1 PREAMBLE OF THE WTO AGREEMENT

1.1 Text of the Preamble

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

Recognizing further that there is a need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the eliminations of discriminatory treatment in international trade relations,

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

1.2 General

1. The Panel in *EC – Tariff Preferences* observed that "[t]he WTO Agreement contains multiple policy objectives and all of these objectives are important".[1]

2. With reference to the first, third and fourth recitals, the Arbitrator in *US – COOL (Article 22.6 – United States)* noted that "while the economic gains ultimately derived from trade are not limited to trade flows themselves, the WTO Agreement frames such broader economic gains as an end for which trade and market access are an essential means".[2]

1.3 First recital

1.3.1 "expanding the production of and trade in goods"

3. In *EC – Asbestos*, the Panel stated that "although the preamble to the WTO Agreement refers in particular to expanding trade in goods, it does not give sufficiently precise information on the terms which we must interpret".[3]

1.3.2 "the objective of sustainable development, seeking both to protect and preserve the environment"

4. The Appellate Body in *US – Gasoline* emphasized the importance of the Preamble of the WTO Agreement in the context of environmental issues:

> "Indeed, in the preamble to the WTO Agreement and in the Decision on Trade and Environment, there is specific acknowledgement to be found about the importance of coordinating policies on trade and the environment. WTO Members have a large measure of autonomy to determine their own policies on the environment (including its relationship with trade), their environmental objectives and the environmental legislation they enact and implement. So far as concerns the WTO, that autonomy is circumscribed only by the need to respect the requirements of the General Agreement and the other covered agreements."[4]

5. In *US – Shrimp*, the Appellate Body referred to the objective of "sustainable development" in the Preamble of the WTO Agreement when interpreting the terms "exhaustible natural resources" in GATT Article XX(g):

> "The words of Article XX(g), 'exhaustible natural resources', were actually crafted more than 50 years ago. They must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the environment. While Article XX was not modified in the Uruguay Round, the preamble attached to the WTO Agreement shows that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and international policy. The preamble of the WTO Agreement -- which informs not only the GATT 1994, but also the other covered agreements -- explicitly acknowledges 'the objective of *sustainable development*' …
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> From the perspective embodied in the preamble of the WTO Agreement, we note that the generic term 'natural resources' in Article XX(g) is not 'static' in its content or reference but is rather 'by definition, evolutionary'. …
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> Given the recent acknowledgement by the international community of the importance of concerted bilateral or multilateral action to protect living natural resources, and recalling the explicit recognition by WTO Members of the objective of sustainable

[1] Panel Report, *EC – Tariff Preferences*, para. 7.52.
[2] Decision by the Arbitrator, *US – COOL (Article 22.6 – United States)*, para. 5.22.
[3] Panel Report, *EC – Asbestos*, para. 8.48.
[4] Appellate Body Report, *US – Gasoline*, p. 30.

development in the preamble of the WTO Agreement, we believe it is too late in the day to suppose that Article XX(g) of the GATT 1994 may be read as referring only to the conservation of exhaustible mineral or other non-living natural resources."[5]

6. On this topic, the Appellate Body in *US – Shrimp* further stated:

"At the end of the Uruguay Round, negotiators fashioned an appropriate preamble for the new WTO Agreement, which strengthened the multilateral trading system by establishing an international organization, inter alia, to facilitate the implementation, administration and operation, and to further the objectives, of that Agreement and the other agreements resulting from that Round. In recognition of the importance of continuity with the previous GATT system, negotiators used the preamble of the GATT 1947 as the template for the preamble of the new WTO Agreement. Those negotiators evidently believed, however, that the objective of 'full use of the resources of the world' set forth in the preamble of the GATT 1947 was no longer appropriate to the world trading system of the 1990's. As a result, they decided to qualify the original objectives of the GATT 1947 with the following words:

> … while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development, …'

We note once more that this language demonstrates a recognition by WTO negotiators that optimal use of the world's resources should be made in accordance with the objective of sustainable development. As this preambular language reflects the intentions of negotiators of the WTO Agreement, we believe it must add colour, texture and shading to our interpretation of the agreements annexed to the WTO Agreement, in this case, the GATT 1994. We have already observed that Article XX(g) of the GATT 1994 is appropriately read with the perspective embodied in the above preamble …'

