

24. A Party may not communicate with the panel without notifying the other Party. The panel shall not communicate with a Party in the absence of, or without notifying, the other Party.

25. A panellist may not discuss an aspect of the substantive subject matter of the proceeding with the Parties in the absence of the other panellists.

Remuneration and Payment of Expenses

26. Each panellist shall keep a record and render a final account to the Parties of their time and expenses, and those of any assistant. The chair of the panel shall keep a record and render a final account to the Parties of all general expenses.

Chapter 18: Exceptions

Article 18.1: Definitions

For the purposes of this Chapter:

competition authority means:

- (a) for Canada, the Commissioner of Competition and includes a successor notified to the other Party through the Coordinators;
and

- (b) for Ukraine, the Antimonopoly Committee of Ukraine and includes a successor notified to the other Party through the Coordinators.

designated authority means:

- (a) for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance and includes a successor notified to the other Party through the Coordinators; and
- (b) for Ukraine, the State Fiscal Service of Ukraine and includes a successor notified to the other Party through the Coordinators.

information protected under its competition laws means:

- (a) for Canada, information within the scope of Section 29 of the *Competition Act*, R.S.C. 1985, c. C-34, and includes any successor provision; and
- (b) for Ukraine, information with restricted access according to Article 221 of the Law of Ukraine *On the Antimonopoly Committee of Ukraine* and includes any successor provision.

person engaged in a cultural industry means a person engaged in any of the following activities:

- (a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, but not including the sole activity of printing or typesetting any of the foregoing;
- (b) the production, distribution, sale or exhibition of film or video recordings;
- (c) the production, distribution, sale or exhibition of audio or video music recordings;
- (d) the publication, distribution or sale of music in print or machine-readable form; or
- (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services.

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

tax and taxation measure do not include:

- (a) a customs duty; or
- (b) a measure listed in exceptions (b), (c), or (d) in the definition of customs duty in Article 1.6 (Definitions of General Application).

Article 18.2: General Exceptions

For the purposes of Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Trade Facilitation), Chapter 5 (Emergency Action), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Technical Barriers to Trade), and Chapter 8 (Electronic Commerce), GATT 1994 Article XX is incorporated into this Agreement. The Parties understand that the measures referred to in GATT 1994 Article XX (b) include environmental measures necessary to protect human, animal or plant life or health. The Parties further understand that GATT 1994 Article XX (g) applies to measures for the conservation of living and non-living exhaustible natural resources.

Article 18.3: National Security

This Agreement does not:

- (a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;*
- (b) prevent a Party from taking an action that it considers necessary to protect its essential security interests:*

- (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;
- (ii) taken in time of war or other emergency in international relations; or
- (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- (c) prevent a Party from fulfilling its obligations under the *Charter of the United Nations* for the maintenance of international peace and security.

Article 18.4: Taxation

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.
2. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of any inconsistency between this Agreement and a tax convention, the tax convention prevails.

3. If a provision with respect to a taxation measure under this Agreement is similar to a provision under a tax convention, the competent authorities identified in the tax convention shall use the procedural provisions of that tax convention to resolve an issue that may arise under this Agreement.

4. Notwithstanding paragraphs 2 and 3:

- (a) Article 2.3 (National Treatment) and the provisions of this Agreement necessary to give effect to that Article apply to a taxation measure to the same extent as Article III of the GATT; and,
- (b) Article 2.9 (Customs Duties on Exports) applies to a taxation measure.

5. In order to give effect to paragraphs 1 to 3:

- (a) if an issue arises as to whether a measure of a Party is a taxation measure in a dispute between the Parties, either Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind any panel established under Article 17.7 (Establishment of a Panel) for the dispute. If a Party has referred the issue to the designated

authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue; and

- (b) if an issue arises as to whether, according to paragraph 2, a tax convention prevails over this Agreement in a dispute between the Parties, a Party to the dispute may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether there is an inconsistency between this Agreement and a tax convention with respect to a taxation measure that gives rise to the issue. If within six months of the referral of the issue to the designated authorities, they decide with respect to the taxation measure that gives rise to the issue that there is an inconsistency, procedures concerning that taxation measure may not be initiated under Article 17.7 (Establishment of a Panel). Procedures concerning the taxation measure may not be initiated while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.

6. The designated authorities seized of an issue under paragraph 5 may modify the time period allowed to decide the issue.

7. This Agreement does not require a Party to furnish or allow access to information the disclosure of which would be contrary to that Party's law protecting information concerning the taxation affairs of a taxpayer.

Article 18.5: Disclosure of Information

1. This Agreement does not require a Party to furnish or allow access to information that if disclosed would impede law enforcement, or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions.

2. In the course of a dispute settlement procedure under this Agreement:

- (a) a Party is not required to furnish or allow access to information protected under its competition laws; and
- (b) a competition authority of a Party is not required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

Article 18.6: Cultural Industries

This Agreement does not apply to a measure adopted or maintained by a Party with respect to a person engaged in a cultural industry except as specifically provided in Article 2.4 (Tariff Elimination on Imports).

Article 18.7: World Trade Organization Waivers

If a right or obligation in this Agreement duplicates a right or obligation under the WTO Agreement, a measure adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with this Agreement.

Chapter 19: Final provisions

Article 19.1: Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement constitute integral parts of this Agreement.

Article 19.2: Review Clause

The Parties undertake to review this Agreement within two years of its entry into force, in light of further developments including within the framework of the WTO Agreement, and other agreements to which the Parties are party, with a view to examining the further