

## **CHAPTER 11 GENERAL PROVISIONS AND EXCEPTIONS**

### **Article 11.1 General Exceptions**

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade) of this Agreement, Article XX of GATT 1994, including its interpretive notes, is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapter 8 (Trade in Services) and Chapter 9 (Temporary Movement of Natural Persons), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

### **Article 11.2 Security Exceptions**

1. Nothing in this Agreement shall be construed to:
  - (a) require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
  - (b) prevent a Party from taking any action 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;
    - (ii) relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
    - (iii) taken in time of national emergency or war or other emergency in international relations;
    - (iv) relating to fissionable and fusionable materials or the materials from which they are derived;
    - (v) relating to the protection of critical public infrastructure, whether publicly or privately owned, including communications, power and water infrastructure; or
  - (c) 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.

### **Article 11.3**

#### **Direct Taxation Measures**

1. Nothing in this Agreement shall apply to any direct taxation measure<sup>1</sup>.
2. Nothing in this Agreement shall affect the rights and obligations of either Party under any direct tax convention<sup>2</sup>. In the event of any inconsistency between this Agreement and any direct tax convention, the direct tax convention shall prevail over this Agreement.

### **Article 11.4**

#### **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 trade in 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 recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions on trade in services 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) shall:
  - (a) be consistent with the IMF Articles of Agreement;
  - (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

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<sup>1</sup> For greater certainty, "direct taxation measure" does not include any indirect taxation measure including customs duties as defined in Article 2.1(b) of Chapter 2 (Trade in Goods) nor does it include the measures listed in subparagraphs (i), (ii), and (iii) of Article 2.1(b) of Chapter 2 (Trade in Goods).

<sup>2</sup> For greater certainty, "direct tax convention" means any direct tax convention, agreement, instrument or arrangement, by whatever name called, whether entered into bilaterally or multilaterally.

- (e) be applied on a non-discriminatory basis such 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 the WTO or the International Monetary Fund, 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.

#### **Article 11.5 Disclosure of Information**

- 1. Nothing in this Agreement shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers:
  - (a) would be contrary to the public interest;
  - (b) is contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
  - (c) would impede law enforcement; or
  - (d) would prejudice legitimate commercial interests of particular enterprises, public or private.

#### **Article 11.6 Confidentiality**

Each Party shall, subject to its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement. Nothing in this Article shall prevent a Party from using or disclosing the confidential information to the extent that it may be necessary in the context of judicial or quasi-judicial proceedings or where a Party is authorised or required to disclose or use the information under its laws and regulations, in which case the Party that has received the

information shall notify the other Party of the release or disclosure where possible.

#### **Article 11.7 Economic Cooperation**

The Parties acknowledge the importance of cooperation in implementing this Agreement and enhancing its benefits. The Parties recognise that cooperation activities undertaken pursuant to this Agreement shall seek to complement and build upon existing agreements or arrangements between the Parties.

#### **Article 11.8 Financial Provisions**

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the laws, regulations and policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.