TITLE XI

GENERAL EXCEPTIONS

Article 295

Security Exception

1. Nothing in this Agreement shall be construed:

(a) to require any Party to furnish or give access to any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any measure which it considers necessary for the protection of its essential security interests:

(i) relating to government procurement indispensable for national security or for national defence purposes;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) connected with the production of, government procurement of or trade in arms, munitions and war material and related to traffic in other goods and materials and to the supply of services or establishment as are carried out directly or indirectly for the purpose of supplying a military establishment;

(iv) taken in time of war or other emergency in international relations; or

(c) to prevent any Party from taking any measures necessary in pursuance of the obligations it has accepted for the purpose of maintaining or restoring international peace and security.

2. The Trade Committee shall be informed to the extent possible of any measure taken by a Party under subparagraphs 1(b) and 1(c) and its termination.

Article 296

Taxation

1. This Agreement shall only apply to taxation measures to the extent such application is necessary to give effect to the provisions of this Agreement.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention [85] between a Member State of the European Union and a signatory Andean Country. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of tax conventions between a Member State of the European Union and a signatory Andean Country, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing any measure which:

(a) aims at ensuring the effective and equitable imposition and collection of direct taxes;

(b) distinguishes in the application of the relevant provisions of domestic fiscal legislation, including those aimed at ensuring the imposition and collection of duties, between tax payers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested;

(c) aims at preventing the avoidance or evasion of taxes pursuant to tax provisions of conventions to avoid double taxation or other tax agreements, or domestic fiscal legislation; or

(d) is incompatible with any MFN obligation established under this Agreement, provided that the difference in treatment results from a tax convention.

4. Tax terms or concepts not defined in this Agreement are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

Article 297

Balance of Payments

1. If a Party experiences serious external financial or balance-of-payments difficulties or threat thereof, that Party may adopt or maintain restrictive measures with regard to trade in goods, trade in services and establishment, including on payments or transfers related to such transactions.

2. Any restrictive measure adopted or maintained pursuant to paragraph 1 shall be non-discriminatory and of limited duration, shall not go beyond what is necessary to remedy the balance- of- payments situation, and shall be in accordance with the conditions established in the WTO Agreement and consistent with the Articles of the Agreement of the International Monetary Fund, as applicable [86].

[85] For the purposes of this article, 'tax convention' shall be understood as a convention for the avoidance of double taxation or other international taxation agreement or arrangement.

[86] The conditions established in the WTO Agreement as referred to in this Article shall be considered applicable, *mutatis mutandis*, to balance of payments measures regarding establishment in sectors other than services sectors.

3. The Parties shall endeavour to avoid the imposition of restrictive measures referred to in paragraph 1. In the event of the introduction or modification by a Party of such measures, such Party, shall promptly notify them to the other Parties and present, as soon as possible, a time schedule for their removal.

4. Consultations shall be held promptly within the Trade Committee. Such consultations shall assess the balance- of-payments situation of the Party adopting or maintaining restrictive measures under this Article, as well as the measures themselves, taking into account, *inter alia*, factors such as:

(a) the nature and extent of the balance of payments and the external financial difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

Consultations shall address the compliance of any restrictive measure with paragraphs 2 and 3. All statistical findings 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 International Monetary Fund of the balance-of- payments and the external financial situation of the Party introducing the measures.

TITLE XII

DISPUTE SETTLEMENT

CHAPTER 1

Objectives, Scope of Application and definitions

Article 298

Objective

The objective of this Title is to prevent and settle any dispute between the Parties concerning the interpretation and application of this Agreement and to reach, whenever possible, a mutually satisfactory resolution on any issue that could affect its operation. In case a mutually agreed solution were not possible, the first objective of this Title will be in general to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of this Agreement.

Article 299

Scope of Application

1. Unless otherwise provided in this Agreement, the provisions of this Title shall apply with respect to any dispute concerning the interpretation and application of this Agreement, in particular when one of the Parties considers that a measure taken by another Party is or could be inconsistent with its obligations under this Agreement.

2. This Title shall not apply to disputes between signatory Andean Countries.

Article 300

Definitions

For the purposes of this Title, ‘party to the dispute’ or ‘party to a dispute’ and ‘parties to the dispute’ or ‘parties to a dispute’ means a Party or Parties to this Agreement that is party or are parties to a dispute settlement procedure under this Title.

CHAPTER 2

Consultations

Article 301

Consultations

1. The Parties shall endeavour to settle any dispute regarding any matter established under Article 299 entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party may seek to initiate consultations through a written request to another Party, with copy to the Trade Committee, identifying any measure at issue and the legal basis for the complaint.

3. The requested Party shall reply to the request for consultations, with copy to the Trade Committee, within 10 days following the receipt of such request. In cases of urgency, that period of time shall be five days.

4. The parties to the dispute may agree not to engage in consultations pursuant to this Article and proceed directly to the arbitration panel procedure pursuant to Article 302. Such decision shall be notified in writing to the Trade Committee no later than five days prior to the request for the establishment of an arbitration panel.

5. Unless the consulting Parties agree otherwise, consultations shall be held and deemed concluded within 30 days following the date of the receipt of the request by the requested Party and shall take place, in the territory of the requested Party. Upon agreement of the parties to the dispute, the consultations may take place by any technological means available. The consultations and all information disclosed during the consultations shall be confidential.

6. In cases of urgency, including those related to perishable goods or that otherwise concern goods or services that rapidly lose their commercial value, such as certain seasonal goods or services, consultations shall begin within 15 days following the date of receipt of the request by the requested Party and shall be deemed concluded within those 15 days.