It is proper for us to take into account, as part of the context of the chapeau, the specific language of the preamble to the WTO Agreement, which, we have said, gives colour, texture and shading to the rights and obligations of Members under the *WTO Agreement*, generally, and under the GATT 1994, in particular."[6]

7. With reference to the first recital, the Appellate Body in *EC – Tariff Preferences* stated that:

"WTO objectives may well be pursued through measures taken under provisions characterized as exceptions. The Preamble to the *WTO Agreement* identifies certain objectives that may be pursued by Members through measures that would have to be justified under the 'General Exceptions' of Article XX."[7]

8. In *China – Raw Materials*, the Appellate Body found that Article XX of the GATT 1994 was not applicable to the obligation in paragraph 11.3 of China's Accession Protocol. In the course of its analysis, the Appellate Body referred to the "balance struck by WTO Members between trade and non-trade-related concerns":

"The preamble of the WTO Agreement lists various objectives, including 'raising standards of living', 'seeking both to protect and preserve the environment' and 'expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development.' The preamble concludes with the resolution 'to develop an integrated, more viable and durable multilateral trading system'. Based on this language, we understand the WTO Agreement, as a whole, to reflect the balance struck by WTO

[5] Appellate Body Report, *US – Shrimp*, paras. 129-131.
[6] Appellate Body Report, *US – Shrimp*, paras. 152-153 and 155.
[7] Appellate Body Report, *EC – Tariff Preferences*, para. 94.

> Members between trade and non-trade-related concerns. However, none of the objectives listed above, nor the balance struck between them, provides specific guidance on the question of whether Article XX of the GATT 1994 is applicable to Paragraph 11.3 of China's Accession Protocol. In the light of China's explicit commitment contained in Paragraph 11.3 to eliminate export duties and the lack of any textual reference to Article XX of the GATT 1994 in that provision, we see no basis to find that Article XX of the GATT 1994 is applicable to export duties found to be inconsistent with Paragraph 11.3."[8]

9. In *China – Rare Earths*, the Panel recalled that the role of the Preamble to the WTO Agreement as relevant context for interpreting Article XX(g) was confirmed by the Appellate Body in *US – Shrimp*, and stated:

> "Indeed, a proper reading of Article XX(g) in the context of the GATT 1994 and the WTO Agreement should take into account the objective of using and managing resources in a sustainable manner that ensures the protection and conservation of the environment while at the same time not interfering with economic development. In other words, the objective of sustainable development is relevant to the interpretation of Article XX(g). However, this does not mean that sustainable development can be invoked as a basis to deviate from the requirements of subparagraph (g) of Article XX."[9]

10. In *India – Solar Cells*, India argued that its challenged measures were "necessary to secure compliance with laws or regulations" within the meaning of Article XX(d) of the GATT 1994. More specifically, India argued that it had an international legal obligation "to ensure ecologically sustainable growth while addressing India's energy security challenge, and ensuring compliance with its obligations relating to climate change". According to India, this obligation was several international instruments, including the first recital of the Preamble to the WTO Agreement. The Panel found that India had failed to demonstrate that the international instruments it had identified could be characterized as "laws or regulations" within the meaning of Article XX(d). The Appellate Body upheld the Panel's finding.[10]

11. In *India – Solar Cells*, the Appellate Body also considered the first recital in interpreting the scope of the exception in Article XX(j) of the GATT 1994. The Appellate Body found that a product is in "short supply" within the meaning of that provision where the quantity of available supply from both domestic and international sources in the relevant geographical market is insufficient to meet demand:

> "Our interpretation of Article XX(j) of the GATT 1994 is in consonance with the preamble of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), which refers to the 'optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with [Members'] respective needs and concerns at different levels of economic development'. The different levels of economic development of Members may, depending on the circumstances, impact the availability of supply of a product in a given market. Developing countries may, for example, have less domestic production, and may be more vulnerable to disruptions in supply than developed countries. Such factors may be relevant in assessing the *availability* of a product in a particular case, and thus in assessing whether a product is in 'general or local short supply'."[11]

