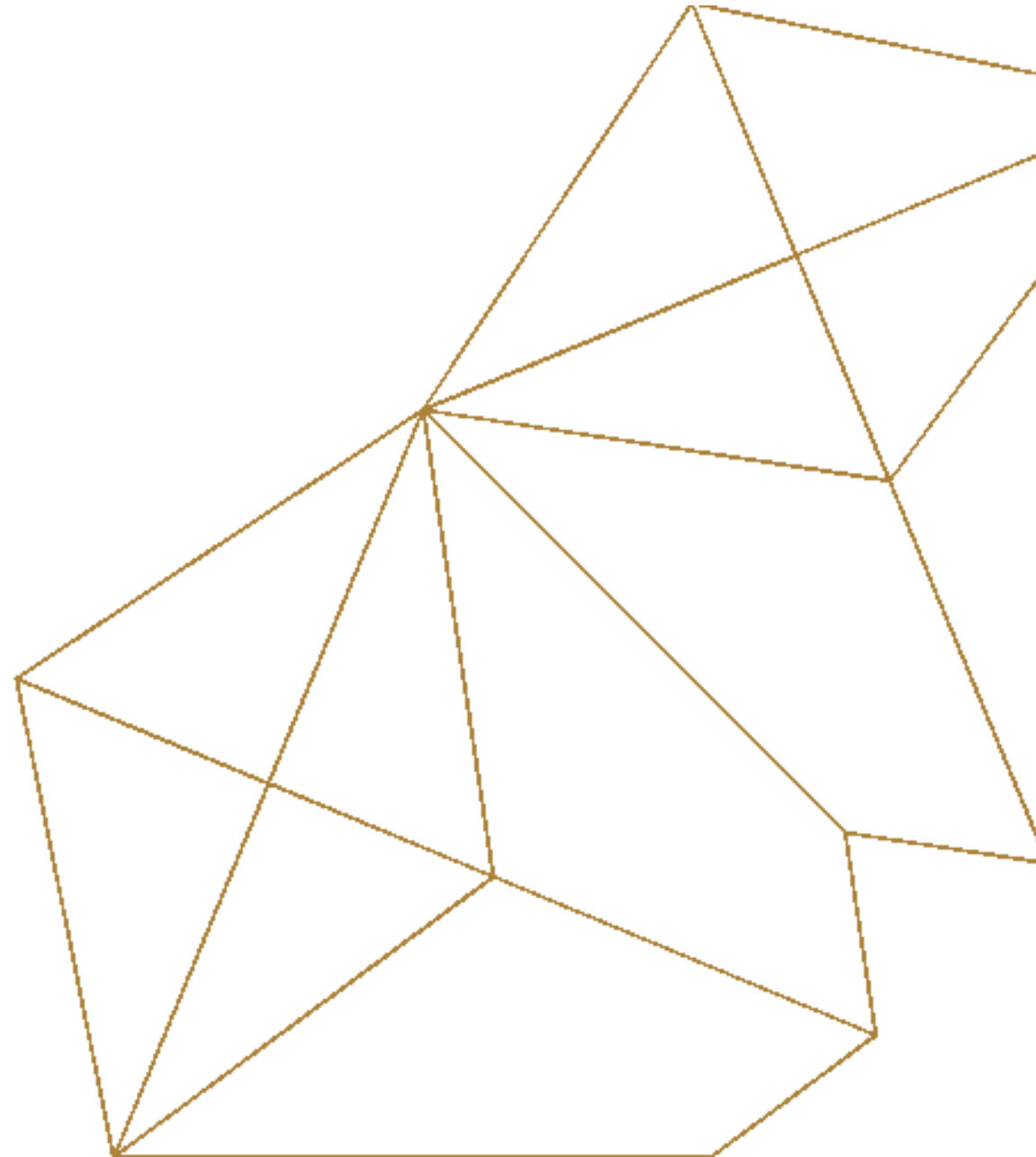


EXCEPTIONS

Date

INTRODUCTION

- Commitments v. Derogation from commitments
- Allows countries to pursue non-trade objectives
- Exceptions in multilateral trade disciplines
- Articles XX and XXI, GATT 1994
- Articles XIV and XIV *bis* GATS.



