

CHAPTER 31

GENERAL PROVISIONS AND EXCEPTIONS

Article 31.1 General Exceptions

1. For the purposes of Chapter 2 (Goods), Chapter 4 (Rules of Origin and Origin Procedures), Chapter 5 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Technical Barriers to Trade), Chapter 13 (Investment), Chapter 14 (Digital Trade), and Chapter 18 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.¹
2. The Parties understand that the measures referred to in paragraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that paragraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
3. For the purposes of Chapter 8 (Cross-Border Trade in Services), Chapter 9 (Financial Services), Chapter 10 (Professional Services and Recognition of Professional Qualifications), Chapter 11 (Temporary Entry for Business Persons), Chapter 12 (Telecommunications), Chapter 13 (Investment), Chapter 14 (Digital Trade), and Chapter 18 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.² The Parties understand that the measures referred to in paragraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.
4. 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 is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which both Parties are party.

¹ For the purposes of Chapter 18 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase, production or sale of goods, or affecting activities the end result of which is the production of goods.

² For the purposes of Chapter 18 (State-Owned Enterprises and Designated Monopolies), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

Article 31.2 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; or
- (b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 31.3 Temporary Safeguard Measures

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.
2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital:
 - (a) in the event of serious balance of payments and external financial difficulties or threats thereof; or
 - (b) if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.
3. Any measure adopted or maintained under paragraph 1 or 2 shall:
 - (a) not be inconsistent with Article 8.3 (National Treatment – Cross-Border Trade in Services), Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services), Article 9.5 (National Treatment – Financial Services), Article 9.8 (Most-Favoured-Nation Treatment – Financial Services), Article 13.5 (National Treatment – Investment), and Article 13.6 (Most-Favoured-Nation Treatment – Investment);³

³ Without prejudice to the general interpretation of Article 8.3 (National Treatment – Cross Border Trade in Services), Article 8.4 (Most-Favoured-Nation Treatment – Cross Border Trade in Services),

- (b) be consistent with the Articles of Agreement of the International Monetary Fund (“IMF”);
 - (c) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
 - (d) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;
 - (e) be temporary and be phased out progressively as the situations specified in paragraph 1 or 2 improve;
 - (f) not be inconsistent with Article 13.9 (Expropriation and Compensation – Investment);⁴ and
 - (g) not be used to avoid necessary macroeconomic adjustment.
4. A Party adopting or maintaining measures under paragraph 1 or 2 shall:
- (a) promptly notify, in writing, the other Party of the measures, including any changes therein; and
 - (b) on request of the other Party, promptly commence consultations with the other Party to review the measures adopted or maintained under paragraph 1 or 2, provided that:
 - (i) in the case of capital movements, such consultations are not otherwise taking place outside of this Agreement; or
 - (ii) in the case of current account restrictions, such consultations are not otherwise taking place under the framework of the WTO Agreement.
5. Any consultations pursuant to paragraph 4 shall take into account all relevant findings of a statistical nature and other facts presented by the IMF relating to foreign exchange, monetary reserves, balance-of-payments, and their

Article 9.5 (National Treatment – Financial Services), Article 9.8 (Most-Favoured-Nation Treatment – Financial Services), Article 13.5 (National Treatment – Investment), and Article 13.6 (Most-Favoured-Nation Treatment – Investment), the fact that a measure adopted or maintained pursuant to paragraph 1 or 2 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with Article 8.3 (National Treatment – Cross Border Trade in Services), Article 8.4 (Most-Favoured-Nation Treatment – Cross Border Trade in Services), Article 9.5 (National Treatment – Financial Services), Article 9.8 (Most-Favoured-Nation Treatment – Financial Services), Article 13.5 (National Treatment – Investment), and Article 13.6 (Most-Favoured-Nation Treatment – Investment).

⁴ For greater certainty, measures referred to in paragraph 1 or 2 may be non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives as referred to in subparagraph 3(b) of Annex 13B (Expropriation – Investment).

conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

Article 31.4 Taxation Measures

1. For the purposes of this Article:

“competent authority” means:

- (a) for Australia, the Secretary to the Treasury or a successor or an authorised representative; and
- (b) for the United Kingdom, the Commissioners for Revenue and Customs or a successor or an authorised representative;

“listed taxes” means taxes on income, on capital gains, on the taxable capital of corporations, on the value of an investment or property⁵ (other than the transfer of that investment or property), on estates, on inheritances, on gifts, or on generation-skipping transfers;

“tax convention” means a convention for the avoidance of double taxation, or any other international taxation agreement or arrangement; and

“taxes” and “taxation measures” include excise duties, but do not include:

- (a) a “customs duty” as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions);
- (b) a fee or other charge in connection with the importation commensurate with the cost of services rendered; or
- (c) an antidumping or countervailing duty.

