

## CHAPTER 16: EXCEPTIONS

### Article 16.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

**Fund:** the International Monetary Fund;

**international capital transactions:** “international capital transactions”, as defined in the *Articles of Agreement of the International Monetary Fund*;

**payments for current international transactions:** “payments for current international transactions”, as defined in the *Articles of Agreement of the International Monetary Fund*;

**tax convention:** a convention for the avoidance of double taxation or other international taxation agreements or arrangements; and

**transfers:** international transactions and related international transfers and payments.

### Article 16.02 General Exceptions

1. Article XX of GATT 1994 and its interpretative notes are incorporated into and made an integral part of this Agreement, for purposes of:

- (a) Part Two (Trade in Goods), except to the extent that any of its provisions apply to services and investment; and
- (b) Part Three (Trade Barriers), except to the extent that any of its provisions apply to services and investment.

2. Subparagraphs (a), (b) and (c) of Article XIV of the GATS, are incorporated into and made an integral part of this Agreement, for purposes of:

- (a) Part Two (Trade in Goods), to the extent that any of its provisions apply to services;
- (b) Part Three (Trade Barriers), to the extent that any of its provisions apply to services; and
- (c) Part Four (Investment, Services and Related Matters).

### Article 16.03 National Security

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
- (b) to prevent a Party from taking any actions that it considers necessary for the protection of its essential security interests:
  - (i) relating to the traffic in arms, ammunitions and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaking directly or indirectly for the purposes of supplying a military or other security establishment;
  - (ii) taken in time of war or other emergency in international relations; or
  - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- (c) to prevent a Party from taking action in pursuance of its obligations under the United Nations Charter for the Maintenance of International Peace and Security.

#### **Article 16.04 Balance of Payments**

1. No provision in this Agreement shall be interpreted to prevent a Party from adopting or maintaining measures that restrict transfers when the Party faces serious difficulties in or threats to its balance of payments, provided that the restrictions are compatible with this Article.

2. The Party shall notify the other Party within thirty (30) days after the adoption of a measure in accordance with paragraph 1. In the event that all Parties become party to the *Articles of Agreement of the International Monetary Fund*, the procedure of paragraph 3 should be followed.

3. As soon as it is feasible, after a Party applies a measure according to this Article and its international obligations, the Party shall:

- (a) submit all restrictions to current account transactions for review by the Fund according to Article VIII of the *Articles of the Agreement of the International Monetary Fund*;
- (b) initiate consultations with the Fund with respect to the measures of economic adjustment geared to address the fundamental economic problems causing the difficulties; and
- (c) adopt or maintain economic policies according to such consultations.

4. The measures adopted or maintained under this Article shall:

- (a) avoid unnecessary damage to the commercial, economic, and financial interests of the other Party;
- (b) not be more burdensome than necessary to deal with the balance of payments difficulties, or threat thereof;
- (c) be temporary and be phased out progressively as the balance of payments situation improves;
- (d) be consistent with those of paragraph 3 (c), as well as with the *Articles of Agreement of the International Monetary Fund*; and
- (e) be applied on a national treatment or most-favored-nation treatment basis, whichever is better.

5. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic program, provided that a Party may not impose a measure for the purposes of protecting a specific industry or sector, unless the measure is consistent with paragraph 3 (c), and with Article VIII (3) of the *Articles of Agreement of the International Monetary Fund*.

6. The restrictions imposed on transfers must:

- (a) be consistent with Article VIII (3) of the *Articles of Agreement of the International Monetary Fund*, when they are applied to payments for current international transactions; and
- (b) be consistent with Article VI of the *Articles of Agreement of the International Monetary Fund* and be applied only in conjunction with measures on payments for current international transactions under paragraph 3 (a).

#### **Article 16.05 Disclosure of information**

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement, or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

#### **Article 16.06 Taxation**

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this

Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

- (a) Article 3.03 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and
- (b) Article 3.12 (Export Taxes) shall apply to taxation measures.

4. For purposes of this Article, taxation measures do not include:

- (a) a customs duty as defined in Chapter 2 (General Definitions); nor
- (b) the measures listed in exceptions (b), (c), and (d) to that definition.

5. Subject to paragraph 2:

- (a) Articles 10.03 (National Treatment) and 11.03 (National Treatment) shall apply to the taxation measures on income, capital gains or on the taxable capital of enterprises that relate to the purchase or consumption of particular services; and
- (b) Articles 10.03 (National Treatment) and 10.04 (Most Favored Nation Treatment); 11.03 (National Treatment) and 11.04 (Most Favored Nation Treatment); shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of enterprises, taxes on estates, inheritances, and donations,

except that nothing in those Articles shall apply:

- (i) to any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to any tax convention;
- (ii) to any existing taxation measure which provides different tax treatment between residents and non-residents;
- (iii) to a non-conforming provision of any existing taxation measure;
- (iv) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (v) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those articles; or

(vi) to the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes and does not arbitrarily discriminate among persons, goods or services of the Parties, or arbitrarily nullify or impair advantages granted by those articles, in the sense of Annex 15.02 (Nullification or Impairment).