

Introduction

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I. OVERVIEW OF SCOPE AND ORGANIZATION

A. SCOPE

1. The *WTO Analytical Index* provides a guide to the interpretation and application of all of the WTO Agreements.<sup>1</sup>
  2. This third edition covers developments in WTO law and practice from 1 January 1995 to 30 September 2011. It includes extracts and/or summaries of key pronouncements and findings from all panel reports, Appellate Body reports, Article 21.3(c) awards and Article 22.6 decisions circulated prior to 30 September 2011.<sup>2</sup> In addition to jurisprudence, it includes the texts of the WTO Agreements; related Ministerial Decisions, Declarations and Understandings; relevant decisions and activities of WTO Committees, Councils and other WTO bodies.
  3. Although the *WTO Analytical Index* does not incorporate the material contained in the *GATT Analytical Index*<sup>3</sup>, appropriate cross-references are made to this earlier work. This volume does not set out the drafting history of the WTO Agreements. Material on the negotiating history of the GATT, the work of the GATT 1947 and the transition from the GATT to the WTO can be found in the *GATT Analytical Index*, particularly in the Chapter on “Institutions and Procedure”.
- B. ORGANIZATION OF MATERIALS
4. The material is organized into 21 chapters, with a separate chapter for each of the WTO Agreements. The Agreements are addressed in the same order in which they are listed in Annexes 1 to 4 of the *Marrakesh*

*Agreement Establishing the World Trade Organization*. Understandings, Ministerial Decisions and Declarations are incorporated into the chapter on the Agreement concerned.

5. Within each chapter, the information is presented on an article-by-article basis. The discussion of each article is generally sub-divided into two parts: “A. Text of Article [...]” sets out the text of the particular article; and “B. Interpretation and Application of Article [...]” provides extracts and/or summaries, organized in chronological order, of relevant jurisprudence and other material. Under Section B, extracts are organized systematically under issue-specific subheadings, often beginning with the heading “General” followed by other relevant subheadings. The subheadings are often based on specific words from the particular portion of the text being interpreted.

II. EDITORIAL CONVENTIONS

A. ABBREVIATIONS

6. This work uses a number of abbreviations and short titles for the various WTO Agreements, WTO bodies, and WTO documents. These are explained in the tables at the end of this chapter.
7. This work refers to panel and Appellate Body reports and arbitration awards and decisions by their standard short titles. Tables setting forth short titles and full citations for all WTO and GATT dispute settlement reports, awards and decisions are included at the end of this publication.

<sup>1</sup> The International Dairy Agreement and the International Bovine Meat Agreement were originally included in Annex 4 of the *Marrakesh Agreement Establishing the World Trade Organization*. These Agreements were terminated in September 1997. On 10 December 1997, the General Council adopted decisions deleting these Agreements from Annex 4 (WT/L/251, WT/L/252). Accordingly, they are not included in this work.

<sup>2</sup> As of 30 September 2011, several panel reports referred to in this work are either under appeal, or have potential appeals pending. These include the panel reports in *US – Large Civil Aircraft* (2<sup>nd</sup> complaint) (under appeal), *China – Raw Materials* (under appeal), *Philippines – Distilled Spirits* (under appeal), *US – Clove Cigarettes* (adoption/appeal pending), and *US – Tuna II (Mexico)* (adoption/appeal pending).

<sup>3</sup> *GATT Analytical Index: Guide to GATT Law and Practice*, Updated 6<sup>th</sup> Edition (1995) (“*GATT Analytical Index*”).

B. OTHER CONVENTIONS

8. All extracts, whether of decisions of WTO bodies or of panel, Appellate Body or arbitration reports, are introduced by short explanatory sentences, generally setting out the context for the particular excerpt.
9. Extracts are generally kept to a minimum. The full text of all materials cited in this work can be accessed on-line through the WTO website (<http://www.wto.org>).
10. Original footnotes within extracts are generally omitted except where expressly retained and identified as “(footnote original)”.
11. No emphasis is added to any of the extracts. Thus, wherever there is any emphasis in an extract, it is found in the original.
12. Within quoted material, ellipses (“...”) are used to indicate where text within a sentence, a paragraph or larger section has been omitted. Ellipses are not

- used at the beginning or ending of passages reproduced in quotations. Square brackets [ ] are used to indicate editorial changes, which have been kept to a minimum.
13. Citations to excerpted materials from WTO bodies are generally limited to the relevant document symbol. A table at the end of this chapter lists WTO document series with the document symbols, which can be used to find them on-line.
14. For the first six Appellate Body reports, where paragraph numbering was not used, page numbers are given.
15. Because this work is both for general distribution and for use by Members of the WTO, references are provided to some documents which may still be subject to restriction. The rules on document restriction and derestriction are discussed in the Chapter on the WTO Agreement.

