

CHAPTER 19

EXCEPTIONS

Article 19.01 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 19.02 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 19.03 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 preclude a Party from applying measures that it considers necessary for the protection of its essential interests in security matters:
 - i) relative to the trade in armaments, ammunitions and military equipments and the trade or operations in goods, materials, services and technology that are carried out with the main direct or indirect purpose of supplying a military institution or other defense organization;
 - ii) applied in war time or in other cases of grave international tension; or
 - iii) applied to national policies or international agreements to avoid the proliferation of nuclear weapons and other nuclear explosives;
- c) to impede a Party from adopting measures for the fulfillment of the obligations derived from the United Nations Charter for the Maintenance of Peace and International Security.

Article 19.04 Balance of Payments

1. No provision in this Agreement shall be interpreted as impeding 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 both 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 to its international obligations, the Party shall:

- a) submit all restrictions to current account for revision to the Fund according to Article VIII of the Articles of 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 according to 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 difficulties in, or threats to the balance of payments;
- c) be temporary and progressively eliminated as the balance of payments situation improves;
- d) be compatible 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 according to this Article that grants priority to the essential services for its economic program, whenever the Party does not impose a measure for the purpose of protecting a specific industry or sector, unless the measure is compatible 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 compatible 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 compatible 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 in accordance with paragraph 3 (a).

Article 19.05 Disclosure of information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede, or otherwise be contrary to its Constitution, public interest, or laws regarding personal privacy, financial matters and banking accounts of individual clients of financial institutions.

Article 19.06 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, successions 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, at the time of its application, its conformity 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 18.02 (Nullification and Impairment).