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## **1 ARTICLE III**

### **1.1 Text of Article III**

#### ***Article III***

##### *Functions of the WTO*

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.
3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.
4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.
5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

### **1.2 Article III:2**

#### **1.2.1 "multilateral trade relations"**

1. In *US – Shrimp*, the Panel referred to several provisions, including Article III:2, in the context of concluding that the WTO Agreement "favours a multilateral approach to trade issues":

"We also note that, by its very nature, the WTO Agreement favours a multilateral approach to trade issues. The Preamble to the WTO Agreement provides that Members are 'resolved ... to develop an integrated, more viable and durable *multilateral trading system* [and] ... determined to preserve the basic principles and to further the objectives underlying this *multilateral trading system*' (emphasis added). Article III:2 of the WTO Agreement also mentions that:

'The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also

provide for a forum for further negotiations among its Members concerning their multilateral trade relations ...'.<sup>1</sup>

This approach is also expressed in Article 23.1 of the DSU which stresses the primacy of the *multilateral* system and rejects unilateralism as a substitute for the procedures foreseen in that agreement."<sup>2</sup>

2. On appeal, the Appellate Body reversed the Panel's interpretation of Article XX of the GATT 1994. In the course of its analysis, the Appellate Body stated that:

"[T]he Panel arrived at the very broad formulation that measures which 'undermine the WTO multilateral trading system' must be regarded as 'not within the scope of measures permitted under the chapeau of Article XX.' Maintaining, rather than undermining, the multilateral trading system is necessarily a fundamental and pervasive premise underlying the WTO Agreement; but it is not a right or an obligation, nor is it an interpretative rule which can be employed in the appraisal of a given measure under the chapeau of Article XX.

...

[C]onditioning access to a Member's domestic market on whether exporting Members comply with, or adopt, a policy or policies unilaterally prescribed by the importing Member may, to some degree, be a common aspect of measures falling within the scope of one or another of the exceptions (a) to (j) of Article XX."<sup>3</sup>

### 1.3 Article III:5

#### 1.3.1 "the WTO shall cooperate, as appropriate" with the IMF

3. In *Argentina – Textiles and Apparel*, the Appellate Body upheld the Panel's finding that there is nothing in the Agreement Between the IMF and the WTO, the Declaration on the Relationship of the WTO with the IMF or the Declaration on Coherence which justifies a conclusion that a Member's commitments to the IMF shall prevail over its obligations under Article VIII of the GATT 1994. The Appellate Body explained:

"The 1994 Declaration on Coherence is a Ministerial decision that articulates the objective of promoting increased cooperation between the WTO and the IMF in order to encourage greater coherence in global economic policy-making. This objective is more explicitly recognized in the treaty language of the *WTO Agreement* in Article III:5, which states:

'With a view to achieving greater coherence in global economic policy-making, *the WTO shall cooperate, as appropriate*, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.' (emphasis added)

In furtherance of the WTO's mandate to 'cooperate, as appropriate' with the IMF, the *Agreement Between the IMF and the WTO* was concluded in 1996.<sup>4</sup> This Agreement provides for specific means of administrative cooperation between the two organizations. It provides for consultations and the exchange of information between

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<sup>1</sup> (*footnote original*) The emphasis on multilateralism is also found in the General Agreement on Trade in Services, where the second paragraph of its Preamble states that Members wish to "establish a *multilateral* framework of principles and rules for trade in services ..." (emphasis added). Similarly, the Preamble to the Agreement on Trade-Related Aspects of Intellectual Property Rights stresses the need for a multilateral approach (TRIPS Agreement, Preamble, paras. 3 and 7). See also Marrakesh Declaration, 15 April 1994, para. 2.

<sup>2</sup> Panel Report, *US – Shrimp*, para. 7.43.

<sup>3</sup> Appellate Body Report, *US – Shrimp*, paras. 116 and 121.

<sup>4</sup> (*footnote original*) Done at Singapore, 9 December 1996.

the WTO Secretariat and the staff of the IMF in certain specified circumstances, and grants to each organization observer status in certain of the other's meetings.<sup>5</sup>

The *Agreement Between the IMF and the WTO*, however, does *not* modify, add to or diminish the rights and obligations of Members under the *WTO Agreement*, nor does it modify individual States' commitments to the IMF. It does not provide any substantive rules concerning the resolution of possible conflicts between obligations of a Member under the *WTO Agreement* and obligations under the Articles of Agreement of the IMF or any agreement with the IMF. However, paragraph 10 of the *Agreement Between the IMF and the WTO* contains a direction to the staff of the IMF and the WTO Secretariat to *consult* on 'issues of *possible inconsistency between measures under discussion*'.

In the 1994 Declaration on the Relationship of the WTO with the IMF, Ministers reaffirmed that, unless otherwise provided for in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, 'the relationship of the WTO with the International Monetary Fund, with regard to the areas covered by the Multilateral Trade Agreements in Annex 1A of the *WTO Agreement*, will be based on the provisions that have governed the relationship of the CONTRACTING PARTIES to the GATT 1947 with the International Monetary Fund.' We note that certain provisions of the GATT 1994, such as Articles XII, XIV, XV and XVIII, permit a WTO Member, in certain specified circumstances relating to exchange matters and/or balance of payments, to be excused from certain of its obligations under the GATT 1994. However, Article VIII contains no such exception or permission."<sup>6</sup>

4. In *Argentina – Textiles and Apparel*, rejecting the claim that the Panel did not make "an objective assessment of the matter" as required under Article 11 of the DSU, by not acceding to the parties' request to seek information from the IMF so as to obtain its opinion on certain issues, the Appellate Body stated that "[a]s in the *WTO Agreement*, there are no provisions in the *Agreement Between the IMF and the WTO* that *require* a panel to consult with the IMF in a case such as this"<sup>7</sup> (i.e. a case not involving Article XV:2). In this relation, see the Section on the DSU, and the Section on Article XV of the GATT 1994.

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<sup>5</sup> (*footnote original*) Excluding the DSB and dispute settlement panels, except where "matters of jurisdictional relevance to the Fund are to be considered". The WTO may invite a member of the staff of the Fund to attend a meeting of DSB "when the WTO, after consultation between the WTO Secretariat and the staff of the Fund, finds that such a presence would be of particular common interest to both organizations." *Agreement Between the IMF and the WTO*, para. 6.

<sup>6</sup> Appellate Body Report, *Argentina – Textiles and Apparel*, paras. 70-73.

<sup>7</sup> Appellate Body Report, *Argentina – Textiles and Apparel*, para. 85. In para. 84 of its Report, the Appellate Body made clear that the case before it did not relate to matters addressed in Article XV:2 of the GATT 1994 (a provision which, as the Appellate Body recognized, does require the WTO to consult with the IMF when dealing with certain problems).