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(a) A request for a waiver concerning this Agreement shall be submitted to the

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agreement through decision-making under the WTO Agreement or a
covered agreement which is a Plurilateral Trade Agreement."
2

2. In US – Wool Shirts and Blouses, the Appellate Body, in support of the Panel's exercise of
judicial economy referred to the exclusive authority of the Ministerial Conference and the General
Council to adopt interpretations of the WTO Agreement:
"As India emphasizes, Article 3.2 of the DSU states that the Members of the WTO
'recognize' that the dispute settlement system 'serves to preserve the rights and
obligations of Members under the covered agreements, and to clarify the existing
provisions of those agreements in accordance with customary rules of interpretation of
public international law' (emphasis added). Given the explicit aim of dispute
settlement that permeates the DSU, we do not consider that Article 3.2 of the DSU is
meant to encourage either panels or the Appellate Body to 'make law' by clarifying
existing provisions of the WTO Agreement outside the context of resolving a particular
dispute. A panel need only address those claims which must be addressed in order to
resolve the matter in issue in the dispute.

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manner that would undermine the amendment provisions in Article X'. A multilateral
interpretation should also be distinguished from a waiver, which allows a Member to
depart from an existing WTO obligation for a limited period of time. We consider that
a multilateral interpretation pursuant to Article IX:2 of the WTO Agreement can be
likened to a subsequent agreement regarding the interpretation of the treaty or the
application of its provisions pursuant to Article 31(3)(a) of the Vienna Convention, as
far as the interpretation of the WTO agreements is concerned."
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6. In US – Clove Cigarettes, the Appellate Body considered the interpretative value of
Paragraph 5.2 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns,
which provides that the phrase "a reasonable interval" in the context of Article 2.12 of the TBT
Agreement shall be understood to mean normally a period of at least six months.
9
 The Appellate
Body found that, in the absence of a specific recommendation from the Council for Trade in Goods
concerning the interpretation of Article 2.12 of the TBT Agreement made in accordance with
Article IX:2 of the WTO Agreement, Paragraph 5.2 of the Doha Ministerial Decision did not
constitute a multilateral interpretation adopted pursuant to Article IX:2 of the WTO Agreement.
Regarding the procedural requirements of Article IX:2, the Appellate Body stated that:
"Multilateral interpretations adopted pursuant to Article IX:2 of the WTO Agreement
have a pervasive legal effect. Such interpretations are binding on all Members. As we
see it, the broad legal effect of these interpretations is precisely the reason why
Article IX:2 subjects the adoption of such interpretations to clearly articulated and
strict decision-making procedures.
…
While Article IX:2 of the WTO Agreement confers upon the Ministerial Conference and
the General Council the exclusive authority to adopt multilateral interpretations of the
WTO Agreement, this authority must be exercised within the defined parameters of
Article IX:2. It seems to us that the view expressed by the Panel does not respect a
specific decision-making procedure established by Article IX:2 of the WTO Agreement.
In our view, to characterize the requirement to act on the basis of a recommendation
by the Council overseeing the functioning of the relevant Agreement as a 'formal
requirement' neither permits a panel to read that requirement out of a treaty
provision, nor to dilute its effectiveness.
Although the Panel's reasoning may be read as suggesting that the Ministerial
Conference could dispense with a specific requirement established by Article IX:2 of
the WTO Agreement, the terms of Article IX:2 do not suggest that compliance with
this requirement is dispensable. In this connection, we recall that, pursuant to
Article IX:2 of the WTO Agreement, the Ministerial Conference or the General Council
'shall' exercise their authority to adopt an interpretation of a Multilateral Trade
Agreement contained in Annex 1 to the WTO Agreement 'on the basis of a
recommendation' by the Council overseeing the functioning of that Agreement. We
consider that the recommendation from the relevant Council is an essential element of
Article IX:2, which constitutes the legal basis upon which the Ministerial Conference or
the General Council exercise their authority to adopt interpretations of the
WTO Agreement. Thus, an interpretation of a Multilateral Trade Agreement contained
in Annex 1 to the WTO Agreement must be adopted on the basis of a recommendation
from the relevant Council overseeing the functioning of that Agreement."
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7. However, the Appellate Body agreed with the Panel that Paragraph 5.2 of the Doha
Ministerial Decision nonetheless constitutes a "subsequent agreement between the parties" within
the meaning of Article 31(3)(a) of the Vienna Convention on the Law of Treaties. In the course of
its analysis, the Appellate Body offered the following observations on the relationship between
multilateral interpretations made under Article IX:2 of the WTO Agreement, and those which were

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should be construed as an agreement on issues not explicitly reflected in its terms and
conditions, justifying circumstances, and stated policy objectives. …
In