2. Except as provided in this Article, nothing in this Agreement applies to taxation measures.

3. The following provisions apply to taxation measures:

- (a) Article 2.3 (National Treatment – Trade in Goods), and such other provisions of this Agreement as are necessary to give effect to that Article, to the same extent as does Article III of GATT 1994;

⁵ This is without prejudice to the methodology used to determine the value of such investment or property under the respective law of the Parties.

- (b) Article 2.12 (Export Duties, Taxes or other Charges – Trade in Goods);
 - (c) Article 13.9 (Expropriation and Compensation – Investment); and
 - (d) Article 13.11 (Performance Requirements – Investment).
4. The following provisions apply to taxation measures other than listed taxes:
- (a) Article 8.3 (National Treatment – Cross-Border Trade in Services);
 - (b) Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services);
 - (c) Article 9.5 (National Treatment – Financial Services);
 - (d) Article 9.8 (Most-Favoured-Nation Treatment – Financial Services);
 - (e) Article 13.5 (National Treatment – Investment); and
 - (f) Article 13.6 (Most-Favoured-Nation Treatment – Investment).
5. The following provisions also apply, in relation to the purchase or consumption of particular services, to taxation measures on income, on capital gains, on the taxable capital of corporations, or on the value of an investment or property⁵ other than the transfer of that investment or property):
- (a) Article 8.3 (National Treatment – Cross-Border Trade in Services; and
 - (b) Article 9.5 (National Treatment – Financial Services),
- except that nothing in this paragraph prevents a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory.
6. Nothing in the provisions referred to in paragraph 4 or 5 applies to:
- (a) a non-conforming provision of any existing taxation measure;
 - (b) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
 - (c) 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;

- (d) the adoption or enforcement of any new 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 for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties⁶;
 - (e) a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, pension plan, superannuation fund or other arrangement to provide pension, superannuation or similar benefits, on a requirement that the Party maintain continuous jurisdiction, regulation or supervision over that trust, plan, fund or other arrangement; or
 - (f) any taxation measure of a Party with respect to the acquisition of an interest in residential property, where that measure is directed at facilitating home ownership for that Party's residents.
7. Nothing in this Agreement affects the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention prevails to the extent of the inconsistency.
8. In the case of a tax convention between the Parties, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred by the Parties to the competent authorities. The competent authorities shall have 12 months beginning with the date of that referral to make a determination as to the existence and extent of any inconsistency. If the competent authorities agree, that period may be extended by no more than a further 12 months. No procedures concerning the measure giving rise to the issue may be initiated under this Agreement before the expiry of that 12 month period or any extension of that period of no more than a further 12 months as may have been agreed by the competent authorities. Any panel established under this Agreement to consider a dispute related to a taxation measure shall accept as binding a determination made by the competent authorities under this paragraph.
9. Nothing in this Agreement shall oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention.

⁶ The Parties understand that this subparagraph must be interpreted by reference to the footnote to paragraph (d) of Article XIV of GATS as if the Article was not restricted to services or direct taxes.

Article 31.5
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 law or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 31.6
Confidentiality of Information

Each Party shall, subject to its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

Article 31.7
The National Health Service and Australia's health system

The Parties recall the exclusions and exceptions in this Agreement that are applicable to the National Health Service of the United Kingdom⁷ and to Australia's health system, including as set out in the relevant provisions of this Chapter, of Chapter 8 (Cross-Border Trade in Services), Chapter 13 (Investment), Chapter 15 (Intellectual Property), Chapter 16 (Government Procurement), and of Annex I (Schedules of Non-Conforming Measures for Services and Investment) and Annex II (Schedules of Non-Conforming Measures for Services and Investment).

⁷ For greater certainty, the National Health Service of the United Kingdom includes the National Health Service in England, Scotland, Wales, and Health and Social Care in Northern Ireland.