III. SHORT TITLES OF WTO AGREEMENTS

|   |                                     |
|---|-------------------------------------|
| Marrakesh Agreement Establishing the World Trade Organization                                 | WTO Agreement                       |
| General Agreement on Tariffs and Trade 1994   | GATT 1994 <sup>4</sup>              |
| Agreement on Agriculture  | Agreement on Agriculture            |
| Agreement on Sanitary and Phytosanitary Measures  | SPS Agreement                       |
| Agreement on Textiles and Clothing  | ATC                                 |
| Agreement on Technical Barriers to Trade  | TBT Agreement                       |
| Agreement on Trade-Related Investment Measures  | TRIMs Agreement                     |
| Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994  | Anti-Dumping Agreement              |
| Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 | Customs Valuation Agreement         |
| Agreement on Preshipment Inspection   | PSI Agreement                       |
| Agreement on Rules of Origin  | Agreement on Rules of Origin        |
| Agreement on Import Licensing Procedures  | Licensing Agreement                 |
| Agreement on Subsidies and Countervailing Measures  | SCM Agreement                       |
| Agreement on Safeguards   | Agreement on Safeguards             |
| General Agreement on Trade in Services  | GATS Agreement                      |
| Agreement on Trade-Related Aspects of Intellectual Property Rights                            | TRIPS Agreement                     |
| Understanding on Rules and Procedures Governing the Settlement of Disputes                    | DSU                                 |
| Trade Policy Review Mechanism   | TPRM                                |
| Agreement on Trade in Civil Aircraft  | Aircraft Agreement                  |
| Agreement on Government Procurement   | Agreement on Government Procurement |
| International Dairy Agreement   | International Dairy Agreement       |
| International Bovine Meat Agreement   | International Bovine Meat Agreement |

<sup>4</sup> Where reference is made to the General Agreement on Tariffs and Trade 1947, the abbreviation “GATT 1947” is used.

IV. SHORT TITLES OF WTO BODIES

|  |  |
|--|--|
| General Council  | General Council  |
| – Committee on Trade and Environment   | – Committee on Trade and Environment                                 |
| – Committee on Trade and Development   | – Committee on Trade and Development                                 |
| = Sub-Committee on Least-Developed Countries   | = LDC Sub-Committee  |
| – Committee on Balance-of-Payments Restrictions  | – BOPs Committee   |
| – Committee on Budget, Finance and Administration  | – BFA Committee  |
| – Committee on Regional Trade Agreements   | – Committee on RTAs or CRTA  |
| – Working Parties on Accession   | – Working Parties on Accession                                       |
| – Working Group on the Relationship between Trade and Investment   | – WGTI   |
| – Working Group on the Interaction between Trade and Competition Policy                                    | – WGTCP  |
| – Working Group on Transparency in Government Procurement  | – WGTGP  |
| – Working Group on Trade, Debt and Finance   | – WGTDF  |
| – Working Group on Trade and Transfer of Technology  | – WGTTF  |
| Trade Negotiations Committee   | TNC  |
| Dispute Settlement Body  | DSB  |
| Trade Policy Review Body   | TPRB   |
| Council for Trade in Goods (subsidiary body of the General Council)  | Council for Trade in Goods   |
| – Committee on Market Access   | – Committee on Market Access   |
| – Committee on Agriculture   | – Committee on Agriculture   |
| – Committee on Sanitary and Phytosanitary Measures   | – SPS Committee  |
| – Committee on Technical Barriers to Trade   | – TBT Committee  |
| – Committee on Subsidies and Countervailing Measures   | – SCM Committee  |
| – Committee on Anti-Dumping Practices  | – ADP Committee  |
| – Committee on Customs Valuation   | – Committee on Customs Valuation                                     |
| – Committee on Rules of Origin   | – Committee on Rules of Origin                                       |
| – Committee on Import Licensing  | – Licensing Committee  |
| – Committee on Trade-Related Investment Measures   | – TRIMs Committee  |
| – Committee on Safeguards  | – Committee on Safeguards  |
| – Textiles Monitoring Body   | – TMB  |
| – Working Party on State-Trading Enterprises   | – Working Party on STE   |
| – Committee of Participants on the Expansion of Trade in Information Technology Products                   | – Committee of Participants on the Expansion of Trade in IT Products |
| Council for Trade in Services (subsidiary body of the General Council)                                     | Council for Trade in Services  |
| – Committee on Trade in Financial Services   | – Committee on Trade in Financial Services                           |
| – Committee on Specific Commitments  | – CSC  |
| – Working Party on Domestic Regulation   | – WPDR   |
| – Working Party on GATS Rules  | – WP GATS Rules  |
| Council for Trade-Related Aspects of Intellectual Property Rights (subsidiary body of the General Council) | TRIPS Council  |
| Committee on Trade in Civil Aircraft   | Aircraft Committee   |
| Committee on Government Procurement  | Committee on Government Procurement                                  |

