

1 ARTICLE IX OF THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

1.1 Text of Article IX

Article IX

Decision -Making

1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. <sup>1</sup> Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States <sup>2</sup> which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, <sup>3</sup> unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.

(footnote original) <sup>1</sup> The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.

(footnote original) Decisions by the General Council when convened as the Dispute Settlement Body shall be taken by a majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths

4 of the Members  
unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.

- (a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths<sup>4</sup> of the Members.
- (b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time-period, the relevant Council shall submit a report to the Ministerial Conference.
4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.
5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

## 1.2 Article IX:1

### 1.2.1 "The WTO shall continue the practice of decision-making by consensus"

1. The General Council adopted the decision on "Decision-Making Procedures Under Articles IX and XII of the WTO Agreement" on 15 November 1995. <sup>1</sup> See also paragraph 2 below.

## 1.3 Articles IX:3 and IX:4: Waivers

### 1.3.1 Decision-making procedures for granting a waiver in the WTO

2. On 15 November 1995, the General Council adopted a decision on "Decision-Making Procedures Under Articles IX and XII of the WTO Agreement":<sup>2</sup>

"On occasions when the General Council deals with matters related to requests for waivers or accessions to the WTO under Articles IX or XII

1.3.3 Waivers originally granted under the General Agreement on Tariffs and Trade 1947 (GATT 1947)

4. The language incorporating the GATT 1947 and other instruments into the General Agreement on Tariffs and Trade 1994 (GATT 1994) defines the "GATT 1994" as incorporating, inter alia "decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement". Footnote 6 to that text specified the waivers initially covered (certain waivers<sup>4</sup> that were in force as of the date of the Uruguay Round Final Act). The same footnote also mandated the Ministerial Conference to establish a revised list adjusted to allow for approval of new GATT 1947 waivers or expiry of existing such waivers, up to the WTO's date of entry into force. The revised list was issued in 1995.<sup>5</sup>

5. The Understanding in Respect of Waivers of Obligations under the GATT 1994 provides:

"Any waiver in effect on the date of entry into force of the WTO Agreement shall terminate, unless extended in accordance with the procedures [in the Understanding] and those of Article IX of the WTO Agreement, on the date of its expiry or two years from the date of entry into force of the WTO Agreement, whichever is earlier."

6. Accordingly, all GATT 1947 waivers have terminated, unless they were extended by a WTO decision. Regarding GATT practice concerning waivers, see the document on Article XXV of the GATT 1947 ([GATT Analytical Index](#)), pages 882- 888).

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<sup>4</sup> The list in MTN/W/FA referred to in footnote 6 omitted the 1955 waiver granted to the United States in connection with import restrictions imposed under Section 22 of the US Agricultural Adjustment Act (BISD 3S/32); the restrictions provided for in this waiver were tariffied in the Uruguay Round and in any event, this waiver was terminated by operation of the Understanding in Respect of Waivers of Obligations under the GATT 1994.

<sup>5</sup> [WT/L/3](#) and [Corr.1](#).