

CHAPTER 11

EXCEPTIONS

ARTICLE 11.1

General exceptions

Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 11.2

Security exceptions

Nothing in this Agreement shall be construed as:

- (a) requiring a Party to provide any information the disclosure of which it considers contrary to its essential security interests;
- (b) preventing a Party from taking any action, which it considers necessary for the protection of its essential security interests, including action:
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) relating to the production of or trade in arms, ammunition and implements of war as well as to the production of or trade in other goods and materials as carried out directly or indirectly for the purpose of supplying military and other security establishments;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) preventing a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the purpose of maintaining international peace and security.

ARTICLE 11.3

Restrictions in case of balance of payments and external financing difficulties

1. Where a Party experiences serious balance-of-payments, capital movements, or external financing difficulties that cause or threaten to cause serious

macroeconomic difficulties related to monetary and exchange rate policies, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers.

2. The measures referred to in paragraph 1 shall:
 - (a) be consistent with the Articles of the Agreement of the International Monetary Fund (IMF), as applicable;
 - (b) not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (c) be temporary and phased out progressively as the situation specified in paragraph 1 improves;
 - (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party or of third countries; and
 - (e) be non-discriminatory compared to third countries in like situations.
3. Each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. Those measures shall be in accordance with the GATT 1994 and the Understanding on the Balance of Payments provisions of the GATT 1994, contained in Annex 1A to the WTO Agreement.
4. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall notify the other Party in writing, along with the rationale for their imposition, within 45 days of their adoption or maintenance.
5. If restrictions are adopted or maintained under this Article, the Parties shall promptly hold consultations at the Joint Committee, unless consultations are held in other fora. The consultations shall assess the balance-of payments or external financial difficulty that led to the measures, taking into account, *inter alia*, factors such as:
 - (a) the nature and extent of the difficulties;
 - (b) the external economic and trading environment; and
 - (c) alternative corrective measures which may be available.
6. The consultations pursuant to paragraph 5 shall address the compliance of any restrictive measures with paragraphs 1 and 2. The Parties shall accept all findings of statistical nature and other facts presented by the IMF relating to foreign exchange, monetary reserves, balance-of-payments. The Parties' conclusions on compliance shall be based on the assessment by the IMF of the

balance-of-payments and the external financial situation of the Party concerned.

ARTICLE 11.4

Taxation measures

1. For the purposes of this Article:
 - (a) “tax convention” means a convention for the avoidance of double taxation, or any other international taxation agreement or arrangement;
 - (b) “taxes” and “taxation measures” include excise duties, but do not include:
 - (i) a “customs duty” as defined in Article 1.2;
 - (ii) a fee or other charge in connection with the importation commensurate with the cost of services rendered; or
 - (iii) an antidumping or a countervailing duty.
2. Except as provided in this Article, nothing in this Agreement applies to taxation measures.
3. Nothing in this Agreement affects the rights and obligations of either Party, under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention prevails to the extent of the inconsistency.
4. In the case of a tax convention between the Parties, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred by the Parties to the competent authorities under, or in respect of, that tax convention.
5. Notwithstanding paragraph 3:
 - (a) Article 2.3, and such other measures as are necessary to give effect to that Article, apply to taxation measures to the same extent as does Article III of the GATT 1994 including its interpretative notes; and
 - (b) Article 2.8 applies to taxation measures.