO to continue to report regularly on the progress achieved in phasing out existing export prohibitions or restrictions and in avoiding disruption of COVID-19 product supply chains.

4 TRADE FACILITATION, REGULATORY COOPERATION AND COHERENCE, AND TARIFFS

4.1. We acknowledge that Members have been implementing trade facilitating measures to expedite the export and import of COVID-19 products to address the ongoing COVID-19 pandemic.

4.2. We reiterate the importance of strengthening the implementation of the WTO Trade Facilitation Agreement and particularly those provisions which have proved critical to date during the pandemic as discussed in the Committee on Trade Facilitation.

4.3. We will deepen experience sharing on lessons learned and challenges encountered during the pandemic, particularly by developing countries including LDCs, in respect of trade facilitation, technical regulations, standards, and conformity assessment procedures. To that end, we will give more impetus to this work in the relevant regular bodies.

4.4. With a view to expediting access to COVID-19 products, while facilitating trade and reducing adaptation costs for manufacturers, we encourage the strengthening of regulatory cooperation and coherence, including through promoting the sharing of regulatory information on a voluntary basis.

4.5. We recognize the importance to developing countries including LDCs of technical assistance and capacity building initiatives to implement trade facilitating measures.

4.6. We acknowledge that some Members have been removing or adjusting tariffs and other duties or charges applied on COVID-19 products or inputs on a voluntary basis in order to help facilitate access to COVID-19 products. We note the indicative list of critical COVID-19 vaccine inputs prepared by the WTO Secretariat.

5 THE ROLE OF TRADE IN SERVICES

5.1. We underline the critical role of services in ensuring resilience during the pandemic. We acknowledge the importance of facilitating the international operations of service suppliers involved in production and distribution of COVID-19 products, such as logistics and freight transport services. We also acknowledge the importance of facilitating trade in services, including health services and ICT services, during the current or future pandemics.

5.2. We recognize the significant impact of the pandemic on the services sectors and services trade of WTO Members, especially in developing countries including LDCs. We stress the importance of a policy environment that promotes the flow of services trade to support economic recovery.

5.3. We underscore the need to ensure that COVID-19-related public health measures that have a detrimental impact on services trade be removed as soon as conditions permit.

6 SUPPORTING INCLUSIVE RECOVERY AND RESILIENCE

6.1. We acknowledge the need for trade to promote economic recovery and foster greater resilience through more diversified production across the world. We underscore the critical role of the WTO in promoting inclusive growth and development.

6.2. We recognize that the pandemic has revealed limitations in the fiscal and monetary means available to developing countries including LDCs to withstand, respond to, and recover from the pandemic.

6.3. We underscore the importance of understanding how the WTO rules have supported Members during the COVID-19 pandemic and their role in future pandemics.

6.4. We encourage work on analysing how WTO rules support resilience and how Members operated under these rules during the pandemic and, as appropriate, identifying gaps with attention to the needs of developing countries and in particular LDCs.

6.5. We underscore the centrality of food security in resilience-building and responding to the current and future pandemics. Food security related issues are multifaceted and require the adoption of a comprehensive approach.

7 COLLABORATION WITH OTHER INTERGOVERNMENTAL ORGANIZATIONS AND STAKEHOLDERS

7.1. We underscore the importance of the WTO's collaboration with other relevant intergovernmental organizations and stakeholders and recognize the efforts of the Director-General to promote such work. We strongly encourage the WTO Secretariat to continue these collaborations as part of the co-ordinated global response to the COVID-19 pandemic and in support of a strong, sustainable, balanced, and inclusive global economic recovery, within its mandate, in accordance with the Marrakesh Agreement.

7.2. Members welcome the work undertaken by the WTO Secretariat to analyse supply chains and regulatory bottlenecks for production and distribution of COVID-19 products in collaboration with other relevant intergovernmental organizations and stakeholders.

8 FRAMEWORK FOR FUTURE PREPAREDNESS

8.1. Taking lessons learned from the current pandemic and the related WTO response, including the challenges faced by developing countries including LDCs, we agree to establish an Action Plan on Pandemic Response, Preparedness and Resilience (Action Plan) aimed at enhancing future preparedness, response and resilience of the WTO and its Members, and at guiding the work of the WTO post-MC12 on these matters. This Action Plan is contained in the Annex to this Declaration.

ANNEX**ACTION PLAN ON PANDEMIC RESPONSE, PREPAREDNESS AND RESILIENCE**

1. We hereby establish an Action Plan on Pandemic Response, Preparedness and Resilience (the Action Plan). The Action Plan is aimed at addressing issues related to the current COVID-19 pandemic and enhancing future preparedness, response and resilience of the WTO and its Members to any future pandemics, and at guiding the work of the WTO post-MC12 on these matters. The Action Plan will address issues identified in this Declaration, including those identified in paragraph 3.c below.

