

CHAPTER 28

GENERAL PROVISIONS AND EXCEPTIONS

Article 28.1

General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 5 (Customs and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Technical Barriers to Trade), Chapter 12 (Digital Trade), and Chapter 17 (State-Owned Enterprises), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.¹
2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Financial Services), Chapter 10 (Temporary Movement of Natural Persons), Chapter 11 (Telecommunications), Chapter 12 (Digital Trade), and Chapter 17 (State-Owned Enterprises), Article XIV of GATS is incorporated into and made part of this Agreement, *mutatis mutandis*.²
3. The Parties understand that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
4. Nothing in this Agreement shall be construed to prevent a Party from implementing a suspension of concessions or other obligations, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO.

Article 28.2

Security Exceptions

1. Nothing in this Agreement shall be construed to:
 - (a) require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

¹ For the purposes of Chapter 17 (State-Owned Enterprises), the application of Article XX of GATT 1994 is limited to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or state trading enterprise) 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 17 (State-Owned Enterprises), the application of Article XIV of GATS is limited to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or state trading enterprise) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

- (b) prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the production of or traffic in arms, ammunition and implements of war and to other activities carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
 - (ii) relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
 - (iii) taken in time of war or other emergency in international relations;
 - (iv) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (c) 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.
2. Without prejudice to paragraph 1, nothing in this Agreement shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests, including in time of national emergency or relating to the protection of critical public infrastructure, whether publicly or privately owned, including communications, power and water infrastructure, subject to the requirement that such action is not taken in a manner which would constitute a disguised restriction on trade.

Article 28.3

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 the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* set out in Annex 1A of the WTO Agreement, adopt restrictive import measures;
 - (b) in the case of trade in services, in accordance with Article XII of GATS, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.

2. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party. A notification must be made no later than:
 - (a) in the case of the adoption of, or change to, a measure, 30 days after the date of the adoption or change;
 - (b) in the case of the maintenance of a measure, 30 days after the date of entry into force of this Agreement.
3. To the extent that it does not duplicate the process under the WTO or the International Monetary Fund (“IMF”), the Party adopting or maintaining any restrictions under this Article shall promptly commence consultations with the other Party in order to review those restrictions.
4. Any consultations pursuant to paragraph 3 that relate to restrictions adopted or maintained under subparagraph 1(b) shall discuss the balance-of-payments or external financial difficulties that led to the adoption or maintenance of the restrictive measures. The Parties shall accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves, balance of payments, and their conclusions shall be based on the assessment by the IMF of the balance-of-payments and external financial situation of the Party concerned.

Article 28.4 **Taxation Measures**

1. For the purposes of this Article:

“taxes” and **“taxation measures”** do not include:

 - (a) a customs duty;
 - (b) a fee or other charge in connection with importation commensurate with the cost of services rendered;
 - (c) an anti-dumping or countervailing duty; or
 - (d) a safeguard duty;

“direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total

amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;³

“**indirect taxes**” comprise all taxation measures other than direct taxes; and

“**tax convention**” means the UK-India DTAA, or any other international taxation agreement or arrangement including any other convention for the avoidance of double taxation.

2. Nothing in this Agreement shall apply to direct taxes.
3. Nothing in this Agreement shall apply to indirect taxes, except for:
 - (a) Article 2.4 (National Treatment – Trade in Goods), including Article III of GATT 1994 as incorporated into this Agreement; and
 - (b) Article 2.9 (Temporary Admission – Trade in Goods).
4. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any tax convention, the tax convention shall prevail over this Agreement.
5. In the case of a tax convention between the Parties, the relevant competent authorities under that tax convention shall jointly determine whether an inconsistency exists between this Agreement and the tax convention.
6. With respect to direct taxes neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement).
7. 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.

Article 28.5 **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

³ For greater certainty, “direct taxes” includes the taxes which are the subject of the *Convention between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains* done at New Delhi on 25 January 1993 (“the UK-India DTAA”) under Article 2 of that Convention.

would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 28.6

Confidentiality

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.
2. Information provided in confidence pursuant to this Agreement shall be used only for the purposes specified by the Party providing the information.
3. Notwithstanding paragraph 1, the confidential information provided pursuant to this Agreement may be transmitted to a non-Party subject to prior consent of the Party providing the information.
4. Nothing in this Article shall prevent a Party from disclosing information where it is required to do so under its law, or to the extent it may be necessary in the context of judicial or quasi-judicial proceedings. In such situations, the Party that has received the information shall notify the other Party of the release or disclosure.

Article 28.7

The National Health Service

The Parties recall the exclusions and exceptions in this Agreement that are applicable to the National Health Service of the United Kingdom⁴, including as set out in the relevant provisions of this Chapter, and Chapter 8 (Trade in Services), the Schedule of the United Kingdom in Annex 8B (Schedules of Specific Commitments), Chapter 13 (Intellectual Property Rights), and Chapter 15 (Government Procurement).

⁴ 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.