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1 ARTICLE 1

1.1 Text of Article 1

finds it must be temporarily released from in order to pursue a course of action necessary to prevent or remedy serious injury that will constitute 'safeguard measures'. For example, where all of the conditions for the imposition of a 'safeguard measure' have been satisfied, a Member may choose to suspend its obligations under Article XI of the GATT 1994 for a period of time and restrict the volume of imports to a level that prevents or remedies serious injury to its domestic industry *in a way that would otherwise be inconsistent* with the prohibition on the application of quantitative restrictions in that Article. The suspension of the imposing Member's obligations under Article XI in this manner would allow it to 're-adjust temporarily the balance in the level of concessions between that Member and other exporting Members' to prevent or remedy serious injury. In the absence of an obligation preventing a Member's remedial action, there would be obviously no need for that Member to be released from a WTO commitment and, therefore, nothing to 're-adjust temporarily'.

It follows, therefore, that one of the defining features of the 'measures provided for' in Article XIX:1(a) (i.e. safeguard measures) is the suspension, withdrawal, or modification of a GATT obligation or concession that *precludes a Member from imposing a measure to the extent necessary to prevent or remedy serious injury*, in a situation where all of the conditions for the imposition of a safeguard measure are satisfied."⁴

3. On appeal, however, the definition of a safeguard measure made by the Panel in *Indonesia – Iron or Steel Products* was challenged by the parties as having conflated the constituent features of a safeguard measure with the conditions for their WTO-consistent application. The Appellate Body disagreed with the Panel's definition, and found that:

"[T]he Panel appears to have considered that, in order to qualify as a safeguard measure, a measure must operate 'to the extent and for such a time as may be necessary to prevent or remedy ... injury'. As discussed in paragraph 5.59 above, the issue of whether a measure is applied to the extent and for such time as may be necessary to prevent or remedy serious injury is not relevant to determ(n)-3 (j)1.3 (er)4.3 (mug ()0.6r)

"Following the second substantive meeting, Indonesia asserted that tariff obligations it incurred under the ASEAN-Korea (10%) and the ASEAN Trade in Goods (0%) RTAs prevented it from 'increase[ing] its tariff' on imports of galvalume. According to Indonesia, 'the application of the preferential tariffs u

scope of the measure pursuant to Article 9.1 does not necessarily mean that "the very same safeguard measure, *because of that discrimination*, suspends the obligation in Article I:1 to provide MFN-treatment for the purpose of Article XIX:1(a)."¹³ The Panel articulated this by highlighting two main considerations:

"First, the discrimination that is called for by Article 9.1 (which would otherwise be inconsistent with Article I:1 of the GATT 1994) is not intended to prevent or remedy o (9)2 (.)4dF8.[21.

provided for in Article XIX of GATT 1994. ... This suggests that Article XIX continues in full force and effect, and, in fact, establishes certain prerequisites for the imposition of safeguard measures. Furthermore, in Article 11.1(a), the ordinary meaning of the language 'unless such action *conforms with the provisions of that Article applied in accordance with this Agreement*' ... clearly is that any safeguard action must *conform with the provisions of Article XIX of the GATT 1994 as well as with the provisions of the Agreement on Safeguards*. Neither of these provisions states that any safeguard action taken after the entry into force of the *WTO Agreement* need only conform with the provisions of the *Agreement on Safeguards*.²⁵²⁶

15. The Appellate Body in *Argentina – Footwear (EC)* further rejected the Panel's conclusion that because the clause "[i]f, as a result of unforeseen developments ... concessions" in Article XIX:1(a) had been expressly omitted from Article 2.1 of the Agreement on Safeguards, safeguard measures that meet the requirements of the Agreement 1, e A01 Tw 5.7./0.0424 T2

19. The Panel in *US – Steel Safeguards* reiterated that GATT Article XIX and the Agreement on