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1 ARTICLE XIV OF THE GENERAL AGREEMENT ON TRADE IN SERVICES

1.1 Text of Article XIV

Article XIV

General Exceptions

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 in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

- (a) necessary to protect public morals or to maintain public order;⁵

(footnote original) ⁵ 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.

- (b) necessary to protect human, animal or plant life or health;

- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of 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) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective⁶ imposition or collection of direct taxes in respect of services or service suppliers of other Members;

(footnote original) ⁶ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) apply to non-resident 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 Member's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other 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 Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

- (e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

1.2 General

1.2.1 Electronic commerce

1. With respect to the application of Article XIV to electronic commerce, see the Progress Report adopted by the Council for Trade in Services in the context of the Work Programme on Electronic Commerce on 19 July 1999.¹

1.2.2 Trade in services and the environment

2. On 1 March 1995, the Council for Trade in Services, pursuant to the Ministerial Decision on Trade in Services and the Environment, adopted the Decision on Trade in Services and the Environment.² The Decision stipulates, *inter alia*:

"In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, [Ministers] request the Committee on Trade and Environment to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Committee shall also examine the relevance of inter-governmental agreements on the environment and their relationship to the Agreement."³

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Current as of: March 2020

¹ [S/L/74](#), para. 14.

² [S/C/M/1](#). The adopted Decision can be found in [S/L/4](#).

³ [S/L/4](#), para. 1.