

TITLE XI

GENERAL EXCEPTIONS

ARTICLE 295

Security Exception

1. Nothing in this Agreement shall be construed:
 - (a) to require any Party to furnish or give access to any information the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any Party from taking any measure which it considers necessary for the protection of its essential security interests:
 - (i) relating to government procurement indispensable for national security or for national defence purposes;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;

- (iii) connected with the production of, government procurement of or trade in arms, munitions and war material and related to traffic in other goods and materials and to the supply of services or establishment as are carried out directly or indirectly for the purpose of supplying a military establishment;
 - (iv) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any measures necessary in pursuance of the obligations it has accepted for the purpose of maintaining or restoring international peace and security.
2. The Trade Committee shall be informed to the extent possible of any measure taken by a Party under subparagraphs 1(b) and 1(c) and its termination.

ARTICLE 296

Taxation

1. This Agreement shall only apply to taxation measures to the extent such application is necessary to give effect to the provisions of this Agreement.

2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention¹ between a Member State of the European Union and a signatory Andean Country. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of tax conventions between a Member State of the European Union and a signatory Andean Country, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing any measure which:

- (a) aims at ensuring the effective and equitable imposition and collection of direct taxes;
- (b) distinguishes in the application of the relevant provisions of domestic fiscal legislation, including those aimed at ensuring the imposition and collection of duties, between tax payers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested;
- (c) aims at preventing the avoidance or evasion of taxes pursuant to tax provisions of conventions to avoid double taxation or other tax agreements, or domestic fiscal legislation; or

¹ For the purposes of this article, "tax convention" shall be understood as a convention for the avoidance of double taxation or other international taxation agreement or arrangement.

(d) is incompatible with any MFN obligation established under this Agreement, provided that the difference in treatment results from a tax convention.

4. Tax terms or concepts not defined in this Agreement 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 297

Balance of Payments

1. If a Party experiences serious external financial or balance-of-payments difficulties or threat thereof, that Party may adopt or maintain restrictive measures with regard to trade in goods, trade in services and establishment, including on payments or transfers related to such transactions.

2. Any restrictive measure adopted or maintained pursuant to paragraph 1 shall be non-discriminatory and of limited duration, shall not go beyond what is necessary to remedy the balance-of-payments situation, and shall be in accordance with the conditions established in the WTO Agreement and consistent with the Articles of the Agreement of the International Monetary Fund, as applicable².

² The conditions established in the WTO Agreement as referred to in this Article shall be considered applicable, *mutatis mutandis*, to balance of payments measures regarding establishment in sectors other than services sectors.

3. The Parties shall endeavour to avoid the imposition of restrictive measures referred to in paragraph 1. In the event of the introduction or modification by a Party of such measures, such Party, shall promptly notify them to the other Parties and present, as soon as possible, a time schedule for their removal.

4. Consultations shall be held promptly within the Trade Committee. Such consultations shall assess the balance- of- payments situation of the Party adopting or maintaining restrictive measures under this Article, as well as the measures themselves, taking into account, *inter alia*, factors such as:

- (a) the nature and extent of the balance of payments and the external financial difficulties;
- (b) the external economic and trading environment; and
- (c) alternative corrective measures which may be available.

Consultations shall address the compliance of any restrictive measure with paragraphs 2 and 3. All statistical findings and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted, and conclusions shall be based on the assessment by the International Monetary Fund of the balance-of- payments and the external financial situation of the Party introducing the measures.