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## 1 PREAMBLE OF THE WTO AGREEMENT

### 1.1 Text of the Preamble

The *Parties* to this Agreement,

Recognizing that the primary objective of the Agreement is to raise standards of living, ensuring that the

## 1.2 General

1. The Panel in *EC - Tariff Preferences* observed that "[t]he WTO Agreement contains multiple policy objectives and all of these objectives are important".<sup>1</sup>

2. With reference to the first, third and fourth recitals, the Arbitrator in *US - COOL (Article 22.6 - United States)* noted that "while the economic gains ultimately derived from trade are not limited to trade flows themselves, the WTO Agreement frames such broader economic gains as an end for which trade and market access are an essential means".<sup>2</sup>

## 1.3 First recital

### 1.3.1 "expanding the production of and trade in goods"

3. In *EC - Asbestos*

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 as referring only to the conservation of exhaustible mineral or other non-living natural resourc

Members between trade and non-trade-related concerns. However, none of the objectives listed above, nor the balance struck between them, provides specific guidance on the question of whether Article XX of the GATT 1994 is applicable to Paragraph 11.3 of China's Accession Protocol. In the light of China's explicit commitment contained in Paragraph 11.3 to eliminate export duties and the lack of any textual reference to Article XX of the GATT 1994 in that provision, we see no basis to find that Article XX of the GATT 1994 is applicable to export duties found to be inconsistent with Paragraph 11.3."<sup>8</sup>

9. In *China - Rare Earths*, the Panel recalled that the role of the Preamble to the WTO Agreement as relevant context for interpreting Article XX(g) was confirmed by the Appellate Body in *US - Shrimp*, and stated:

"Indeed, a proper reading of Article XX(g) in the context of the GATT 1994 and the WTO Agreement should take into account the objective of using and managing resources in a sustainable manner that ensures the protection and conservation of the environment while at the same time not interfering with economic development. In other words, the objective of sustainable development is relevant to the interpretation of Article XX(g). However, this does not mean that sustainable development can be invoked as a basis to deviate from the requirements of subparagraph (g) of Article XX."<sup>9</sup>

10. In *India - Solar Cells*, India argued that its challenged measures were "necessary to secure compliance with laws or regulations" within the meaning of Article XX(d) of the GATT 1994. More specifically, India argued that it had an international legal obligation "to ensure ecologically sustainable growth while addressing India's energy security challenge, and ensuring compliance with its obligations relating to climate change". According to India, this obligation was several international instruments, including the first recital of the Preamble to the WTO Agreement. The Panel found that India had failed to demonstrate that the international instruments it had identified could be characterized as "laws or regulations" within the meaning of Article XX(d). The Appellate Body upheld the Panel's finding.<sup>10</sup>

11. In *India - Solar Cells*, the Appellate Body also considered the first recital in interpreting the scope of the exception in Article XX(j) of the GATT 1994. The Appellate Body found that a product is in "short supply" within the meaning of that provision where the quantity of available supply from both domestic and international sources in the relevant geographical market is insufficient to meet demand:

"Our interpretation of Article XX(j) of the GATT 1994 is in consonance with the preamble of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), which refers to 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 [Members'] respective needs and concerns at different levels of economic development'. The different levels of economic development of Members may, depending on the circumstances, impact the availability of supply of a product in a given market. Developing countries may, for example, have less domestic production, and may be more vulnerable to disruptions in supply than developed countries. Such factors may be relevant in assessing the *availability* of a product in a particular case, and thus in assessi t



countries may have different needs according to their levels of development and particular circumstances."<sup>16</sup>

### 1.5 Third recital

#### 1.5.1 "entering into reciprocal and mutually advantageous arrangements"

17. In *EC - Computer Equipment*, the Appellate Body stated that:

"[T]he security and predictability of 'the reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade' is an object and purpose of the WTO Agreement, generally, as well as of the GATT 1994."<sup>17</sup>

18. In *EC - Chicken Cuts*, the Panel stated that:

"Taken together, the relevant aspects of the WTO Agreement and the GATT 1994 indicate that concessions made by WTO Members should be interpreted so as to further the general objective of the expansion of trade in goods and the substantial reduction of tariffs. It is also clear that such an interpretation is limited by the condition that arrangements entered into by Members be reciprocal and mutually advantageous. In other words, the terms of a concession should not be interpreted in such a way that would disrupt the balance of concessions negotiated by the parties. Finally, the interpretation must ensure the security and predictability of the reciprocal and mutually advantageous arrangements manifested in the form of concessions."

