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1 ARTICLE X

1.1 Text of Article X

Article X

Amendments

1. Any Member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. The Councils listed in paragraph 5 of Article IV may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in Annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the Ministerial Conference any decision by the Ministerial Conference to submit the proposed amendment to the Members for acceptance shall be taken by consensus. Unless the provisions of paragraphs 2, 5 or 6 apply, that decision shall specify whether the provisions of paragraphs 3 or 4 shall apply. If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members for acceptance. If consensus is not reached at a meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and 6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial Conference decides by a three-fourths majority of the Members that the provisions of paragraph 4 shall apply.

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members:

- Article IX of this Agreement;
- Articles I and II of GATT 1994;
- Article II:1 of GATS;
- Article 4 of the Agreement on TRIPS.

3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.

4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligations of the Members, shall take effect for all Members upon acceptance by two thirds of the Members.

5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Member upon

acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under the preceding provision is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all Members upon acceptance by two thirds of the Members.

6. Notwithstanding the other provisions of this Article, amendments to the Agreement on TRIPS meeting the requirements of paragraph 2 of Article 71 thereof may be adopted by the Ministerial Conference without further formal acceptance process.

7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.

8. Any Member of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in Annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The decision to approve amendments to the Multilateral Trade Agreement in Annex 2 shall be made by consensus and these amendments shall take effect for all Members upon approval by the Ministerial Conference. Decisions to approve amendments to the Multilateral Trade Agreement in Annex 3 shall take effect for all Members upon approval by the Ministerial Conference.

9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

1.2 Relationship to Article XXVIII (Modification of Schedules)

1. In *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, the Appellate Body confirmed that the modification of schedules "does not require formal amendment" pursuant to Article X of the WTO Agreement, and is not subject to the "formal acceptance process" provided for in Article X:7 of the WTO Agreement. The Appellate Body set forth its understanding of the relationship between Article X of the WTO Agreement and Article XXVIII of the GATT 1994 as follows:

"Article X of the *WTO Agreement* sets out rules and procedures to amend the provisions in the Multilateral Trade Agreements. Article X specifies the process and quorum required to amend particular provisions or covered agreements. Amendments, unlike waivers, are not limited in time and create new or modify existing rights and obligations for WTO Members. Special rules on acceptance and entry into force apply, depending on the provisions that are being amended and on whether the amendment 'would alter the rights and obligations of the Members'. Amendments to the *WTO Agreement* and to a Multilateral Trade Agreement in Annex 1 enter into force following a formal acceptance process pursuant to Article X:7.

The modification of Schedules of Concessions, which are an integral part of the GATT 1994, does not require a formal amendment pursuant to Article X of the *WTO Agreement*, but is enacted through a special procedure set out in Article XXVIII of the GATT 1994 or through multilateral rounds of tariff negotiations. Pursuant to Article XXVIII, a Member may modify or withdraw a concession annexed to the GATT 1994 by negotiation and agreement with other Members that are 'primarily concerned', and in consultation with Members that have a substantial interest in the concession. Article XXVIII:2 provides that, in an agreement on the renegotiation of a concession, which may include compensatory adjustment, WTO Members 'shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior

to such negotiations'. If an agreement cannot be reached, the modifying Member is free to modify or withdraw the concession, while other Members that are primarily concerned or have a substantial interest in the concession are free to withdraw substantially equivalent concessions initially negotiated with the modifying Member."¹

1.3 Relationship to general international law rules governing the modification of treaties

2. In *Peru – Agricultural Products*, the Appellate Body stated, with reference to Articles IX and X of the WTO Agreement, that "the WTO agreements contain specific provisions addressing amendments, waivers, or exceptions for regional trade agreements², which prevail over the general provisions of the Vienna Convention, such as Article 41."³

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¹ Appellate Body Reports, *EC – Bananas III (Art. 21.5 – Ecuador II) / EC – Bananas III (Art. 21.5 – US)*, paras. 384-385.

² (*footnote original*) Article X of the WTO Agreement sets out detailed procedures "to amend the provisions of this Agreement or the Multilateral Trade Agreements". Article IX of the WTO Agreement gives the Ministerial Conference and the General Council the exclusive authority to adopt interpretations of the WTO Multilateral Trade Agreements and to waive obligations imposed on Members under these agreements. Importantly, Article XXIV of the GATT 1994 and Article V of the GATS provide for regional trade exceptions, allowing WTO Members to depart from specific rights and obligations under the WTO covered agreements when they form customs unions, free trade areas or agreements liberalizing trade in services. Developing countries entering into regional trade agreements covering trade in goods with other developing countries may also avail themselves of the exception provided by the Enabling Clause. We note, however, that neither participant has invoked or relied upon the Enabling Clause in respect of the FTA at issue.

³ Appellate Body Report, *Peru – Agricultural Products*, para. 5.112.