

CHAPTER 18 GENERAL PROVISIONS AND EXCEPTIONS

Article 18.1 General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Cooperation), Chapter 5 (Sanitary and Phytosanitary Measures), and Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures) of this Agreement, Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Telecommunications Services), Chapter 10 (Movement of Natural Persons), and Chapter 15 (Electronic Commerce) of this Agreement, Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

Article 18.2 Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require a Party to furnish 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 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;
 - (iii) taken so as to protect critical public infrastructures³⁹ including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures;
 - (iv) taken in time of national emergency or war or other emergency in international relations; or
 - (c) to 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.

³⁹ For greater certainty, this includes critical public infrastructures whether publicly or privately owned.

2. The FTA Joint Commission shall be informed to the fullest extent possible of measures taken under subparagraphs 1(b) and (c) and of their termination.

Article 18.3

Taxation

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

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

- (a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;
- (b) they are granted or imposed under Article 12.8 (Expropriation and Compensation) of Chapter 12 (Investment); or
- (c) they are granted or imposed under Article 12.9 (Transfers) of Chapter 12 (Investment).

3. For the avoidance of doubt, nothing in this Agreement shall apply to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, or superannuation fund, or other arrangement to provide pension, or superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

4. Nothing in this Agreement shall affect the rights and obligations of a Party under any tax convention relating to the avoidance of double taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail.

5. If either Party considers that there is any inconsistency relating to a taxation measure between this Agreement and any tax convention, the relevant authorities shall immediately consult. For the purpose of this paragraph, the relevant authorities shall include:

- (a) for Australia, the Treasury and the Department of Foreign Affairs and Trade; and
- (b) for Malaysia, the Ministry of Finance.

6. For the purpose of paragraph 5, any consultations between the Parties about whether a measure is a taxation measure shall be done by the competent tax authorities, as stipulated under the laws of each Party.

7. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement relating to the avoidance of double taxation or from the provisions on the

avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

8. For the purpose of this Article, taxation measures do not include any import or customs duties.

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:

- (a) in the case of trade in goods, in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of GATT 1994*, in Annex 1A to the WTO Agreement, adopt restrictive import measures;
- (b) in the case of trade in services, adopt or maintain restrictions on trade in services in respect of which it has obligations under Article 8.3 (National Treatment) and Article 8.5 (Market Access) of Chapter 8 (Trade in Services), including on payments or transfers for transactions related to such commitments; and
- (c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in subparagraph (a) of Article 12 (Definitions) of Chapter 12 (Investment).

2. Restrictions adopted or maintained under subparagraphs 1(b) or (c) 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
- (e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party.

3. With respect to trade in services and investment:

- (a) it is recognised that particular pressures on the balance-of-payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition; and

- (b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to their economic or development programmes. 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.
- 5. A Party adopting or maintaining any restrictions under paragraph 1 shall:
 - (a) in the case of investment, respond to the other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement; and
 - (b) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with the other Party.