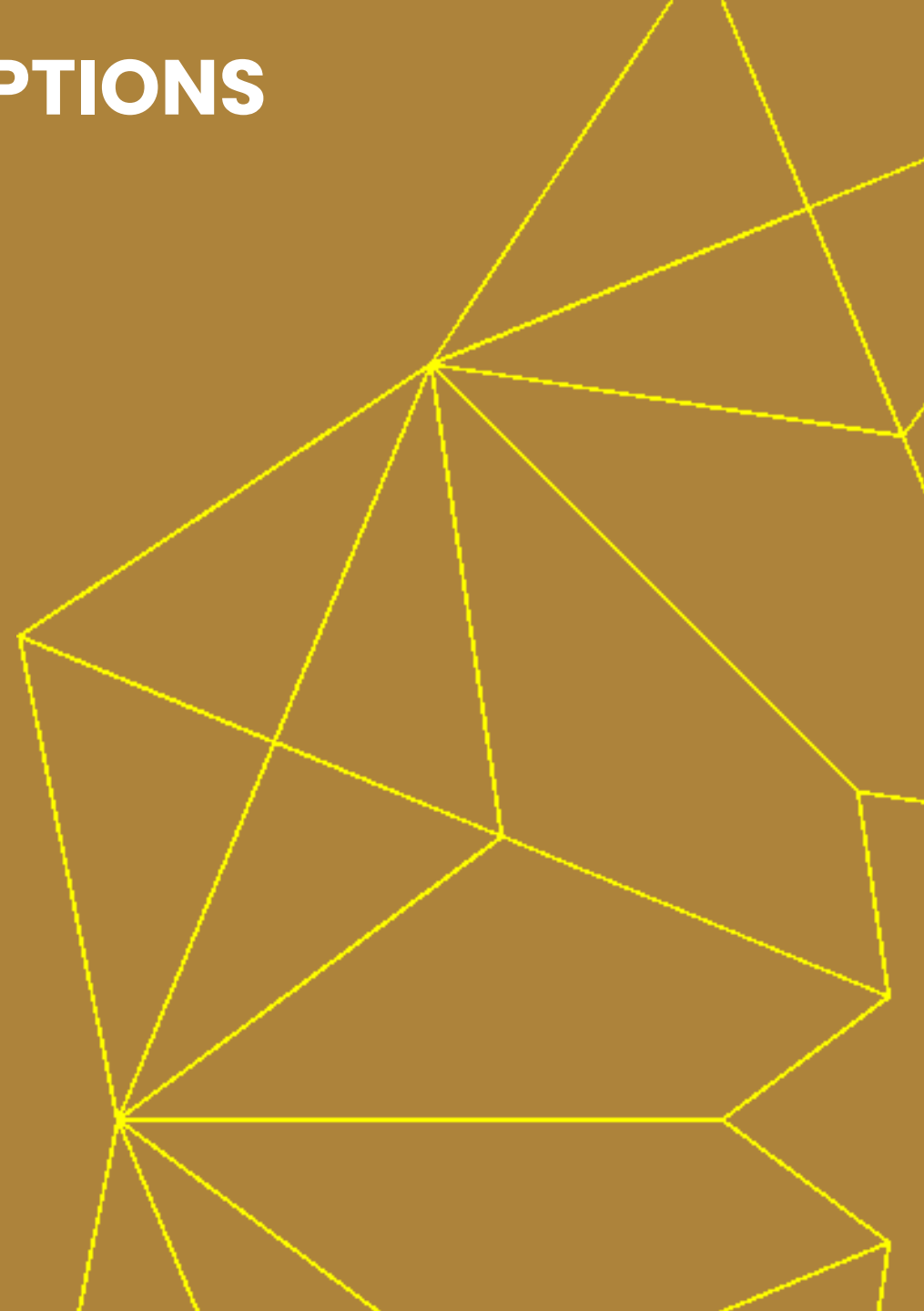
STRUCTURE OF THE DISCUSSION

- Understanding Exceptions
- General Exception
- Security Exception
- Taxation Exception
- Disclosure of Information
- WTO Waivers
- Balance of Payments
- Strategies for Negotiations
- Conclusion



UNDERSTANDING EXCEPTIONS

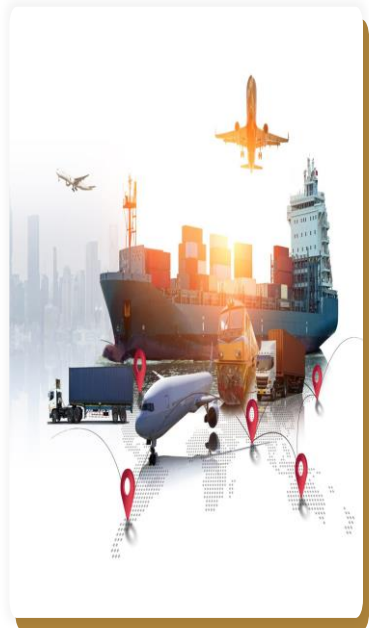
- Exceptions in the field of law
- Need for Exceptions in International Trade Disciplines
- Assurance of a country's policy space
- Potent Symbolic Function
- Language of Exceptions provisions



GENERAL EXCEPTIONS

- Builds upon Article XX of the GATT 1994 and Article XIV of the GATS
- General Exceptions has two aspects: *Objective* and *Chapeau*
- *Objectives* include environment, health, public morality, and data protection.
- *Chapeau* deals with the manner in which the measure applies.
- Requirements of Chapeau are:
 - The measure should not lead to 'arbitrary or unjustifiable discrimination between countries where the same conditions prevail'; or
 - The measure should not pose 'a disguised restriction on international trade'.
- General Exceptions apply on the specific Chapters of the FTA.
- Determination of chapters of the FTA on which Exceptions chapter apply.
- Consultation before the invocation of certain Exceptions in the EU FTAs.
- Broader scope for the application of the Exceptions chapter in the USMCA compared to the European FTAs.

