

## CHAPTER 20

### EXCEPTIONS

#### ARTICLE 20.1

##### 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) connected to the production of, or traffic in, arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;
  - (ii) relating to fissionable and fusionable materials or the materials from which they are derived; or
  - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Party from taking any action in pursuance of its international obligations under the Charter of the United Nations, signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization (hereinafter referred to as the "Charter of the United Nations"), for the purpose of maintaining international peace and security.

## ARTICLE 20.2

### General exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in Chapters 2, 4 and 17 shall be construed to prevent the adoption or enforcement by a Party of measures referred to in Article XX of the GATT 1994. To that end, Article XX of the GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment liberalisation or trade in services, nothing in Chapters 10 and 17 shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order<sup>1</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources, if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to:

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<sup>1</sup> The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (i) the prevention of deceptive and fraudulent practices<sup>2</sup> or to deal with the effects of a default on 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; or
- (iii) safety.

3. Nothing in Chapter 10 shall be construed to prevent the adoption or enforcement of a measure which implements a requirement imposed or enforced by a court, administrative tribunal or competition authority to remedy a violation of competition laws and regulations.

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<sup>2</sup> For greater certainty, this includes laws and regulations on anti-money laundering and combating the financing of terrorism.

4. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions of Chapters 2, 4 and 17:

- (a) the measures referred to in point (b) of Article XX of GATT 1994 include environmental measures, which are necessary to protect human, animal or plant life or health;
- (b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and
- (c) measures taken to implement multilateral environmental agreements can fall under points (b) or (g) of Article XX of GATT 1994.

5. Before a Party takes any measures in accordance with points (i) and (j) of Article XX of GATT 1994, it shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If an agreement is not reached within 30 (thirty) days of providing such information, the Party may apply the relevant measures. Whenever exceptional and critical circumstances require immediate action, the Party intending to take the measures may apply the measure necessary to deal with the circumstances without prior notification and shall inform the other Party immediately thereof.

## ARTICLE 20.3

### Taxation

1. For the purposes of this Article, the following definitions apply:
  - (a) "residence" means residence for tax purposes; and
  - (b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that the European Union or its Member States or a Signatory MERCOSUR State is party to.
2. Nothing in this Agreement shall affect the rights and obligations of the European Union or its Member States or of the Signatory MERCOSUR States under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.

3. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries, where like conditions prevail, or a disguised restriction on trade or investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes<sup>3</sup> that:

- (a) distinguishes between taxpayers, 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; or
- (b) aims at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax convention or domestic fiscal legislation.

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<sup>3</sup> For greater certainty, the Parties understand that such measures include measures inconsistent with Article 10.4 aimed at ensuring the equitable or effective imposition or collection of direct taxes, taken by a Party under its taxation system which:

- (i) apply to non-resident investors and service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in this footnote 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 20.4

### Disclosure of information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which 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, except where a panel requires such confidential information in dispute settlement proceedings under Chapter 21. In such cases, the panel shall ensure that confidentiality is fully protected.
2. When a Party provides information which is considered confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

## ARTICLE 20.5

### WTO Waivers

If an obligation in this Agreement is substantially equivalent to an obligation contained in the WTO Agreement, any measure taken in conformity with a waiver adopted pursuant to paragraphs 3 and 4 of Article IX of the WTO Agreement is deemed to be in conformity with the substantively equivalent provision in this Agreement.