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Members,

Having in mind the overall objective of the Members to improve and strengthen the international trading system based on GATT 1994;

Recognizing the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of GATT 1994, is called for;

Hereby *agree* as follows:

1.2 General

1. In *Korea – Dairy*, the Appellate Body referred to the Preamble of the Agreement on Safeguards as additional support for its finding that all provisions of both Article XIX of GATT 1994 and the Agreement on Safeguards apply cumulatively and must be given their full meaning and legal effect:¹

"Our reading ... is consistent with the desire expressed by the Uruguay Round negotiators in the Preamble to the *Agreement on Safeguards* 'to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX ..., to re-establish multilateral control over safeguards and eliminate measures that escape such control ...' In furthering this statement of the object and purpose of the *Agreement on Safeguards*, it must always be remembered that safeguard measures result in the temporary suspension of treaty concessions or the temporary withdrawal of treaty obligations, which are fundamental to the WTO Agreement, such as those in Article II and Article XI of the GATT 1994."²

2. In a finding subsequently upheld by the Appellate Body, the Panel in *US – Lamb* rejected the United States argument that the term "domestic industry" under Article 4.1(c) should be defined on the basis of a "continuous line of production" and a "coincidence of economic interests". The Panel then referred to the object and purpose of the Agreement on Safeguards, as evidenced in the Preamble, as relevant context for its more restrictive approach to the concept of "domestic industry":

"In our view, [our] reading of the industry definition is consistent with the object and purpose of the Safeguards Agreement. In particular, this reading is consistent with the Agreement's objectives of, on the one hand, creating a mechanism for effective, temporary protection from imports to an industry that is experiencing serious injury or threat thereof from imports in the wake of trade liberalization, and on the other hand, encouraging 'structural adjustment', and 'clarify[ing] and reforc[ing] the disciplines

¹ With respect to the term "unforeseen developments", see the Section on Article XIX of the GATT 1994.

² Appellate Body Report, *Korea – Dairy*, para. 88. See also Appellate Body Report, *Argentina – Footwear*, para. 95.

of ... Article XIX of GATT', in view of 'the need to enhance rather than limit competition in international markets'.

If WTO law were not to offer a 'safety valve' for situations in which, following trade liberalization, imports increase so as to cause serious injury or threat thereof to a domestic industry, Members could be deterred from entering into additional tariff concessions and from engaging in further trade liberalization. It is for this reason that the safeguard mechanism in Article XIX has always been an integral part of the GATT. ... [W]e note that SG Article XIX of GATT 1994 as well as SG Article 11.1 both refer to safeguard measures as 'emergency' measures, and the Appellate Body has characterized them as 'extraordinary' remedies.³ A conceptual approach to defining the relevant domestic industry which would leave it to the discretion of competent national authorities how far upstream and/or downstream the production chain of a given 'like' end product to look in defining the scope of the domestic industry could easily defeat the Safeguards Agreement's purpose of reinforcing disciplines in the field of safeguards and enhancing rather than limiting competition."⁴

3. The Appellate Body in *US – Lamb* referred to the object and purpose of the Agreement on Safeguards in distinguishing between the concepts of "serious injury" under the Agreement on Safeguards and "material injury" under the Anti-Dumping Agreement and the SCM Agreement:

"We believe that the word 'serious' connotes a much higher standard of injury than the word 'material'. Moreover, we submit that it accords with the object and purpose of the *Agreement on Safeguards* that the injury standard for the application of a safeguard measure should be higher than the injury standard for anti-dumping or countervailing measures."⁵

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³ (*footnote original*) Appellate Body Report on *Argentina – Footwear*, para. 94.

⁴ Panel Report, *US – Lamb*, paras. 7.76-7.77.

⁵ Appellate Body Report, *US – Lamb*, para. 124.