

CHAPTER 17

GENERAL PROVISIONS AND EXCEPTIONS

Article 17.1: Confidentiality of Information

1. Nothing in this Agreement shall require a Party to furnish or allow access to information that would be contrary to its law or impede law enforcement, or otherwise be contrary to the public interest or that would prejudice the legitimate commercial interests of any particular enterprises, public or private.

2. 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 Party receiving the information shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except where the disclosure of information is for the purposes of complying with the legal requirements of a Party.

Article 17.2: General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Non-Tariff Measures), Chapter 4 (Rules of Origin), Chapter 5 (Customs Procedures), Chapter 6 (Trade Facilitation), Chapter 7 (Sanitary and Phytosanitary Measures) and Chapter 8 (Technical Barriers to Trade), Article XX of GATT 1994 is 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 and that Article XX(f) of GATT 1994 applies to measures imposed for the protection of national treasures of artistic, historic or archaeological value.

2. For the purposes of Chapter 9 (Trade in Services), Chapter 10 (Financial Services), Chapter 11 (Telecommunications), Chapter 12 (Movement of Natural Persons) and Chapter 13 (Electronic Commerce), 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.

3. For the purposes of Chapter 14 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or

unjustifiable discrimination between investments or between investors where like conditions prevail, or a disguised restriction on international trade or investment, nothing in Chapter 14 (Investment) shall be construed to prevent a Party from adopting or enforcing measures:

- (a) necessary to protect public morals or to maintain public order¹;
- (b) necessary to protect human, animal or plant life or health²;
- (c) necessary to ensure compliance with laws and regulations that 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) imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (e) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.³

4. For the purposes of Chapter 9 (Trade in Services) and Chapter 14 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, or between investors or between investments, where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national

¹ 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.

² For greater certainty, the measures referred to subparagraph (b) include environmental measures to protect human, animal or plant life or health.

³ For greater certainty, the measures referred to in subparagraph (e) include environmental measures relating to the conservation of living and non-living exhaustible natural resources.

treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.⁴

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 9 (Trade in Services) and Chapter 14 (Investment) if requested by a Party affected by the measures referred to in paragraph 4.

6. Nothing in this Agreement shall be construed to prevent a Party from implementing the suspension of obligations, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO or resulting from a decision by a dispute settlement panel under a free trade agreement to which the Parties are party.

Article 17.3: Security Exceptions

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 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 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 carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) taken so as to protect critical public infrastructure⁵ which may include communications, power and water infrastructures;

⁴ “Creative arts” includes the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

⁵ For clarity, this includes critical public infrastructures whether publicly or privately owned.

(iv) taken in time of national emergency or war or other emergency in international relations; 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.

Article 17.4: Taxation Measures

1. For the purposes of this Article:

competent authorities means:

(i) with respect to Australia, the Secretary to the Treasury or an authorised representative of the Secretary; and

(ii) with respect to Indonesia, the Minister of Finance or his or her authorised representative.

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement to which the Parties are party; and

taxation measures 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 where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

(b) they are granted or imposed under Article 14.6 (Prohibition of Performance Requirements) of Chapter 14 (Investment);

(c) they are granted or imposed under Article 14.9 (Transfers) of Chapter 14 (Investment); or

(d) they are granted or imposed under Article 14.11 (Expropriation and Compensation) of Chapter 14 (Investment).

4. Where paragraph 3(c) or (d) applies, Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) shall also apply in respect of taxation measures.

5. Where an investor claims that the disputing Party has breached Article 14.9 (Transfers) of Chapter 14 (Investment) or Article 14.11 (Expropriation and Compensation) of Chapter 14 (Investment) by the adoption or enforcement of a taxation measure, the competent authorities of the disputing Party may request consultations with the competent authorities of the non-disputing Party at the time that the disputing Party receives the investor's notice of intent under Article 14.25 (Submission of a Claim) of Chapter 14 (Investment). The competent authorities of the Parties shall hold consultations with a view to determining whether Article 14.9 (Transfers) of Chapter 14 (Investment) has been breached or whether the taxation measure in question has an effect equivalent to expropriation. Any tribunal established in accordance with Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment) to consider the measure, shall accept as binding the decision of the competent authorities under this paragraph.

6. If the competent authorities of the Parties fail to determine whether Article 14.9 (Transfers) of Chapter 14 (Investment) has been breached or whether the taxation measure has an effect equivalent to expropriation within 360 days of the date of receipt of the request for consultations by the non-disputing Party, the investor may submit its claim to arbitration under Article 14.25 (Submission of a Claim) of Chapter 14 (Investment).

7. The time period under Article 14.26 (Conditions and Limitations on Submission of a Claim) of Chapter 14 (Investment) shall be suspended during the 360 day period under paragraph 6. For greater certainty, this time period shall not be counted as part of the time limit in Article 14.26.1 (Conditions and Limitations on Submission of a Claim) of Chapter 14 (Investment).

8. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall be done by the competent authorities.

9. If an issue arises as to whether any inconsistency exists between this Agreement and any applicable tax convention in the context of proceedings under Chapter 20 (Consultations and Dispute Settlement) or Section B (Investor-State Dispute Settlement) of Chapter 14 (Investment), the issue shall be referred to the competent authorities of the Parties. The competent authorities of the Parties shall have 180 days from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If the competent authorities agree, such a period may be extended. No procedure concerning the measure giving rise to the issue may continue under Chapter 20 (Consultations and Dispute Settlement) or Chapter 14 (Investment) until the expiry of the

180 day period, or such other period as may have been agreed by the competent authorities. Any panel or tribunal established under this Agreement to consider a dispute which may contain any inconsistency between this Agreement and any applicable tax convention shall accept as binding a determination of the competent authorities of the Parties made under this paragraph.

10. 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 17.5: Measures to Safeguard the Balance of Payments

1. Where 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 Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement, adopt restrictive import measures;

(b) in the case of trade in services, where a Party is in serious balance of payments and external financial difficulties or under threat thereof or if, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for macroeconomic management, adopt or maintain restrictions on payments or capital movements related to trade in services;

(c) in the case of investments, where a Party is in serious balance of payments and external financial difficulties or under threat thereof or if, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for macroeconomic management, adopt or maintain restrictions on payments or capital movements related to covered investments as defined in Article 2.4 of Chapter 2 (Initial Provisions and General Definitions).

2. Restrictions adopted or maintained under paragraphs 1(b) and 1(c) 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;
 - (d) be temporary and phased out progressively as the situation specified in paragraph 1 improves;
 - (e) be applied on a national treatment basis;
 - (f) ensure that the other Party is treated as favourably as any non-Party;
 - (g) not constitute a dual or multiple exchange rate practice; and
 - (h) not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the Articles of Agreement of the International Monetary Fund.
3. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party.
4. A Party adopting or maintaining any restrictions under paragraph 1 shall:
- (a) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, if requested, promptly commence consultations with the other Party;
 - (b) in the case of investment, respond to the other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement.