

CHAPTER 7

Exceptions

Article 167

General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, or a disguised restriction on establishment or cross-border supply of services, nothing in this Title and Title V (Current Payments and Capital Movements) shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order ⁽⁵⁴⁾;
- (b) necessary to protect human, animal or plant life or health, including those environmental measures necessary to this effect;
- (c) relating to the conservation of living and non-living exhaustible natural resources, if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title and Title V (Current Payments and Capital Movements) ⁽⁵⁵⁾ including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

⁽⁵⁴⁾ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of the society.

⁽⁵⁵⁾ For greater certainty, in the case of Peru, the execution of measures that prevent a monetary transfer through the equitable, non-discriminatory and good faith application of Peruvian Laws relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
 - (c) criminal or penal offences;
 - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
 - (e) ensuring compliance with judicial or administrative orders or rulings in judicial or administrative proceedings;
- shall not be considered inconsistent with the provisions of this Title and Title V (Current Payments and Capital Movements).

- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

- (iii) safety.

2. The provisions of this Title, Annexes VII (List of Commitments on Establishment) and VIII (List of Commitments on Cross-border Supply of Services) and Title V (Current Payments and Movement of Capital) shall not apply to the respective social security systems of the Parties or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

TITLE V

CURRENT PAYMENTS AND MOVEMENT OF CAPITAL

Article 168

Current Account

The Parties shall authorise, in freely convertible currency and in accordance with the provisions of Article VIII of the Articles of Agreement of the International Monetary Fund, any payments and transfers on the current account of balance of payments between the Parties.

Article 169

Capital Account

With regard to transactions on the capital and financial account of balance of payments, following the entry into force of this Agreement, the Parties shall ensure the free movement of capital relating to direct investments ⁽⁵⁶⁾ made in juridical persons constituted in accordance with the laws of the host country and investments and other transactions made in accordance with the provisions of Title IV (Trade in Services, Establishment, and Electronic Commerce) ⁽⁵⁷⁾, as well as the liquidation and repatriation of these investments and of any profit stemming therefrom.

Article 170

Safeguard Measures

1. In the case of Colombia, where, in exceptional circumstances, payments and capital movements cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in Colombia, Colombia may adopt safeguard measures with regard to capital movements for a period not exceeding one year. These safeguard measures may be maintained beyond such period of time for justified reasons when it is necessary to overcome the exceptional circumstances that led to their application. In such event, Colombia shall present in advance to the other Parties the reasons that justify their maintenance.

⁽⁵⁶⁾ For greater certainty, 'direct investment' does not mean credits related to foreign trade, portfolio investment according to domestic legislation, public debt and related credit.

⁽⁵⁷⁾ For greater certainty, Chapter 7 (Exceptions) in Title IV (Trade in Services, Establishment, and Electronic Commerce) shall also apply to this Title.

2. In the case of Peru and the EU Party, where, in exceptional circumstances, payments and capital movements, cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in Peru or in the European Union, Peru or the EU Party may respectively adopt safeguard measures with regard to capital movements for a period not exceeding one year.

3. The application of safeguard measures pursuant to paragraph 2 may be extended through their formal reintroduction in case of extremely exceptional circumstances and after having coordinated in advance between the Parties concerned regarding the implementation of any proposed formal reintroduction.

4. Under no circumstance may the measures referred to in paragraphs 1 and 2 be used as a means for commercial protection or for the purpose of protecting a particular industry.

5. A Party adopting or maintaining safeguard measures pursuant to paragraphs 1, 2 or 3 shall promptly inform the other Parties of their relevance and scope, and present, as soon as possible, a schedule for their removal.

Article 171

Final Provisions

With the aim of supporting a stable and secure framework for long-term investment, the Parties shall consult with a view to facilitating the movement of capital between them, in particular the progressive liberalisation of capital and financial accounts.

TITLE VI

GOVERNMENT PROCUREMENT

Article 172

Definitions

For the purposes of this Title:

- ‘construction service’ means a service that has as its objective the realization by whatever means, of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (hereinafter referred to as ‘CPC’);
- ‘electronic auction’ means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- ‘in writing’ or ‘written’ means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;
- ‘limited tendering’ means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- ‘measure’ means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity, relating to a covered procurement;
- ‘multi-use list’ means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
- ‘notice of intended procurement’ means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
- ‘offset’ means any condition or undertaking that encourages local development or improves balance-of-payments accounts of a Party, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;
- ‘open tendering’ means a procurement method whereby all interested suppliers may submit a tender;
- ‘procuring entity’ means an entity of a Party listed in Appendix 1 of Annex XII (Government Procurement);
- ‘qualified supplier’ means a supplier that a procuring entity recognises as having satisfied the conditions for participation;
- ‘selective tendering’ means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- ‘build-operate-transfer contract and public works concession contract’ mean any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government-owned works and under which, as consideration for a supplier’s execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period, temporary ownership, or a right to control and operate, and demand payment for the use of, such works for the duration of the contract;
- ‘commercial goods or services’ means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;