V. WTO DOCUMENT SERIES AND ISSUING BODIES<sup>5</sup>

|             |  |
|-------------|--|
| G/ADP/      | Committee on Anti-Dumping Practices  |
| G/ADP/AHG/  | Ad Hoc Group on Implementation of the Anti-Dumping Committee                       |
| G/ADP/IG/W/ | Informal Group on Anti-Circumvention of the Anti-Dumping Committee                 |
| G/AG/       | Committee on Agriculture   |
| G/C/        | Council for Trade in Goods   |
| G/IT        | Committee of Participants on Expansion of Trade in Information Technology Products |
| G/L/        | General documents  |

<sup>5</sup> Document symbols may include sub-designations, including: **COM** (Communication), **D** (Dispute), **INF** (Information and/or List of Representatives), **M** (Minutes), **N** (Notification), **Q** (Questions and Replies), **R** (Report), **W** (Working Paper), **Add.** (Addition), **Corr.** (Corrigendum), **Rev.** (Revision).

|                |  |
|----------------|--|
| G/LIC/         | Committee on Import Licensing  |
| G/MA/          | Committee on Market Access   |
| G/NOP/         | Working Group on Notification Obligations and Procedures   |
| GPA/           | Committee on Government Procurement  |
| GPA/IC/        | Interim Committee on Government Procurement  |
| G/PSI/         | Preshipment Inspection   |
| G/RO/          | Committee on Rules of Origin   |
| G/RS/          | Rectifications and Modifications of Schedules Annexed to the Marrakesh Protocol                          |
| G/SCM/         | Committee on Subsidies and Countervailing Measures   |
| G/SECRET/      | Schedules  |
| G/SECRET/HS/   | Harmonized System  |
| G/SG/          | Committee on Safeguards  |
| G/SP/          | Additions to Schedules Annexed to the Marrakesh Protocol to GATT 1994                                    |
| G/SPS/         | Committee on Sanitary and Phytosanitary Measures   |
| G/STR/         | State Trading  |
| G/TBT/         | Committee on Technical Barriers to Trade   |
| G/TMB/         | Textiles Monitoring Body   |
| G/TRIMS/       | Committee on Trade-Related Investment Measures   |
| G/VAL/         | Committee on Customs Valuation   |
| IDA/           | International Dairy Agreement  |
| IDB/URM        | Integrated Database – User Reference Manual  |
| IMA/           | International Bovine Meat Agreement  |
| IP/C/          | Council for Trade-Related Aspects of Intellectual Property Rights  |
| IP/D/          | Dispute Settlement   |
| IP/N/          | Council for Trade-Related Aspects of Intellectual Property Rights – Notification of Laws and Regulations |
| IP/Q/[MEMBER]/ | Legislation on copyright-related matters: questions and responses  |
| PC/            | Preparatory Committee for the WTO  |
| PC/AIR/        | Airgrams   |
| PC/BFA/        | Sub-Committee on Budget, Finance and Administration  |
| PC/IPL/        | Sub-Committee on Institutional, Procedural and Legal Matters   |
| PC/SCS/        | Sub-Committee on Services  |
| PC/SCS/SP/     | Sub-Committee on Services – Additions to Schedules   |
| PC/SCTE/       | Sub-Committee on Trade and Environment   |
| PRESS/         | Press Release  |
| S/C/           | Council for Trade in Services  |
| S/CSC/         | Committee on Specific Commitments  |
| S/ENQ/         | Enquiry Point  |
| S/FIN/         | Committee on Trade in Financial Services   |
| S/GBT/         | Group on Basic Telecommunications  |
| S/IGFS/        | Interim Group on Financial Services  |
| S/L/           | Trade in Services general documents  |
| S/NGBT/        | Negotiating Group on Basic Telecommunications  |
| S/NGMTS/       | Negotiating Group on Maritime Transport Services   |
| S/NGNP/        | Negotiating Group on Movement of Natural Persons   |
| S/P/           | Provisional Schedule of Specific Commitments under the GATS  |
| S/WPDR/        | Working Party on Domestic Regulation   |
| S/WPGR/        | Working Party on GATS Rules  |
| S/WPPS/        | Working Party on Professional Services   |
| TCA/           | Committee on Trade in Civil Aircraft   |
| TN/AG/         | Committee on Agriculture, Special Session  |
| TN/C/          | Trade Negotiations Committee   |
| TN/CTD/        | Committee on Trade and Development, Special Session  |
| TN/DS/         | Dispute Settlement Body, Special Session   |
| TN/IP/         | Council for TRIPS, Special Session   |
| TN/MA/         | Negotiating Group on Market Access   |
| TN/RL/         | Negotiating Group on WTO Rules   |