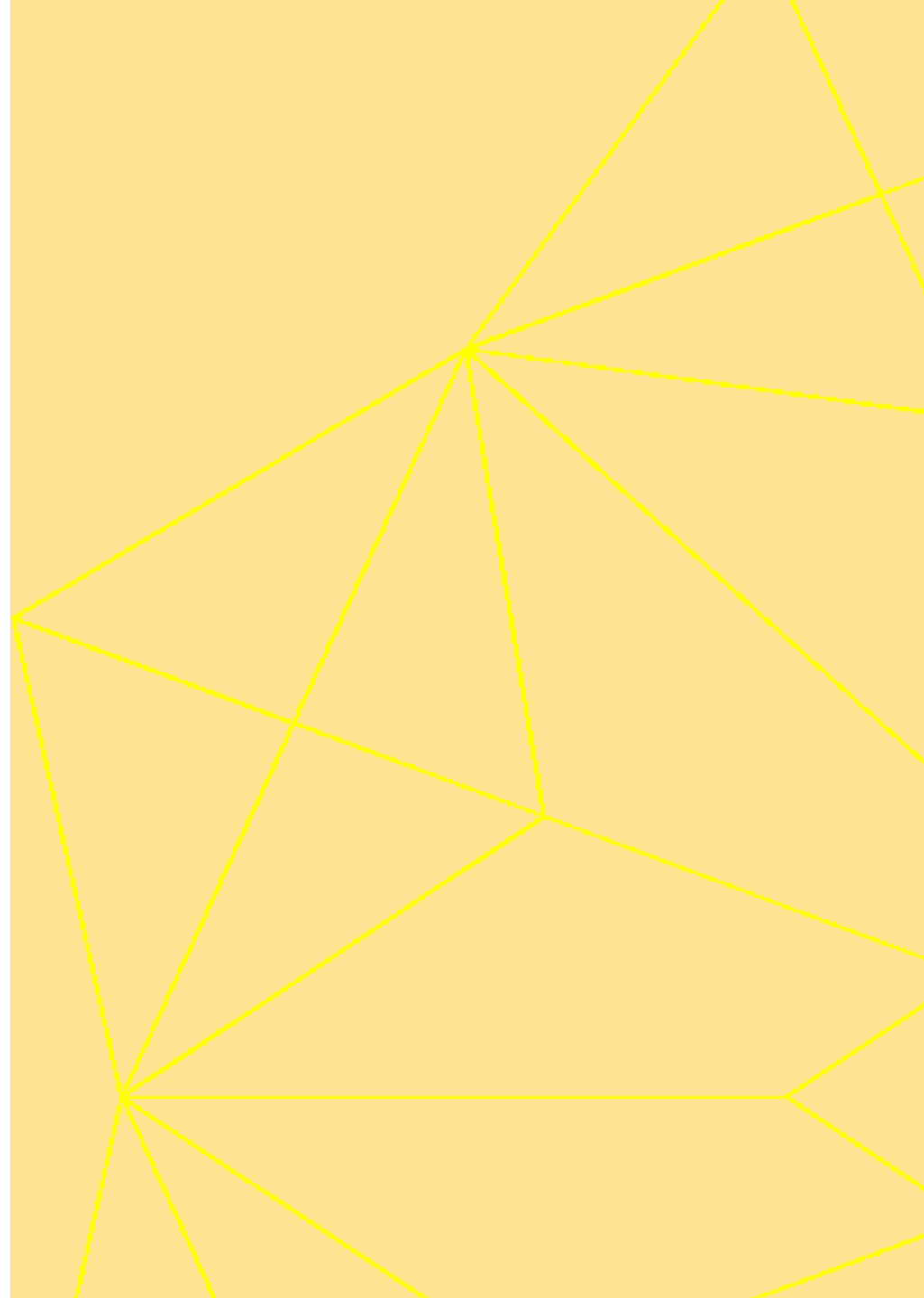
SECURITY EXCEPTIONS



- Article XXI of the GATT, Article XIV *bis* of the GATS, Article 79 of the TRIPS.
- Security Exceptions apply across the FTAs instead of specific Chapters.
- Security Exceptions:
 - ❑ First deals with the disclosure of information that a Party feels is essential to its security interests.
 - ❑ The second deals with allowing a Party to take actions that it considers necessary for the protection of its essential security interests
 - relating to fissionable materials or the materials from which they are derived;
 - relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - taken in time of war or other emergency in international relations;
 - ❑ Third aspect is allowing the Party to take action in pursuance of the obligation under the United Nations Charter for the maintenance of international peace and security.

