

CHAPTER 18

EXCEPTIONS

Article 18.1

General Exceptions

1. For the purposes of Chapters 3 to 8 (Trade in Goods, Rules of Origin, Customs Procedures and Cooperation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade and Trade Remedies), Article XX of *GATT 1994* and its interpretative notes are 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 Chapters 10 to 12 (Establishment, Trade in Services and Financial Services), Article XIV of *GATS* (including its footnotes) 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.

3. Nothing in this Agreement shall be construed to prevent a Party from taking action authorised by the Dispute Settlement Body of the WTO. A Party taking such action shall inform the Commission to the fullest extent possible of measures taken and of their termination.

Article 18.2

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 considers contrary to its essential security interests;
 - (b) to 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 on directly or indirectly for the purpose of supplying or provisioning a military establishment; or
- (iii) taken in time of war or other emergency in external relations; or
- (c) to 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. A Party taking action under paragraphs 1(b) and (c) shall promptly inform the other Party to the fullest extent possible of measures taken and of their termination.

Article 18.3

Taxation Measures

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

2. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention or other arrangement on taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such convention or other arrangement on taxation, the latter shall prevail to the extent of the inconsistency.

3. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall be referred to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention or arrangement prevails. If within 6 months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention or arrangement prevails, no procedures concerning that measure may be initiated under Chapter 17 (Dispute Settlement). Neither may such procedures be initiated during the period the issue is under consideration by the designated authorities.

4. Article 3.3 shall apply to taxation measures to the same extent as Article III of *GATT 1994*.

5. Articles 10.3 and 11.3 and 12.4 shall apply to taxation measures to the same extent as covered by the *GATS*.

6. For the purposes of this Article, **taxation measure** means any measure relating to direct or indirect taxes, but does not include:

- (a) a customs duty; or
- (b) the measures listed in subparagraphs (b) and (c) of the definition of **customs duties** in Article 2.1.

7. For the purposes of paragraph 3, **designated authority** means:

- (a) in the case of Hong Kong, China, to be designated by the Director-General of Trade and Industry or his authorised representative; and
- (b) in the case of Chile, the *Director del Servicio de Impuestos Internos, Ministerio de Hacienda*, or an authorised representative of the *Ministro de Hacienda*.

Article 18.4

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 adopt or maintain restrictive measures with regard to trade in goods, trade in services, and establishment under Chapter 10 in accordance with:

- (a) *GATT 1994* and the *WTO Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*; or
- (b) Article XII.2 of *GATS*, including on payments, transfers or capital movements,

as applicable.

2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.

3. Any restrictive measure adopted or maintained under this Article shall be non-discriminatory and of limited duration and shall not go beyond what is necessary to remedy the balance of payments and external financial situation.

4 In determining the incidence of restrictions adopted or maintained under paragraph 1, each 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 any changes therein, shall promptly be notified to the other Party and present, as soon as possible, a time schedule for their removal.

6. The Party adopting or maintaining any restrictions under paragraph 1 shall consult promptly with the other Party. Such consultations shall assess the balance of payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:

- (a) the nature and extent of the balance of payments and the external financial difficulties;
- (b) the external economic and trading environment of the consulting Party; and
- (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 3 and 4. All findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the Fund of the balance of payments and external financial situation of the consulting Party.

Article 18.5

Disclosure of Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific written permission of the Party providing the information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

2. Nothing in this Agreement shall be construed as requiring a Party to furnish or allow access to information the disclosure of which would impede law enforcement or violate its domestic law or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of 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.