|                  |   |
|------------------|---|
| TN/S/            | Council for Trade in Services, Special Session                        |
| TN/TE/           | Committee on Trade and Environment, Special Session                   |
| TN/TF/           | Negotiating Group on Trade Facilitation                               |
| UNCTAD/WTO/AIR/  | Airgrams convening ITC meetings                                       |
| WT/AB/WP/        | Appellate Body  |
| WT/ACC/          | Accessions – Working Party  |
| WT/BFA/          | Committee on Budget, Finance and Administration                       |
| WT/BOP/          | Committee on Balance-of-Payments Restrictions                         |
| WT/COMTD/        | Committee on Trade and Development                                    |
| WT/CTE/          | Committee on Trade and Environment                                    |
| WT/DAILYB[YEAR]/ | Daily Bulletin  |
| WT/DER/          | Derestriction Procedures  |
| WT/DS[NUMBER]/   | Dispute Settlement  |
| WT/DSB/          | Dispute Settlement Body   |
| WT/FIFTY/        | 50th Anniversary of the GATT/WTO                                      |
| WT/GC/           | General Council   |
| WT/IFSC/         | Integrated Framework Steering Committee                               |
| WT/INF/          | Information   |
| WT/L/            | General documents   |
| WT/LDC/HL/       | Least-Developed Countries – High Level Meeting                        |
| WT/LDC/SWG/IF    | Sub-Committee on Least-Developed Countries                            |
| WT/LET/          | Letters   |
| WT/MIN(96)/      | Ministerial Conference, Singapore                                     |
| WT/MIN(98)/      | Ministerial Conference, Geneva  |
| WT/MIN(99)/      | Ministerial Conference, Seattle                                       |
| WT/MIN(01)/      | Ministerial Conference, Doha  |
| WT/MIN(03)/      | Ministerial Conference, Cancún  |
| WT/REG/          | Regional Trade  |
| WT/SPEC/         | Special distribution documents  |
| WT/ST/           | Statements  |
| WT/TC/NOTIF/     | Technical Cooperation<br>– Handbook on Notification Requirements      |
| WT/TF/           | Trade and Finance   |
| WT/TPR/          | Trade Policy Review Body  |
| WT/WGTCP/        | Working Group on the Interaction between Trade and Competition Policy |
| WT/WGTDF/        | Working Group on Trade, Debt and Finance                              |
| WT/WGTGP/        | Working Group on Transparency in Government Procurement               |
| WT/WGTI/         | Working Group on the Relationship between Trade and Investment        |
| WT/WGTTT/        | Working Group on Trade and Transfer of Technology                     |
| WTO/AIR/         | Airgrams  |

