

## CHAPTER 19

### GENERAL PROVISIONS AND EXCEPTIONS

#### Article 19.1: 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 be contrary to its laws and regulations or 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 19.2: Confidentiality of Information

Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information.

#### Article 19.3: General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Technical Barriers to Trade), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Trade Remedies) and Chapter 11 (Electronic Commerce)<sup>1</sup>, Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Financial Services), Chapter 10 (Temporary Entry for Business Persons) and Chapter 11 (Electronic Commerce)<sup>1</sup>, Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

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<sup>1</sup> This paragraph is without prejudice to whether a digital product should be classified as a good or service.

#### **Article 19.4: Security Exceptions**

Nothing in this Agreement shall be construed to:

- (a) 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) prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) relating to fissionable materials or the materials from which they are derived;
  - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as is carried on directly or indirectly for the purpose of supplying a military establishment; or
  - (iii) taken in time of war or other emergency in external relations; or
- (c) prevent a Party from taking any action in pursuance of the obligations applicable to it under the *United Nations Charter* for the maintenance of international peace and security.

#### **Article 19.5: Taxation Measures**

1. For the purposes of this Article:

**designated authorities** means:

- (a) for Hong Kong, China, an authority or its authorised representative to be designated by the Director-General of Trade and Industry; and
- (b) for Peru, the Ministry of Economy and Finance (Ministerio de Economía y Finanzas - MEF);

**tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

**taxes** and **taxation measures** include excise duties, but do not include any import or customs duties.

2. Unless otherwise provided in this Article, nothing in this Agreement shall apply to taxation measures.

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

- (a) corresponding rights and obligations are also granted or imposed under the WTO Agreement; or
- (b) they are granted or imposed under:
  - (i) Chapter 2 (Trade in Goods); or
  - (ii) Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions).

4. Notwithstanding paragraph 3, nothing in the Article referred to in subparagraph 3(b)(ii) shall apply to:

- (a) any non-conforming provision of any existing taxation measure;
- (b) the continuation or prompt renewal of any non-conforming provision of any existing taxation measure;
- (c) an amendment to any non-conforming provision of any existing taxation measure, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with the rights and obligations in Article 12.5 (Performance Requirements) of Chapter 12 (Establishment and Related Provisions);
- (d) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties<sup>2</sup>; or
- (e) a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits on a requirement that the Party maintains continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

5. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention to which the Parties are party. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.

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<sup>2</sup> The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

6. If an issue arises as to whether any inconsistency exists between this Agreement and a tax convention to which the Parties are party, the issue shall be referred to the designated authorities of the Parties. The designated authorities of the Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of the inconsistency. If the designated authorities agree, such a period may be extended up to 12 months from the date of referral of the issue. No procedure concerning the measure giving rise to the issue may be initiated under Chapter 18 (Dispute Settlement) until the expiry of the six-month period, or such other period as may have been agreed by the designated authorities pursuant to the previous sentence. A panel established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties made under this paragraph.

7. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any tax convention by which the Party is bound.

#### **Article 19.6: Measures to Safeguard the Balance-of-Payments**

1. If a Party is in serious balance-of-payments and external financial difficulties or under threat thereof, it may:

- (a) in the case of trade in goods, in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement, adopt or maintain restrictive import measures; and
- (b) in the case of trade in services, adopt or maintain restrictions on payments or transfers related to trade in services.

2. If a Party is in serious balance-of-payments and external financial difficulties or under threat thereof, or if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, it may adopt or maintain restrictions on payments or transfers related to Chapter 12 (Establishment and Related Provisions).

3. Restrictions adopted or maintained under paragraph 1(b) or paragraph 2 shall:

- (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(b) or paragraph 2;

- (d) be temporary and be phased out progressively as the situation specified in paragraph 1(b) or paragraph 2 improves; and
- (e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-party.

4. In determining the incidence of restrictions adopted or maintained under paragraph 1 or paragraph 2, a Party may give priority to economic sectors which are more essential to its economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

5. Any restrictions adopted or maintained by a Party under paragraph 1 or paragraph 2, or any changes therein, shall be notified promptly to the other Party.

6. The Party adopting or maintaining any restrictions under paragraph 1 or paragraph 2 shall, on request, promptly commence consultations with the other Party in order to review the restrictions adopted or maintained by it.