1.4 Second recital

12. The Panel in *Argentina – Import Measures* recalled that the Preamble recognizes the need for positive efforts designed to ensure that developing countries, and especially the least

[8] Appellate Body Reports, *China – Raw Materials*, para. 306.
[9] Panel Reports, *China – Rare Earths*, para. 7.259.
[10] Appellate Body Report, *India – Solar Cells*, paras. 5.138-5.149.
[11] Appellate Body Report, *India – Solar Cells*, para. 5.72.

developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development, and then stated:

> "In other words, the WTO agreements highlight the positive role international trade can play as part of the development policies of developing and least developed country Members. This realization explains why sovereign nations, such as Argentina, voluntarily accept the international obligations that are the result of subscribing to the WTO Agreement and becoming Members of the World Trade Organization."[12]

1.4.1 "positive efforts"

13. The Panel in *Brazil – Aircraft (Article 21.5 – Canada)* referred to the Preamble in reference to Article 27 of the SCM Agreement and the interests of developing countries:

> "The preamble to the WTO Agreement recognises
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> > 'that there is need for positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.'
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> This overarching concern of the WTO Agreement finds ample reflection in the *SCM Agreement*. Article 27 of that Agreement recognizes that 'subsidies may play an important role in economic development programmes of developing country Members' and provides substantial special and differential treatment for developing countries, including in respect of export subsidies."[13]

14. The Panel in *India – Quantitative Restrictions* invoked the Preamble in the context of recognising the need to address the concerns of developing countries:

> "At the outset, we recall that the Preamble to the WTO Agreement recognizes both (i) the desirability of expanding international trade in goods and services and (ii) the need for positive efforts designed to ensure that developing countries secure a share in international trade commensurate with the needs of their economic development. In implementing these goals, WTO rules promote trade liberalization, but recognize the need for specific exceptions from the general rules to address special concerns, including those of developing countries."[14]

15. In *EC – Tariff Preferences,* the Appellate Body recognized that:

> "[T]he Enabling Clause is among the 'positive efforts' called for in the Preamble to the WTO Agreement to be taken by developed-country Members to enhance the 'economic development' of developing-country Members."[15]

1.4.2 "commensurate"

16. In *EC – Tariff Preferences,* the Appellate Body further found:

> "[T]he Preamble to the WTO Agreement, which informs all the covered agreements including the GATT 1994 (and, hence, the Enabling Clause), explicitly recognizes the 'need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development'. The word 'commensurate' in this phrase appears to leave open the possibility that developing

[12] Panel Report, *Argentina – Import Measures*, para. 6.5.
[13] Panel Report, *Brazil – Aircraft (Article 21.5 – Canada)*, para. 6.47, fn 49.
[14] Panel Report, *India – Quantitative Restrictions*, para. 7.2.
[15] Appellate Body Report, *EC – Tariff Preferences*, para. 92.

countries may have different needs according to their levels of development and particular circumstances."[16]

1.5 Third recital

1.5.1 "entering into reciprocal and mutually advantageous arrangements"

17. In *EC – Computer Equipment*, the Appellate Body stated that:

> "[T]he security and predictability of 'the reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade' is an object and purpose of the WTO Agreement, generally, as well as of the GATT 1994."[17]

18. In *EC – Chicken Cuts*, the Panel stated that:

> "Taken together, the relevant aspects of the WTO Agreement and the GATT 1994 indicate that concessions made by WTO Members should be interpreted so as to further the general objective of the expansion of trade in goods and the substantial reduction of tariffs. It is also clear that such an interpretation is limited by the condition that arrangements entered into by Members be reciprocal and mutually advantageous. In other words, the terms of a concession should not be interpreted in such a way that would disrupt the balance of concessions negotiated by the parties. Finally, the interpretation must ensure the security and predictability of the reciprocal and mutually advantageous arrangements manifested in the form of concessions."[18]

19. In *US – Gambling*, the Panel referred to several objectives of the covered agreements, including the objective of "entering into reciprocal and mutually advantageous arrangements", in the context of interpreting the US Schedule to the GATS. On appeal, the Appellate Body stated that:

> "We agree with the Panel's characterization of these objectives, along with its suggestion that they reinforce the importance of Members' making clear commitments. Yet these considerations do not provide specific assistance for determining where, in the United States' Schedule, 'gambling and betting services' fall. Accordingly, it is necessary to continue our analysis by examining other elements to be taken into account in interpreting treaty provisions."[19]

20. In *EC – Bananas III (Article 21.5 – Ecuador II)/EC – Bananas III (Article 21.5 – US)*, the Panel found that when the Banana Framework Agreement expired on 31 December 2002, the European Commnunities' tariff quota concession necessarily also expired. The Appellate Body disagreed with the Panel, and discussed the Preamble in the course of its analysis:

> "We agree with the Panel that 'concessions made by WTO Members should be interpreted so as to further the general objective of expanding trade in goods and services and reducing barriers to trade, through the negotiation of reciprocal and mutually advantageous arrangements.' We also consider that the 'objective of promoting security and predictability in international trade' is furthered 'through the exchange of concessions', which are subject to conditions and qualifications inscribed in Members' Schedules. However … it is not consistent with the objective of promoting security and predictability in international trade through the exchange of concessions if terms, conditions, and temporal limitations relating to an agreement on quota allocation are improperly read to qualify a tariff quota concession that is bound as the 'final quota quantity and in-quota tariff rate'.

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[16] Appellate Body Report, *EC – Tariff Preferences*, para. 161.
[17] Appellate Body Report, *EC – Computer Equipment*, para. 82
[18] Panel Reports, *EC – Chicken Cuts*, para. 7.320.
[19] Appellate Body Report, *US – Gambling*, para. 189.

> … If the Panel's interpretation that paragraph 9 of the Bananas Framework Agreement 'extinguished' the tariff quota concession from Part I, Section I-B of the European Communities' Schedule were accepted, only the out-of-quota tariff rate bound in Part I, Section I-A at a level of at €680/mt would remain, coupled with a requirement to consult on a rebinding. In our view, this would not provide security or predictability of tariff concessions and would not promote the objective of expanding trade and reducing barriers to trade through the negotiation of reciprocal and mutually advantageous concessions and arrangements."[20]

21. The Panel in *EU – Poultry (China)* referred to the third recital of the Preamble in describing Article XXVIII, concerning the modification of Schedules:

> "On the other hand, one of the specific objects and purposes of Article XXVIII is to allow Members to make tariff concessions by providing them with flexibility to withdraw or modify those concessions subsequently, if necessary, in accordance with the procedures provided for therein. In this way, the right to modify or withdraw concessions supports the overarching object and purpose, which finds reflection in the preambles of both the GATT 1994 and the WTO Agreement, of Members '*entering into* reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade'."[21]

22. In *EU – Poultry (China)*, the Panel also referred to the Preamble in interpreting the term "reciprocal" in Article XXVIII:2 of the GATT 1994, which provides that negotiations to modify or withdraw a concession in a Schedule must "endeavour to maintain a general level of reciprocal and mutually advantageous concessions". The Panel observed that:

> "Other provisions of the GATT 1994 refer to 'reciprocal and mutually advantageous' concessions and arrangements. Notably, the preamble to both the GATT 1994 and the WTO Agreement recognize the objective of entering into 'reciprocal and mutually advantageous arrangements' directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.[22] It seems to us that they basically convey the notion of balanced concessions and arrangements. As the Panel in *EC – Chicken Cuts* observed:
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> > Taken together, the relevant aspects of the WTO Agreement and the GATT 1994 indicate that concessions made by WTO Members should be interpreted so as to further the general objective of the expansion of trade in goods and the substantial reduction of tariffs. It is also clear that such an interpretation is limited by the condition that arrangements entered into by Members be reciprocal and mutually advantageous. In other words, the terms of a concession should not be interpreted in such a way that would disrupt the balance of concessions negotiated by the parties.[23]"[24]

1.5.2 "the elimination of discriminatory treatment in international commerce"

23. The Panel in *Turkey – Textiles* also referred to the Preamble in finding that Article XXIV of the GATT 1994 does not constitute a shield from other GATT/WTO prohibitions or the introduction of measures considered to be *ipso facto* incompatible with GATT/WTO:

> "At the conclusion of the Uruguay Round Members reiterated the same general objective and principles in the GATT 1994 Understanding on Article XXIV:

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[20] Appellate Body Report, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, paras. 433-434.