2. [ALT1: A Pandemic Response, Preparedness and Resilience Body (the Body) is hereby established under the General Council. This ad hoc Body will be chaired by a Head of Delegation appointed by the General Council by its next meeting. Pending the appointment, the Chair of the General Council will serve, or designate a Head of Delegation to serve, as the interim Chair. The Body, in order to guide, coordinate, and oversee work pursuant to this Declaration, will convene sessions at regular intervals or whenever necessary between now and the end of 2023 to assess progress, consider issues of a cross-cutting nature in specific areas of the Action Plan, and to provide overall guidance and direction to relevant WTO bodies set forth in paragraph 3 below.] [ALT 2: The General Council, in order to guide, coordinate, and oversee work pursuant to this Declaration, will convene dedicated sessions at regular intervals or whenever necessary between now and the end of 2023 to assess progress, consider issues of a cross-cutting nature in specific areas of the Action Plan, and to provide overall guidance and direction to relevant WTO bodies set forth in paragraph 3 below.]

3. Under this Action Plan:

- a. The Council for Trade in Goods or its relevant subsidiary bodies (including the Committee on Trade Facilitation, the Committee on Technical Barriers to Trade, the Committee on Market Access, and the Committee on Agriculture), the Trade Policy Review Body, the Council for Trade in Services or its relevant subsidiary bodies, the Council for Trade-Related Aspects of Intellectual Property Rights, the Committee on Trade and Development, and the Working Group on Trade and Technology Transfer will continue, or initiate as soon as possible, regular dedicated sessions to discuss lessons learned and challenges encountered in responding to the ongoing COVID-19 pandemic. Based on such discussions, as appropriate, these WTO bodies will develop guidelines, make recommendations, identify best practices, or take any other relevant actions to guide the response to the ongoing pandemic, and consider their applicability to future pandemics. These bodies will provide regular updates and reports to [the Body] / [the General Council] on their work described below.
- b. Papers, concept notes, or other information submitted by Members, as well as other supporting documents prepared by the WTO Secretariat may inform this work.
- c. In their discussions under the Action Plan, Members will consider existing flexibilities in WTO Agreements and their use during pandemics. To assist that discussion, the Secretariat will prepare a compilation of flexibilities contained in existing rules.
- d. Areas of discussion and focus will include the following:
 - i. reviewing existing provisions of the WTO agreements on transparency and monitoring, including with a view to identifying possible areas of improvement in light of lessons learned during the pandemic, and addressing challenges related to capacity constraints;
 - ii. reviewing export prohibitions or restrictions imposed during the pandemic, with a view to learning lessons and assessing the need to improve the framework applicable to such measures;
 - iii. considering strengthening and promoting best practices in implementation of the Trade Facilitation Agreement, and reviewing trade facilitating measures with a view to examining their effectiveness in the context of current and future pandemics;

- iv. considering how to further expedite and streamline trade procedures, including by using electronic documentation and paperless processes
 - v. considering ways to improve regulatory cooperation or coherence, including facilitating recognition of conformity assessment procedures;
 - vi. considering the impact that tariffs and other duties and charges have on trade in COVID-19 products and inputs;
 - vii. considering the contribution of trade in services to pandemic preparedness and resilience and sharing experience and information on measures taken to facilitate the operations of service suppliers during the pandemic, with a view to highlighting lessons learned;
 - viii. considering the role of the intellectual property system in ensuring the development and timely and equitable distribution of health technologies needed to respond to future pandemics, including through the full use of flexibilities in the TRIPS Agreement to protect public health;
 - ix. considering possible ways to promote the transfer of technology and know-how in order to diversify the production of COVID-19 products;
 - x. considering policy tools within the mandate of the WTO to promote food security and livelihoods.
- e. In the areas listed above, each relevant WTO body will consider and seek to address the following in light of factors they may consider relevant:
- i. whether the existing WTO rules and their implementation are sufficient for WTO Members to be adequately prepared to address crises like the COVID-19 pandemic; and
 - ii. whether there are new or expanded methods of cooperation and consultation amongst Members and with other intergovernmental organizations and other relevant stakeholders, which would be desirable to better prepare WTO Members for future pandemics.
- f. The [Body] / [General Council] will collaborate with other relevant intergovernmental organizations on activities related to this Action Plan.
4. We direct the Secretariat to provide technical assistance and capacity building to developing countries including LDCs who face difficulties engaging in this Action Plan.
5. We direct the relevant WTO bodies to use all available technology and resources to encourage participation of Capital-based officials in the Action Plan.
6. We instruct the Chair of the [Body] / [General Council] to provide regular updates to, and deliver a report by the last regular meeting of, the General Council in 2022 on the work under the Action Plan. That report will include suggested next steps so that the General Council can take stock of the effectiveness of the above actions and consider options for moving forward. The [Body] / [General Council] will present the results of the Action Plan at the 13th Ministerial Conference, and in any case no later than the end of 2023.
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