

## 17 FINAL PROVISIONS

### ARTICLE 1

#### *Regional and Local Government*

Each Party is fully responsible for the observance of all provisions in this Agreement, and, except as otherwise provided for in this Agreement, shall take such reasonable measures<sup>1</sup> as may be available to it to ensure that they are observed by the regional and local governments and authorities within its territory, and in respect of trade in services and investment covered by Chapter 7 (Cross-Border Trade in Services) and Chapter 8 (Investment) of this Agreement, that they are observed by non-governmental bodies (in the exercise of powers delegated by central, regional or local government or authorities) within its territory.

### ARTICLE 2

#### *Security Exceptions*

Nothing in this Agreement shall be construed to:

- (a) 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) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

### ARTICLE 3

#### *Taxation Measures*

1. For the purposes of this Article:

“tax convention” means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

“taxation measures” do not include a “customs duty” as defined in Article 2(e) (General Definitions) of Chapter 1 (Objectives and General Definitions).

2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

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<sup>1</sup> For the purposes of this Chapter, “measure” includes any law, regulation, procedure, requirement or practice.

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under Article III of GATT 1994 and, with respect to services, including financial services and services supplied by a covered investment, Articles I, XVII and XIV(d) of GATS, *mutatis mutandis*.<sup>2</sup>

4. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and such tax convention, the latter shall prevail to the extent of the inconsistency. The competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

## ARTICLE 4

### *Temporary Safeguard Measures*

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital:

- (a) in the event of serious balance of payments and external financial difficulties or threats thereof; or
- (b) if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

3. Any measure adopted or maintained under paragraph 1 or 2 shall:

- (a) not be inconsistent with Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 8 (Investment), or Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment) of Chapter 9 (Financial Services);<sup>3</sup>

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<sup>2</sup> The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article were not restricted to direct taxes.

<sup>3</sup> Without prejudice to the general interpretation of Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 8 (Investment), and Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment) of Chapter 9 (Financial Services), the fact that a

- (b) be consistent with the *Articles of Agreement of the International Monetary Fund*;
- (c) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (d) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;
- (e) be temporary and be phased out progressively as the situations specified in paragraph 1 or 2 improve, and shall not exceed 18 months in duration; however, in exceptional circumstances, a Party may extend such measure for additional periods of one year, by notifying the other Party in writing within 30 days of the extension. If the other Party advises, in writing, within 30 days of receiving the notification, that it does not agree that the extended measure is designed and applied to satisfy subparagraphs (c), (d) and (h), the Party imposing the measure shall commence consultations with the other Party within 90 days of receiving the notification from the other Party, and endeavour to modify the measure to bring it into conformity with subparagraphs (c), (d) and (h), taking into account the views of the other Party;
- (f) not be inconsistent with Article 13 (Expropriation and Nationalisation) of Chapter 8 (Investment);<sup>4</sup>
- (g) in the case of restrictions on capital outflows, not interfere with an investor's ability to earn a market rate of return in the territory of the restricting Party on any restricted assets;<sup>5</sup> and
- (h) not be used to avoid necessary macroeconomic adjustment.

4. Measures referred to in paragraphs 1 and 2 shall not apply to payments or transfers relating to foreign direct investment.<sup>6</sup>

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measure adopted or maintained pursuant to paragraph 1 or 2 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 8 (Investment), and Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment) of Chapter 9 (Financial Services).

<sup>4</sup> For greater certainty, measures referred to in paragraph 1 or 2 may be non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives as referred to in subparagraph 3(b) of Annex 8-A (Expropriation) to Chapter 8 (Investment).

<sup>5</sup> The term "restricted assets" in this subparagraph refers only to assets invested in the territory of the restricting Party by an investor of the other Party that are restricted from being transferred out of the territory of the restricting Party.

<sup>6</sup> For the purposes of this Article, "foreign direct investment" means a type of investment by an investor of a Party in the territory of the other Party, through which the investor exercises ownership or control over, or a significant degree of influence on the management of, an enterprise or other direct investment,

5. A Party shall endeavour to provide that any measures adopted or maintained under paragraph 1 or 2 be price-based, and if such measures are not price-based, the Party shall explain the rationale for using quantitative restrictions when it notifies the other Party of the measure.

6. In the case of trade in goods, Article XII of GATT 1994 and the *Understanding on the Balance of Payments Provisions of the GATT 1994* are incorporated into and made part of this Agreement, *mutatis mutandis*. Any measures adopted or maintained under this paragraph shall not impair the relative benefits accorded to the other Party under this Agreement as compared to the treatment of a non-Party.

7. A Party adopting or maintaining measures under paragraph 1, 2 or 6 shall:

- (a) notify, in writing, the other Party of the measures, including any changes therein, along with the rationale for their imposition, within 30 days of their adoption;
- (b) present, as soon as possible, either a time schedule or the conditions necessary for their removal;
- (c) promptly publish the measures; and
- (d) promptly commence consultations with the other Party in order to review the measures adopted or maintained by it.
  - (i) In the case of capital movements, promptly respond to a request for consultations from the other Party in relation to the measures adopted by it, provided that such consultations are not otherwise taking place outside of this Agreement.
  - (ii) In the case of current account restrictions, if consultations in relation to the measures adopted by it are not taking place under the framework of the WTO Agreement, a Party, if requested, shall promptly commence consultations with the other Party.

## ARTICLE 5

### ***General Exceptions***

1. For the purposes of Chapter 3 (Rules of Origin) and Chapter 5 (Technical Regulations and Sanitary and Phytosanitary Measures), Article XX of GATT 1994 and

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and tends to be undertaken in order to establish a lasting relationship. For example, ownership of at least 10 per cent of the voting power of an enterprise over a period of at least 12 months generally would be considered foreign direct investment. For the purposes of this Chapter, “enterprise” means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation.

its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

## ARTICLE 6

### ***Contact Point***

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of a Party, the contact point of the requested Party shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Party.

## ARTICLE 7

### ***Review***

In addition to the provisions for consultations elsewhere in this Agreement, Ministers in charge of trade negotiations of the Parties shall meet within a year of the date of entry into force of this Agreement and then biennially or otherwise as appropriate to review this Agreement.

## ARTICLE 8

### ***Association with the Agreement***

This Agreement is open to accession or association by any State or separate customs territory, on terms to be agreed between the Parties.

## ARTICLE 9

### ***Relation to Other Agreements***

Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and any other agreement to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with customary rules of public international law.<sup>7</sup>

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<sup>7</sup> For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of this Article. For the purposes of this Chapter, "person" means a natural person or an enterprise.

## ARTICLE 10

### *Annexes*

The Annexes in this Agreement shall form an integral part of this Agreement.

## ARTICLE 11

### *Amendments*

This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed between the Parties.

## ARTICLE 12

### *Entry into Force, Duration and Termination*

1. This Agreement shall enter into force on the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of this Agreement.
2. Either Party may terminate this Agreement by giving the other Party six months' advance notice in writing.