Marrakesh Agreement Establishing the World Trade Organization  
(WTO Agreement)

|  |    |  |    |
|--|----|--|----|
| <b>I. PREAMBLE</b>   | 10 | <b>3. Article III:3</b>  | 18 |
| <b>A. TEXT OF THE PREAMBLE</b>   | 10 | (a) “shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes”                                      | 18 |
| <b>B. INTERPRETATION AND APPLICATION OF THE PREAMBLE</b>   | 10 | <b>4. Article III:4</b>  | 18 |
| <b>1. Legal relevance of the Preamble</b>  | 10 | (a) “shall administer the Trade Policy Review Mechanism”   | 18 |
| (a) First recital: environmental context   | 10 | <b>5. Article III:5: cooperation with the IMF and the World Bank</b>   | 18 |
| (b) Second recital: developing countries and trade   | 11 | (a) “The WTO shall cooperate, as appropriate”  | 18 |
| (i) “positive efforts”   | 11 | (i) <i>General</i>   | 18 |
| (ii) “commensurate”  | 11 | (ii) <i>Observer status</i>  | 18 |
| (c) Third recital: “reciprocal and mutually advantageous arrangements”                             | 12 | (iii) <i>Cooperation agreements do not modify, add to or diminish rights and obligations of Members</i>                                    | 18 |
| (d) Fourth recital: “an integrated . . . multilateral trading system”                              | 12 | (iv) <i>No requirement for WTO panels to consult with IMF</i>  | 19 |
| <b>2. Relationship with other WTO Agreements</b>   | 12 | (b) “with a view to achieving greater coherence in global economic policy-making”  | 19 |
| (a) GATT 1994  | 12 | (i) <i>General</i>   | 19 |
| (i) <i>Article XX(g)</i>   | 12 | (ii) <i>Annual reports</i>   | 20 |
| (ii) <i>Article XXIV</i>   | 13 | <b>V. ARTICLE IV</b>   | 20 |
| (b) SCM Agreement  | 13 | <b>A. TEXT OF ARTICLE IV</b>   | 20 |
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| <b>A. TEXT OF ARTICLE I</b>  | 13 | <b>1. Organization chart</b>   | 20 |
| <b>B. INTERPRETATION AND APPLICATION OF ARTICLE I</b>  | 13 | <b>2. Article IV:1</b>   | 21 |
| <b>III. ARTICLE II</b>   | 13 | (a) “there shall be a Ministerial Conference . . . which shall meet at least once every two years”   | 21 |
| <b>A. TEXT OF ARTICLE II</b>   | 13 | (i) <i>1996 Singapore Ministerial Conference</i>   | 21 |
| <b>B. INTERPRETATION AND APPLICATION OF ARTICLE II</b>   | 14 | (ii) <i>1998 Geneva Ministerial Conference</i>   | 22 |
| <b>1. Article II:2</b>   | 14 | (iii) <i>1999 Seattle Ministerial Conference</i>   | 22 |
| (a) WTO agreements as part of a single undertaking   | 14 | (iv) <i>2001 Doha Ministerial Conference</i>   | 22 |
| (b) Common context   | 14 | (v) <i>2003 Cancún Ministerial Conference</i>  | 22 |
| (c) Coexistence  | 15 | (vi) <i>2005 Hong Kong Ministerial Conference</i>  | 22 |
| <b>2. Article II:4</b>   | 15 | (vii) <i>2009 Geneva Ministerial Conference</i>  | 22 |
| <b>IV. ARTICLE III</b>   | 15 | (viii) <i>2011 Geneva Ministerial Conference</i>   | 22 |
| <b>A. TEXT OF ARTICLE III</b>  | 15 | (b) “The Ministerial Conference shall carry out the functions of the WTO”  | 22 |
| <b>B. INTERPRETATION AND APPLICATION OF ARTICLE III</b>  | 15 | (i) <i>Powers of the Ministerial Conference</i>  | 22 |
| <b>1. Article III:1</b>  | 15 | (ii) <i>Powers under other Agreements</i>  | 23 |
| (a) “implementation, administration and operation . . . of the Multilateral Trade Agreements”      | 15 | GATT 1994  | 23 |
| (i) <i>General</i>   | 15 | GATS   | 23 |
| (ii) <i>Circulation and derestriction of documents</i>   | 15 | TRIPS  | 23 |
| <b>2. Article III:2</b>  | 16 | (iii) <i>Working parties</i>   | 23 |
| (a) “forum for negotiations among its Members”   | 16 | (c) “Ministerial Conference shall . . . take decisions on all matters under any of the Multilateral Trade Agreements”                      | 23 |
| (i) “Built-in Agenda”  | 16 | (d) “in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreements” | 23 |
| (ii) <i>E-commerce Work Programme and moratorium on customs duties on electronic transmissions</i> | 16 | (e) Rules of procedure   | 24 |
| (iii) <i>Negotiations launched at the Doha Ministerial Conference</i>                              | 18 |  |    |



