

1 PREAMBLE	1
1.1 Text of the Preamble.....	1
1.2 General.....	1

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Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

- (a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;
- (b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;
- (c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;
- (d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and
- (e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

1.2 General

1. The Panel in *Australia – Tobacco Plain Packaging*, in considering the types of reasons that might sufficiently support the application of special requirements that may be considered not to

"unjustifiably" encumber the use of a trademark in the course of trade within the meaning of Article 20, noted that:

"[T]he first recital of the preamble to the TRIPS Agreement expresses a key objective of the TRIPS Agreement, namely to 'reduce distortions and impediments to international trade' and takes into account the need, on one hand, 'to promote effective and adequate protection of intellectual property rights' and, on the other, 'to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade'.

...

Articles 7 and 8, together with the preamble of the TRIPS Agreement, set out general goals and principles underlying the TRIPS Agreement, which are to be borne in mind when specific provisions of the Agreement are being interpreted in their context and in light of the object and purpose of the Agreement."¹

2. In *India – Patents (US)*, the Appellate Body referred to a part of the preamble in its interpretation of Article 70.8(a):

"The Panel's interpretation here [of Article 70.8(a)] is consistent also with the object and purpose of the TRIPS Agreement. The Agreement takes into account, inter alia, 'the need to promote effective and adequate protection of intellectual property rights'."²

3. In *EC – Trademarks and Geographical Indications*, the Panel referred to the preamble to confirm its observation that the text of the national treatment obligation in Article 3.1 of the TRIPS Agreement combines elements both from pre-existing intellectual property conventions and GATT 1994:

"It is useful to recall that Article 3.1 of the TRIPS Agreement combines elements of national treatment both from pre-existing intellectual property agreements and GATT 1994. ... This combination of elements is reflected in the preamble to the TRIPS Agreement which explains the purpose of the "basic principles" in Articles 3 and 4 (a term highlighted in the title of Part I)

'Recognizing, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;"³

4. In *EC – Trademarks and Geographical Indications*, the Panel referred *inter alia* to the preamble to ascertain the object and purpose of the TRIPS Agreement:

"The ordinary meaning of the terms in their context must also be interpreted in light of the object and purpose of the agreement. The object and purpose of the TRIPS Agreement, as indicated by Articles 9 through 62 and 70 and reflected in the preamble, includes the provision of adequate standards and principles concerning the availability, scope, use and enforcement of trade-related intellectual property rights. This confirms that a limitation on the standards for trademark or GI protection should not be implied unless it is supported by the text."⁴

5. In *EC – Trademarks and Geographical Indications*, the Panel referred to the preamble to confirm its view that "interested parties" for the purposes of Article 22.2 can be "private parties":

¹ Panel Reports, *Australia – Tobacco Plain Packaging*, paras. 7.2398 and 7.2402.

² Appellate Body Report, *India – Patents (US)*, para. 57.

³ Panel Reports, *EC – Trademarks and Geographical Indications (US)*, para. 7.131, and (*Australia*), para. 7181.

⁴ Panel Reports, *EC – Trademarks and Geographical Indications (US)*, para. 7.620, and (*Australia*), para. 7.620.

"Article 1.3 provides that 'Members shall accord the treatment provided for in this Agreement to the nationals of other Members'. That includes the protection provided for in Article 22.2, which obliges Members to provide legal means for 'interested parties'. The interested parties must qualify as 'nationals of other Members' in accordance with the criteria referred to in Article 1.3. These persons can be private parties, which is reflected in the fourth recital of the preamble to the agreement, which reads '[r]ecognizing that intellectual property rights are private rights'."⁵

Current as of: December 2020

⁵ Panel Report, *EC – Trademarks and Geographical Indications (US)*, para. 7.742. See also Panel Reports, *EC – Trademarks and Geographical Indications (US)* para. 7.682 and (*Australia*), para. 7.680.