

## **CHAPTER 13 EXCEPTIONS**

### **ARTICLE 105 General Exceptions**

1. For the purposes of Chapters 3 (Trade in Goods), 4 (Rules of Origin), 5 (Customs Procedures), 6 (Trade Remedies) and 7 (Technical Barriers to Trade, Sanitary and Phytosanitary Measures), Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 8 (Trade in Services), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order;<sup>16</sup>
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (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;
- (d) inconsistent with Article 62 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>17</sup> imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

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<sup>16</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

<sup>17</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or

## **ARTICLE 106**

### **Security Exceptions**

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; or
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
  - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (iii) taken in time of war or other emergency in international relations; or
  - (iv) relating to protection of critical public infrastructure, including critical communication infrastructure, from deliberate attempts intended to disable or degrade such infrastructures; 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.

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- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
  - (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
  - (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
  - (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
  - (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in sub-paragraph (d) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

**ARTICLE 107**  
**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:
  - (a) in the case of trade in goods, adopt restrictive import measures in accordance with the GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the GATT 1994*;
  - (b) in the case of trade in services, adopt or maintain restrictions on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. 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.
2. The restrictions referred to in paragraph 1:
  - (a) shall be consistent with the *Articles of Agreement of the International Monetary Fund*;
  - (b) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
  - (c) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
  - (d) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.
3. In determining the incidence of such restrictions, the Parties 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 under paragraph 1, or any changes therein, shall be promptly notified to the other Party.