

CHAPTER 16

GENERAL EXCEPTIONS

ARTICLE 1601

General Exceptions

1. For the purposes of Chapters 2 – 7, Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For purposes of Chapters 8 – 10, Article XIV of GATS is incorporated into and made part of this Agreement, *mutatis mutandis*.
3. Article XX (e) – (g) of GATT 1994 is incorporated into and made part of Chapter 9, *mutatis mutandis*.

ARTICLE 1602

Security Exceptions

1. For the purposes of Chapters 2 – 7, Article XXI of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapters 8 - 10, Article XIV *bis* of GATS is incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 1603

Disclosure of Information

Nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 1604

Balance of Payments

1. In the case of trade in goods, a Party may, in accordance with GATT 1994 and the *Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, adopt restrictive import measures in order to safeguard its external financial position and its balance of payments.
2. The Party adopting any restrictions under this Article shall initiate consultations with the other Party to review the restrictions adopted by it.

ARTICLE 1605

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments and transfers of funds of any investor of the other Party related to any investment covered by Chapter 9 and international payments and transfers for current transactions⁸ related to its specific commitments under Chapter 8. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for stable economic development.
2. The restrictions referred to in Paragraph 1 shall:

⁸ “Current transactions” refers to current transactions as defined by the International Monetary Fund.

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (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 national treatment basis and such that the other Party is treated no less favourably than any non-Party.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their 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 under Paragraph 1, or any changes therein, shall be promptly notified to the other Party.

5. The Party applying any restrictions under Paragraph 1 shall commence consultations with the other Party in order to review the restrictions applied by it.

ARTICLE 1606

Prudential Measures

Nothing in this Agreement shall prevent a Party from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service⁹ supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

9 A "financial service" is any service of a financial nature offered by a service supplier of a Party, and includes all insurance and insurance-related services, and all banking and other financial services. An illustrative list of financial services is provided in paragraph 5 of the *Annex on Financial Services* to GATS.

ARTICLE 1607

Taxation Measures

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

- (a) where a corresponding right or obligation is also granted or imposed by the WTO Agreement; and
- (b) under Article 912.¹⁰

2. If there is a dispute described in Article 917 (1) that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 917 shall accept a decision of the Parties as to whether the measure in question is a taxation measure.

3. In the event of any inconsistency relating to a taxation measure between this Agreement and the *Agreement between Australia and the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion*, done at Canberra on 31 August 1989, the latter shall prevail. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall include representatives of the tax administration of each Party.¹¹

¹⁰ This Sub-paragraph relates to taxation measures having an effect equivalent to expropriation or nationalisation.

¹¹ Nothing in this Agreement shall be regarded as obliging a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement on 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.