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| 3. Article IV:2   | 24 | (c) Committee on Budget, Finance and Administration  | 33 |
| (a) "there shall be a General Council"  | 24 | (i) Establishment and terms of reference   | 33 |
| (b) "The General Council shall also carry out the functions assigned to it by this Agreement"                                     | 24 | (ii) Rules of procedure  | 33 |
| (c) "the General Council shall establish its rules of procedure"  | 24 | (iii) Reporting  | 33 |
| (d) "the General Council shall . . . approve the rules of procedure for the committees . . ."                                     | 24 | (iv) Activities  | 33 |
| (e) Procedures for reporting to and by the General Council  | 24 | (d) Committee on Market Access   | 34 |
| 4. Article IV:3: "the General Council shall convene . . . to discharge the responsibilities of the Dispute Settlement Body (DSB)" | 25 | (i) Establishment and terms of reference   | 34 |
| (a) General   | 25 | (ii) Rules of procedure  | 34 |
| (b) "The DSB . . . shall establish such rules of procedure"   | 25 | (iii) Reporting  | 34 |
| (c) Special Session of the Dispute Settlement Body  | 25 | (iv) Activities  | 34 |
| 5. Article IV:4: "the General Council shall . . . discharge the responsibilities of the Trade Policy Review Body"                 | 25 | (e) Committee on Trade and Environment   | 34 |
| (a) Country reviews   | 25 | (i) Establishment and terms of reference   | 34 |
| (b) "the Trade Policy Review Body shall . . . establish such rules of procedure"  | 25 | (ii) Rules of procedure  | 35 |
| 6. Article IV:5   | 26 | (iii) Reporting  | 35 |
| (a) "Council for Trade in Goods"  | 26 | (iv) Activities  | 35 |
| (i) Functions   | 26 | (f) Committee on Regional Trade Agreements   | 35 |
| (ii) Rules of procedure   | 26 | (i) Establishment and terms of reference   | 35 |
| (b) "Council for Trade in Services"   | 27 | (ii) Rules of procedure  | 35 |
| (i) Functions   | 27 | (iii) Reporting  | 35 |
| (ii) Rules of procedure   | 27 | (iv) Activities  | 35 |
| (c) "The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)"   | 27 | Procedures for the consideration and examination of RTAs   | 36 |
| (i) Functions   | 27 | (g) Trade Negotiations Committee (TNC)   | 37 |
| (ii) Rules of procedure   | 28 | 9. Article IV:8  | 38 |
| (d) The Councils "shall operate under the general guidance of the General Council"  | 28 | (a) Bodies provided for under Plurilateral Trade Agreements  | 38 |
| 7. Article IV:6   | 28 | (i) Committee on Government Procurement  | 38 |
| (a) "the [Council for Trade in Goods] . . . shall establish subsidiary bodies"  | 28 | (ii) Committee on Trade in Civil Aircraft  | 38 |
| (b) "These subsidiary bodies shall establish . . . rules of procedure subject to approval of their respective Councils"           | 28 | (iii) International Dairy Council and International Meat Council   | 38 |
| (c) "the [Council for Trade in Services] . . . shall establish subsidiary bodies as required"                                     | 29 | VI. ARTICLE V  | 38 |
| (d) "the [TRIPS Council] shall establish subsidiary bodies as required"   | 29 | A. TEXT OF ARTICLE V   | 38 |
| 8. Article IV:7: Committees established by the Ministerial Conference or General Council  | 29 | B. INTERPRETATION AND APPLICATION OF ARTICLE V   | 38 |
| (a) Committee on Trade and Development  | 29 | 1. Article V:1   | 38 |
| (i) Establishment and terms of reference  | 29 | (a) "Shall make appropriate arrangements for effective cooperation with other intergovernmental organizations"     | 38 |
| (ii) Rules of procedure and observer status   | 30 | (b) Observer status  | 38 |
| (iii) Reporting   | 30 | 2. Article V:2   | 39 |
| (iv) Activities   | 30 | (a) "may make appropriate arrangements . . . with non-governmental organizations"                                  | 39 |
| Establishment of the Sub-Committee on Least-Developed Countries   | 30 | (i) Guidelines for Arrangements on Relations with Non-Governmental Organizations                                   | 39 |
| Work Programme for Least-Developed Countries  | 30 | (ii) Procedure to provide observer capacity  | 39 |
| Technical cooperation   | 30 | VII. ARTICLE VI  | 39 |
| Favourable and more preferential treatment for developing countries   | 32 | A. TEXT OF ARTICLE VI  | 39 |
| (v) Reference to GATT practice  | 33 | B. INTERPRETATION AND APPLICATION OF ARTICLE VI  | 39 |
| (b) Committee on Balance-of-Payments Restrictions   | 33 | 1. Article VI:1  | 39 |
| (i) Establishment and terms of reference  | 33 | (a) WTO Secretariat  | 39 |
| (ii) Rules of procedure   | 33 | 2. Article VI:2  | 40 |
| (iii) Reporting   | 33 | (a) "the Ministerial Conference shall appoint the Director-General"  | 40 |
| (iv) Activities   | 33 | (b) "regulations setting out the powers, duties, conditions of service and term of office of the Director-General" | 40 |
|   |    | 3. Article VI:3  | 40 |
|   |    | (a) "duties and conditions of service" of the WTO Secretariat  | 40 |
|   |    | (i) Staff Regulations and Rules  | 40 |
|   |    | (ii) WTO Pension Plan  | 40 |
|   |    | 4. Article VI:4: responsibilities and conduct of Director-General and Secretariat staff                            | 41 |