[21] Panel Report, *EU – Poultry (China)*, para. 7.512.

[22] *(footnote original)* We also note that Article XVII:3 of the GATT 1994 and Article XXVIII*bis* both refer to negotiations on a "reciprocal and mutually advantageous basis" to reduce obstacles to trade.

[23] *(footnote original)* See Panel Reports, *EC – Chicken Cuts*, para. 7.320.

[24] Panel Report, *EU – Poultry (China)*, para. 7.297.

> '*Reaffirming* that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members;'

and in the Preamble to the WTO Agreement:

> 'Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of *discriminatory treatment* in international commerce …' (emphasis added)

We also recall the Singapore Ministerial Declaration:

> '7. … We reaffirm the primacy of the multilateral trading system, which includes a framework for the development of regional trade agreements, and we renew our commitment to ensure that regional trade agreements are complementary to it and consistent with its rules'

From the above cited provisions, we draw two general conclusions for the present case. Firstly, the objectives of regional trade agreements and those of the GATT and the WTO have always been complementary, and therefore should be interpreted consistently with one another, with a view to increasing trade and not to raising barriers to trade, thereby arguing against an interpretation that would allow, on the occasion of the formation of a customs union, for the introduction of quantitative restrictions. Secondly, we read in these parallel objectives a recognition that the provisions of Article XXIV (together with those of the GATT 1994 Understanding on Article XXIV) do not constitute a shield from other GATT/WTO prohibitions, or a justification for the introduction of measures which are considered generally to be ipso facto incompatible with GATT/WTO. In our view the provisions of Article XXIV on regional trade agreements cannot be considered to exempt constituent members of a customs union from the primacy of the WTO rules."[25]

24. The Panel in *US – Line Pipe* found that the rules in Article XIII of the GATT 1994, regarding the non-discriminatory administration of quantitative restrictions, apply to safeguard measures. In the Panel's view, the alternative interpretation would be contrary to the object and purpose of eliminating discriminatory treatment as reflected in the third recital:

> "If Article XIII did not apply to tariff quota safeguard measures, such safeguard measures would escape the majority of the disciplines set forth in Article 5 [of the Safeguards Agreement]. This is an important consideration, given the quantitative aspect of a tariff quota. For example, if Article XIII did not apply, quantitative criteria regarding the availability of lower tariff rates could be introduced in a discriminatory manner, without any consideration to prior quantitative performance. In our view, the potential for such discrimination is contrary to the object and purpose of both the Safeguards Agreement, and the WTO Agreement. In this regard, the preamble of the Safeguards Agreement refers to the 'need to clarify and reinforce the disciplines of GATT 1994' in the context of safeguards. We consider that the 'disciplines of GATT 1994' surely include those providing for non-discrimination. In any event 'the elimination of discriminatory treatment in international trade relations' is referred to explicitly in the preamble to the WTO Agreement."[26]

[25] Panel Report, *Turkey – Textiles*, paras. 9.161-9.163.
[26] Panel Report, *US – Line Pipe*, para. 7.49.

1.6 Fourth recital

1.6.1 "an integrated … multilateral trading system"

25. In *Brazil – Desiccated Coconut,* the Panel noted that:

> "[O]ne of the central objects and purposes of the WTO Agreement, as reflected in the Preamble to that Agreement, is to 'develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations …'. This is one of the reasons that the WTO Agreement is a single undertaking, accepted by all Members."[27]

26. The Appellate Body Report in *Brazil – Desiccated Coconut* also relied on the Preamble in the course of its analysis, stating:

> "The authors of the new WTO regime intended to put an end to the fragmentation that had characterized the previous system. This can be seen from the preamble to the *WTO Agreement* which states, in pertinent part:
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> > *Resolved*, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations."[28]

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[27] Panel Report, *Brazil – Desiccated Coconut*, para. 242.
[28] Appellate Body Report, *Brazil – Desiccated Coconut*, p. 17.