

CHAPTER 12 GENERAL EXCEPTIONS

Article 12.1 General Exceptions

1. For the purposes of Chapters 2 through 10 (Trade in Goods, Rules of Origin, Customs Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, and Investment) of this Agreement, Article XX of GATT 1994 and its interpretive notes and Article XIV of GATS (including its footnotes) shall apply to this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 2 through 10 (Trade in Goods, Rules of Origin, Customs Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, and Investment) of this Agreement, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures of artistic, historic or archaeological value.

Article 12.2 Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
 - (b) to prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests:
 - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
 - (ii) taken in time of war or other emergency in international relations;
 - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (iv) relating to protection of critical public infrastructure, including

communications, power and water infrastructure from deliberate attempts intended to disable or degrade such infrastructure;

- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Joint Commission shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

3. For the purposes of Chapters 8 (Trade in Services), 9 (Movement of Natural Persons) and 10 (Investment), nothing shall be construed to require a Party to accord the benefits of these Chapters to a service supplier or an investor that is an enterprise of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or a service supplier or an investor of a non-Party that would be violated or circumvented if the benefits of these Chapters were accorded to such a service supplier, an enterprise or to its investments, as the case may be.

4. Paragraph 3 shall be interpreted in accordance with the understanding of the Parties on security exceptions as set out in Annex 12-1 (Security Exceptions).

5. For purposes of Chapter 10 (Investment), this Article shall be interpreted in accordance with the understanding of the Parties on non-justiciability of security exceptions as set out in Annex 12-2 (Non-Justiciability of Security Exceptions).

Article 12.3 Taxation Measures

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any other agreement on taxation measures. In the event of any inconsistency between this Agreement and any such agreement on taxation measures, that agreement shall prevail to the extent of the inconsistency.

Article 12.4 Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

- (a) in the case of trade in goods, in accordance with GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt restrictive import measures;
- (b) in the case of services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.
- (c) in the case of investments, adopt or maintain restrictions with regard to payments or transfers relating to investment. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. Restrictions adopted or maintained under paragraph 1(b) or (c) shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied in such a manner that the other Party is treated no less favourably than any country that is not a party to this Agreement.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party from the date such measures are taken.

5. To the extent that it does not duplicate the process under WTO and International Monetary Fund (“IMF”), the Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations with the other Party from the date of notification in order to review the measures adopted or maintained by it.