

CHAPTER 19

GENERAL PROVISIONS AND EXCEPTIONS

Article 19.1: Disclosure of Information

Nothing in this Agreement shall require a Party to furnish or allow access to information that would impede law enforcement, or otherwise be contrary to the public interest, or that would prejudice the legitimate commercial interests of any particular enterprises, public or private, or at the time of the disclosure of the information, would be for the purpose of judicial proceedings of the other Party.

Article 19.2: Confidentiality of Information

Unless otherwise provided in this Agreement, if a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except if such use or disclosure is necessary to comply with legal requirements, or for the purpose of judicial proceedings.

Article 19.3: General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Technical Barriers to Trade), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 11 (Electronic Commerce), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*. 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.

2. For the purposes of Chapter 7 (Cross-Border Trade in Services), Chapter 8 (Financial Services), Chapter 9 (Telecommunications), Chapter 10 (Movement of Natural Persons) and Chapter 11 (Electronic Commerce), Article XIV of GATS is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

Article 19.4: Essential Security

1. Nothing in Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Technical Barriers to Trade) and Chapter 6 (Sanitary and Phytosanitary Measures) shall be construed to:

- (a) require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;
- (b) prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) 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 out directly or indirectly for the purpose of supplying or provisioning a military establishment;
 - (iii) taken so as to protect critical public infrastructure¹ including communications, power, transport and water infrastructures from deliberate attempts intended to disable, degrade or otherwise interfere with such infrastructures²; or
 - (iv) taken in time of national emergency, war or other emergency in international relations; or
- (c) prevent a Party from taking any action in pursuance of the obligations applicable to it under the *United Nations Charter* for the maintenance of international peace and security.

2. Nothing in Chapter 7 (Cross-Border Trade in Services), Chapter 8 (Financial Services), Chapter 9 (Telecommunications), Chapter 10 (Movement of Natural Persons), Chapter 11 (Electronic Commerce), Chapter 12 (Establishment and Related Provisions), Chapter 13 (Government Procurement), Chapter 14 (Intellectual Property) and Chapter 15 (Competition Policy) 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;
- (b) preclude a Party from applying measures that it considers necessary for the

¹ For greater certainty, this includes critical public infrastructure whether publicly or privately owned.

² For greater certainty, this includes action taken to prevent such attempts.

protection of its own essential security interests³; or

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

3. Subject to paragraph 1(a) and paragraph 2(a), the Joint Commission shall be informed of measures taken under paragraph 1(b), paragraph 1(c), paragraph 2(b) and paragraph 2(c) and of their termination.

Article 19.5: Taxation Measures

1. For the purposes of this Article:

designated authorities means:

- (a) for Australia, the Secretary to the Treasury or an authorised representative of the Secretary; and
- (b) for Hong Kong, China, an authority or its authorised representative to be designated by the Director-General of Trade and Industry;

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

taxes and **taxation measures** include excise duties, but do not include any import or customs duties.

2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures⁴.

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures if:

³ For greater certainty, measures referred to in paragraph 2(b) include: (i) those relating to fissionable and fusionable materials or the materials from which they are derived; (ii) those 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 out directly or indirectly for the purpose of supplying or provisioning a military establishment; (iii) those taken so as to protect critical public infrastructure, whether publicly or privately owned, including communications, power, transport and water infrastructures from deliberate attempts intended to disable, degrade or otherwise interfere with such infrastructures (including measures taken to prevent such attempts); and (iv) those taken in time of national emergency, war or other emergency in international relations.

⁴ For greater certainty, notwithstanding this paragraph, Chapter 18 (Consultations and Dispute Settlement) shall apply where paragraph 3 applies.

- (a) corresponding rights and obligations are also granted or imposed under the WTO Agreement; or
- (b) they are granted or imposed under:
 - (i) Chapter 2 (Trade in Goods); or
 - (ii) Article 12.6 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions).

4. Notwithstanding paragraph 3, the rights granted and obligations imposed under this Agreement in accordance with paragraph 3(b)(ii) shall not apply to:

- (a) any non-conforming provision of any existing taxation measure;
- (b) the continuation or prompt renewal of any non-conforming provision of any existing taxation measure;
- (c) an amendment to any non-conforming provision of any existing taxation measure, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with the rights and obligations in paragraph 3(b)(ii);
- (d) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence or incorporation, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties⁵; or
- (e) a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintains continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

5. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention to which both Parties are party. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, such convention shall prevail to the extent of the inconsistency.

6. If an issue arises as to whether any inconsistency exists between this Agreement and a tax convention to which both Parties are party, the issue shall be referred to the designated authorities of the Parties. The designated authorities of the Parties shall have six months from the date of referral of the issue to make a determination as to the

⁵ The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

existence and extent of the inconsistency. If the designated authorities agree, such a period may be extended up to 12 months from the date of referral of the issue. No procedure concerning the measure giving rise to the issue may be initiated under Chapter 18 (Consultations and Dispute Settlement) until the expiry of the six-month period, or such other period as may have been agreed by the designated authorities pursuant to the previous sentence. A panel established to consider a dispute related to a taxation measure shall accept as binding any determination of the designated authorities of the Parties made under this paragraph.

7. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any tax convention applicable to the Party.

Article 19.6: Measures to Safeguard the Balance-of-Payments

1. If 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 *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement, adopt or maintain restrictive import measures; and
- (b) in the case of trade in services, adopt or maintain restrictions on payments or transfers related to trade in services.

2. If a Party is in serious balance-of-payments and external financial difficulties or under threat thereof, or if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, it may adopt or maintain restrictions on payments or transfers related to covered investments.

3. Restrictions adopted or maintained under paragraph 1(b) or paragraph 2 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(b) or paragraph 2;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1(b) or paragraph 2 improves; and

- (e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party.

4. In determining the incidence of restrictions adopted or maintained under paragraph 1 or paragraph 2, a Party may give priority to economic sectors which are more essential to its economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

5. Any restrictions adopted or maintained by a Party under paragraph 1 or paragraph 2, or any changes therein, shall be notified promptly to the other Party.

6. A Party adopting or maintaining any restrictions under paragraph 1 or paragraph 2 shall:

- (a) in the case of trade in goods or trade in services, if consultations in relation to the restrictions adopted or maintained by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with the other Party; and
- (b) in the case of investment, respond to the other Party that requests consultations in relation to the restrictions adopted or maintained by it, if such consultations are not otherwise taking place outside this Agreement.