... If the Panel's interpretation that paragraph 9 of the Bananas Framework Agreement 'extinguished' the tariff quota concession from Part I, Section I-B of the European Communities' Schedule were accepted, only the out-of-quota tariff rate bound in Part I, Section I-A at a level of at €680/mt would remain, coupled with a requirement to consult on a rebinding. In our view, this would not provide security or predictability of tariff concessions and would not promote the objective of expanding trade and reducing barriers to trade through the negotiation of reciprocal and mutually advantageous concessions and arrangements."<sup>20</sup>

21. The Panel in *EU - Poultry (China)* referred to the third recital of the Preamble in describing Article XXVIII, concerning the modification of Schedules:

"On the other hand, one of the specific objects and purposes of Article XXVIII is to allow Members to make tariff concessions by providing them with flexibility to withdraw or modify those concessions subsequently, if necessary, in accordance with the procedures provided for therein. In this way, the right to modify or withdraw concessions supports the overarching object and purpose, which find 796.92 s841.92 reW.32 841.92 ( )-407

'*Reaffirming* that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members;'

and in the Preamble to the WTO Agreement:

'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 commerce ...'  
(emphasis added)

We also recall the Singapore Ministerial Declaration:

'7. ... We reaffirm the primacy of the multilateral trading system, which includes a framework for the development of regional trade agreements, and we renew our commitment to ensure that regional trade agreements are complementary to it and consistent with its rules'

From the above cited provisions, we draw two general conclusions for the present case. Firstly, the objectives of regional trade agreements and those of the GATT and the WTO have always been complementary, and therefore should be interpreted consistently with one another, with a view to increasing trade and not to raising barriers to trade, thereby arguing against an interpretation that would allow, on the occasion of the formation of a customs union, for the introduction of quantitative restrictions. Secondly, we read in these parallel objectives a recognition that the provisions of Article XXIV (together with those of the GATT 1994 Understanding on Article XXIV) do not constitute a shield from other GATT/WTO prohibitions, or a justification for the introduction of measures which are considered generally to be ipso facto incompatible with GATT/WTO. In our view the provisions of Article XXIV on regional trade agreements cannot be considered to exempt constituent members of a customs union from the primacy of the WTO rules."<sup>25</sup>

24. The Panel in *US - Line Pipe* found that the rules in Article XIII of the GATT 1994, regarding the non-discriminatory administration of quantitative restrictions, apply to safeguard measures. In the Panel's view, the alternative interpretation would be contrary to the object and purpose of eliminating discriminatory treatment as reflected in the third recital:

"If Article XIII did not apply to tariff quota safeguard measures, such safeguard measures would escape the majority of the disciplines set forth in Article 5 [of the Safeguards Agreement]. This is an important consideration, given the quantitative aspect of a tariff quota. For example, if Article XIII did not apply, quantitative criteria regarding the availability of lower tariff rates could be introduced in a discriminatory manner, without any consideration to prior quantitative performance. In our view 5.3260 01e



## 1.6 Fourth recital

### 1.6.1 "Ub'bhY[ fUHYX'Å multilateral trading system"

25. In *Brazil - Desiccated Coconut*, the Panel noted that:

"[O]ne of the central objects and purposes of the WTO Agreement, as reflected in the Preamble to that Agreement, is 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 ...'. This is one of the reasons that the WTO Agreement is a single undertaking, accepted by all Members."<sup>27</sup>

26. The Appellate Body Report in *Brazil - Desiccated Coconut* also relied on the Preamble in the course of its analysis, stating:

"The authors of the new WTO regime intended to put an end to the fragmentation that had characterized the previous system. This can be seen from the preamble to the *WTO Agreement* which states, in pertinent part:

*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 trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations."<sup>28</sup>

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Current as of: December 2023

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<sup>27</sup> Panel Report, *Brazil - Desiccated Coconut*, para. 242.

<sup>28</sup> Appellate Body Report, *Brazil - Desiccated Coconut*, p. 17.