A. INTRODUCTION

WTO panels are directed to interpret the WTO agreements “in accordance with customary rules of interpretation of public international law,”¹ and, except as otherwise provided, “the WTO shall be guided by the decisions, procedures and customary practices followed by the Contracting Parties to GATT 1947 and the bodies established in the framework of GATT 1947.”² In this chapter I will argue that the customary rules of interpretation of public international law obligate the WTO to consider the wider body of general international law in interpreting its own rules. The chapter first analyzes the key rules of the Vienna Convention on the Law of Treaties as they have been applied in WTO jurisprudence. It then argues in favor of a flexible and evolutionary approach to interpreting GATT Article XX. This is followed by an analysis of the effect of non-WTO rules on WTO law and the rules regarding conflicts between treaties.

B. THE VIENNA CONVENTION ON THE LAW OF TREATIES

The Vienna Convention on the Law of Treaties (Vienna Convention) codifies the customary rules of treaty interpretation and applies to the interpretation of WTO agreements. The key rules of treaty interpretation in the Vienna Convention are:

¹ Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], Legal Instruments—Results of the Uruguay Round, Annex 2, 33 I.L.M. 1197 (1994) [hereinafter DSU], art. 3(2) states: “The dispute settlement system of the WTO . . . serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law.”

² WTO Agreement, art. XVI(1).
Article 31: General Rule of Interpretation

1. A treaty is to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
   (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
   (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
   (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
   (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
   (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32: Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning when the interpretation according to Article 31:
   (a) leaves the meaning ambiguous or obscure; or
   (b) leads to a result which is manifestly absurd or unreasonable.

The Appellate Body has consistently taken the view that the rules of treaty interpretation in Articles 31 and 32 of the Vienna Convention have “attained the status of a rule of customary or gen-