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1.1 Text of Article II

Article II

Scope of the WTO

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.
2. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members.
3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.
4. The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as "GATT 1994") is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as "GATT 1947").

1.2 Article II:2

1.2.1 "integral parts of this Agreement, binding on all Members"

1. In *Brazil – Desiccated Coconut*, the Appellate Body referred to Article II:2 in the context of observing that the WTO Agreement is a single treaty, accepted as a "single undertaking":

"Unlike the previous GATT system, the *WTO Agreement* is a single treaty instrument which was accepted by the WTO Members as a 'single undertaking'. Article II:2 of the *WTO Agreement* provides that the Multilateral Trade Agreements in Annexes 1, 2 and 3 are 'integral parts' of the *WTO Agreement*, binding on all Members. ...

The single undertaking is further reflected in the provisions of the *WTO Agreement* dealing with original membership, accession, non-application of the Multilateral Trade Agreements between particular Members, acceptance of the *WTO Agreement*, and withdrawal from it.¹⁶ Within this framework, all WTO Members are bound by all the rights and obligations in the *WTO Agreement* and its Annexes 1, 2 and 3."¹

2. In *Argentina – Footwear (EC)*, the Appellate Body referred to Article II:2 as a basis to find that Article XIX of the GATT 1994 and the Safeguards Agreement are an "inseparable package", and apply cumulatively:

¹ Appellate Body Report, *Brazil – Desiccated Coconut*, pp. 11-12.

"The GATT 1994 and the *Agreement on Safeguards* are both Multilateral Agreements on Trade in Goods contained in Annex 1A of the *WTO Agreement*, and, as such, are both 'integral parts' of the same treaty, the *WTO Agreement*, that are 'binding on all Members'. Therefore, the provisions of Article XIX of the GATT 1994 and the provisions of the *Agreement on Safeguards* are all provisions of one treaty, the *WTO Agreement*. They entered into force as part of that treaty at the same time. They apply equally and are equally binding on all WTO Members. And, as these provisions relate to the same thing, namely the application by Members of safeguard measures, the Panel was correct in saying that 'Article XIX of GATT and the Safeguards Agreement must *a fortiori* be read as representing an *inseparable package* of rights and disciplines which have to be considered in conjunction.' Yet a treaty interpreter must read all applicable provisions of a treaty in a way that gives meaning to *all* of them, harmoniously. And, an appropriate reading of this 'inseparable package of rights and disciplines' must, accordingly, be one that gives meaning to *all* the relevant provisions of these two equally binding agreements."²

3. In *Australia – Apples*, the Appellate Body noted that "because Annex A(1) to the *SPS Agreement* and Article III:1 of the *GATT 1994* form part of the same treaty by virtue of Article II:2 of the *WTO Agreement*, each constitutes context relevant to the interpretation of the other."³

4. In *China – Rare Earths*, the Appellate Body found that Article XX of the *GATT 1994* is not applicable to the obligation in paragraph 11.3 of China's Accession Protocol. In the course of its analysis, the Appellate Body observed that:

"As has been established in a number of disputes to date, the mere fact that each of the Multilateral Trade Agreements is an integral part of the Marrakesh Agreement by virtue of Article II:2 of the Marrakesh Agreement does not, in and of itself, answer the question as to how specific rights and obligations contained in those Multilateral Trade Agreements relate to each other, particularly when they are contained in different instruments that nevertheless relate to the same subject matter."⁴

5. The Appellate Body also elaborated on the relationship between Articles II:2 and XII:1 of the *WTO Agreement*:

"Article II:2 provides that '[t]he agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as 'Multilateral Trade Agreements') are integral parts of this Agreement, binding on all Members.' The dictionary meaning of the word 'integral' includes '[b]elonging to or making up a whole', and 'constituent, component; necessary to the completeness or integrity of the whole, not merely attached'. The reference to 'integral parts' in Article II:2, therefore, indicates that the Multilateral Trade Agreements annexed to the Marrakesh Agreement are necessary components of the single package of WTO rights and obligations. Article II:2 thus stipulates the requirement on *existing* WTO Members to abide by the obligations under all of the agreements in this package. Article XII:1, which concerns accession, extends the same requirement to acceding Members. As Japan submits on appeal, 'Article II:2 defines the scope of the application of the Multilateral Trade Agreements on existing Members, whereas Article XII regulates the process of acceding to ... the *WTO Agreement* by a prospective WTO Member.' These two provisions thus serve closely related, albeit distinct, functions; they are not merely duplicative of each other. Read together, they ensure that the fundamental principle of the single undertaking applies to both existing and newly acceded Members of the *WTO*."⁵

6. Regarding the meaning of the terms "integral part" in the context of Article II:1 and more generally, the Appellate Body observed that:

"The term 'integral part' is used frequently in the covered agreements in order to integrate one or more agreements (or legal instruments) into another agreement. An

² Appellate Body Report, *Argentina – Footwear (EC)*, para. 81.

³ Appellate Body Report, *Australia – Apples*, fn 285.

⁴ Appellate Body Reports, *China – Rare Earths*, para. 5.53.

⁵ Appellate Body Reports, *China – Rare Earths*, para. 5.30.

example is Article II:2 of the Marrakesh Agreement, which, as noted above, stipulates that the Multilateral Trade Agreements included in Annexes 1, 2, and 3 'are integral parts of' the Marrakesh Agreement, binding on all Members.

The term 'integral part' is also used in numerous other instances throughout the covered agreements in which the relevant legal instruments are 'made an integral part of' another covered agreement or the agreements to which they are annexed. For example, Article 3.1 of the Agreement on Agriculture provides that the domestic support and export subsidy commitments in Part IV of each Member's Schedule 'are hereby made an integral part of GATT 1994'. In most other instances, references are made to annexes being an 'integral part' of the agreement to which they are annexed, similar to the reference to 'integral parts' in Article II:2 of the Marrakesh Agreement. For example, Article II:7 of the GATT 1994 states that: '[t]he Schedules annexed to this Agreement are hereby made an integral part of Part I of this Agreement.' Other examples include Agreement on Agriculture, Article 21.2 (with respect to its annexes); Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Article 1.3 (with respect to its annexes); TBT Agreement, Article 15.5 (with respect to its annexes); Anti-Dumping Agreement, Article 18.7 (with respect to its annexes); the Agreement on Subsidies and Countervailing Measures (SCM Agreement), Article 32.8 (with respect to its annexes); Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Agreement on Customs Valuation), Article 14 (with respect to its interpretative notes and annexes); Agreement on Rules of Origin, Article 9.4 (with respect to the results of the harmonization work programme to be established by the Ministerial Conference as an annex); and GATS, Article XX:3 (with respect to the schedules of specific commitments) and Article XXIX (with respect to its annexes)."⁶

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⁶ Appellate Body Reports, *China – Rare Earths*, para. 5.41 and fn 455.