

CHAPTER 16

GENERAL PROVISIONS AND EXCEPTIONS

ARTICLE 16.1: DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

1. Nothing in this Agreement shall require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.
2. Unless otherwise provided in this Agreement, where a Party provides written information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except where such use or disclosure is necessary to comply with legal or constitutional requirements, or for the purpose of judicial proceedings.

ARTICLE 16.2: GENERAL EXCEPTIONS

1. For the purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin and Implementation Procedures), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures), 6 (Technical Barriers to Trade) and 12 (Electronic Commerce), Article XX of GATT 1994, including its interpretative notes, is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapters 8 (Trade in Services), 10 (Movement of Natural Persons) and 12 (Electronic Commerce), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 16.3: SECURITY EXCEPTIONS

Article XXI of GATT 1994 and Article XIV *bis* of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 16.4: TAXATION

1. For the purposes of this Article, the term “taxation measures” shall not include any customs or import duties.

2. Unless otherwise provided for in this Article, nothing in this Agreement shall apply to taxation measures.

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under the WTO Agreement.

4. Notwithstanding paragraph 3, nothing in this Agreement shall:

- (a) oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention;
- (b) apply to:
 - (i) a non-conforming provision of any taxation measure that is maintained by a Party on the date of entry into force of this Agreement;
 - (ii) the continuation or prompt renewal of a non-conforming provision of any such taxation measure; or
 - (iii) an amendment to a non-conforming provision of any such taxation measure to the extent that the amendment does not decrease the conformity of the tax measure, as it existed before the amendment, with the Agreement;
- (c) prevent the adoption or enforcement by a Party of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or
- (d) prevent the adoption or enforcement by a Party of a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation or supervision over such trust, fund or other arrangement.

5. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, any consultation about whether any inconsistency exists shall include the competent authorities of each Party under that tax convention.

ARTICLE 16.5: REVIEW OF AGREEMENT

The Parties shall undertake a general review of the Agreement, with a view to furthering its objectives, within three years of the date of entry into force of this Agreement and at least every five years thereafter unless otherwise agreed by the Parties. The review shall include, but not be limited to, consideration of deepening liberalisation and further expansion of market access.

ARTICLE 16.6: 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 the General Agreement on Tariffs and Trade 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 undertaken specific commitments, 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 Article 9.1 of Chapter 9 (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. In determining the incidence of such restrictions, a 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.

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. The Party adopting or maintaining any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions applied by it.

ARTICLE 16.7: COMPETITION COOPERATION

1. The Parties recognise the importance of cooperation and coordination to further the promotion of competition, economic efficiency, consumer welfare and the curtailment of anticompetitive practices.

2. The competition authorities of the Parties shall cooperate and coordinate, as appropriate, in enforcing competition laws and policies subject to each Party's confidentiality requirements, including through:

- (a) the exchange of information;
- (b) notification;
- (c) coordination of cross-border enforcement matters and the exchange of views in cases which are subject to the common review of both Parties; and
- (d) technical cooperation.

3. The cooperation referred to in paragraph 2 may be promoted through new or existing mechanisms for cooperation between the competition authorities of the Parties.

4. Without prejudice to the independence of the Parties' competition authorities, the Parties agree to cooperate under this Article in accordance with their respective laws, regulations and procedures, and within their reasonably available resources.

ARTICLE 16.8: GOVERNMENT PROCUREMENT

The Parties shall commence negotiations on government procurement as soon as possible after the completion of negotiations on the accession of China to the *Agreement on Government Procurement*, contained in Annex 4 to the WTO Agreement, with a view to concluding, on a reciprocal basis, commitments on government procurement between the Parties.