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| <b>VIII. ARTICLE VII</b>  | 41 | <b>1. Article X:1</b>  | 49 |
| A. TEXT OF ARTICLE VII  | 41 | (a) "Amendments to this Agreement or the Multilateral Trade Agreements in Annex 1"   | 49 |
| B. INTERPRETATION AND APPLICATION OF ARTICLE VII  | 41 | <b>2. Article X:3</b>  | 50 |
| 1. Article VII:1  | 41 | <b>3. Article X:9</b>  | 50 |
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I. PREAMBLE

A. TEXT OF THE PREAMBLE

The *Parties* to this Agreement,

*Recognizing* that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

*Recognizing* further that there is a need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development,

*Being desirous* of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

*Resolved*, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

*Determined* to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

B. INTERPRETATION AND APPLICATION OF THE PREAMBLE

1. Legal relevance of the Preamble

(a) First recital: environmental context

1. The Appellate Body in *US – Gasoline* emphasized the importance of the Preamble of the WTO Agreement in the context of environmental issues:

“Indeed, in the preamble to the WTO Agreement and in the Decision on Trade and Environment, there is specific acknowledgement to be found about the importance of coordinating policies on trade and the environment. WTO Members have a large measure of autonomy to determine their own policies on the environment (including its relationship with trade), their environmental objectives and the environmental legislation they enact and implement. So far as concerns the WTO, that autonomy is circumscribed only by the need to respect the requirements of the General Agreement and the other covered agreements.”<sup>1</sup>

2. In *US – Shrimp*, to interpret the meaning of “exhaustible natural resources” in GATT Article XX(g), the Appellate Body referred to the Preamble of the WTO Agreement:

“The words of Article XX(g), ‘exhaustible natural resources’, were actually crafted more than 50 years ago. They must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the environment. While Article XX was not modified in the Uruguay Round, the preamble attached to the WTO Agreement shows that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and international policy. The preamble of the WTO Agreement – which informs not only the GATT 1994, but also the other covered agreements – explicitly acknowledges ‘the objective of *sustainable development*’ . . .

From the perspective embodied in the preamble of the WTO Agreement, we note that the generic term ‘natural resources’ in Article XX(g) is not ‘static’ in its content or reference but is rather ‘by definition, evolutionary’ . . .

Given the recent acknowledgement by the international community of the importance of concerted bilateral or multilateral action to protect living natural resources, and recalling the explicit recognition by WTO Members of the objective of sustainable development in the preamble of the WTO Agreement, we believe it is too late in the day to suppose that Article XX(g) of the GATT 1994 may be read

<sup>1</sup> Appellate Body Report, *US – Gasoline*, p. 30.