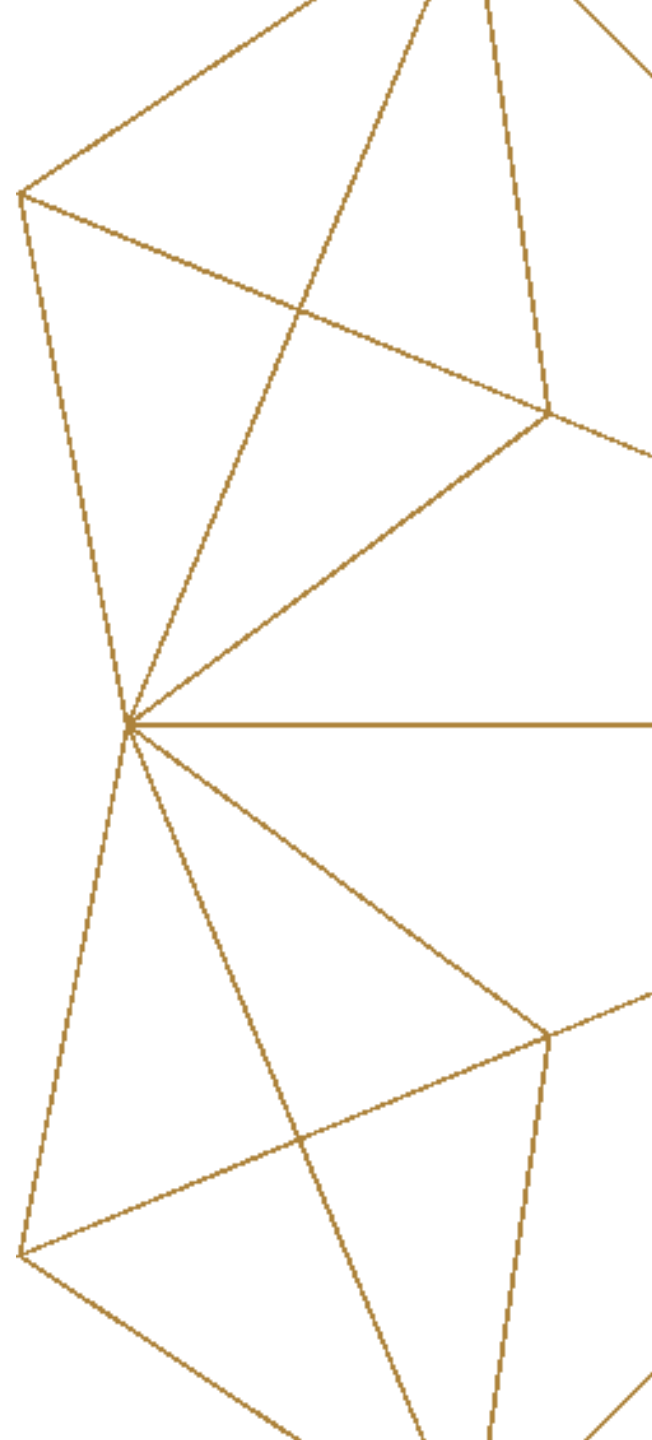
TAXATION EXCEPTIONS

- Limited to direct taxes only.
- Builds upon Article XIV (d)-(e) of the GATS.
- Article XIV(d) deals with collection of taxes.
- Article XIV(e) deals with the difference in treatment as the result of an agreement on the avoidance of double taxation.



DISCLOSURE OF INFORMATION

- The types of information covered are:
 - Any information that would impede law enforcement
 - Information that could be contrary to the public interest.
 - Information which would be prejudicial to the legitimate commercial interest of a particular enterprise
- The caveat to this Exception is that it may not be invoked when the information is required by the panel in the dispute settlement proceedings.



WTO WAIVERS

- Requires the existence of a substantially WTO equivalent provision in the FTA.
- Understanding Exceptions through TRIPS Waiver.
- The Waiver for the WTO obligations should equally apply to such FTA obligations.

Article 25.8 of the EU–New Zealand FTA

If a right or obligation in this Agreement duplicates one in the WTO Agreement, any measure taken in conformity with a decision to grant a waiver adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the duplicated provision in this Agreement.

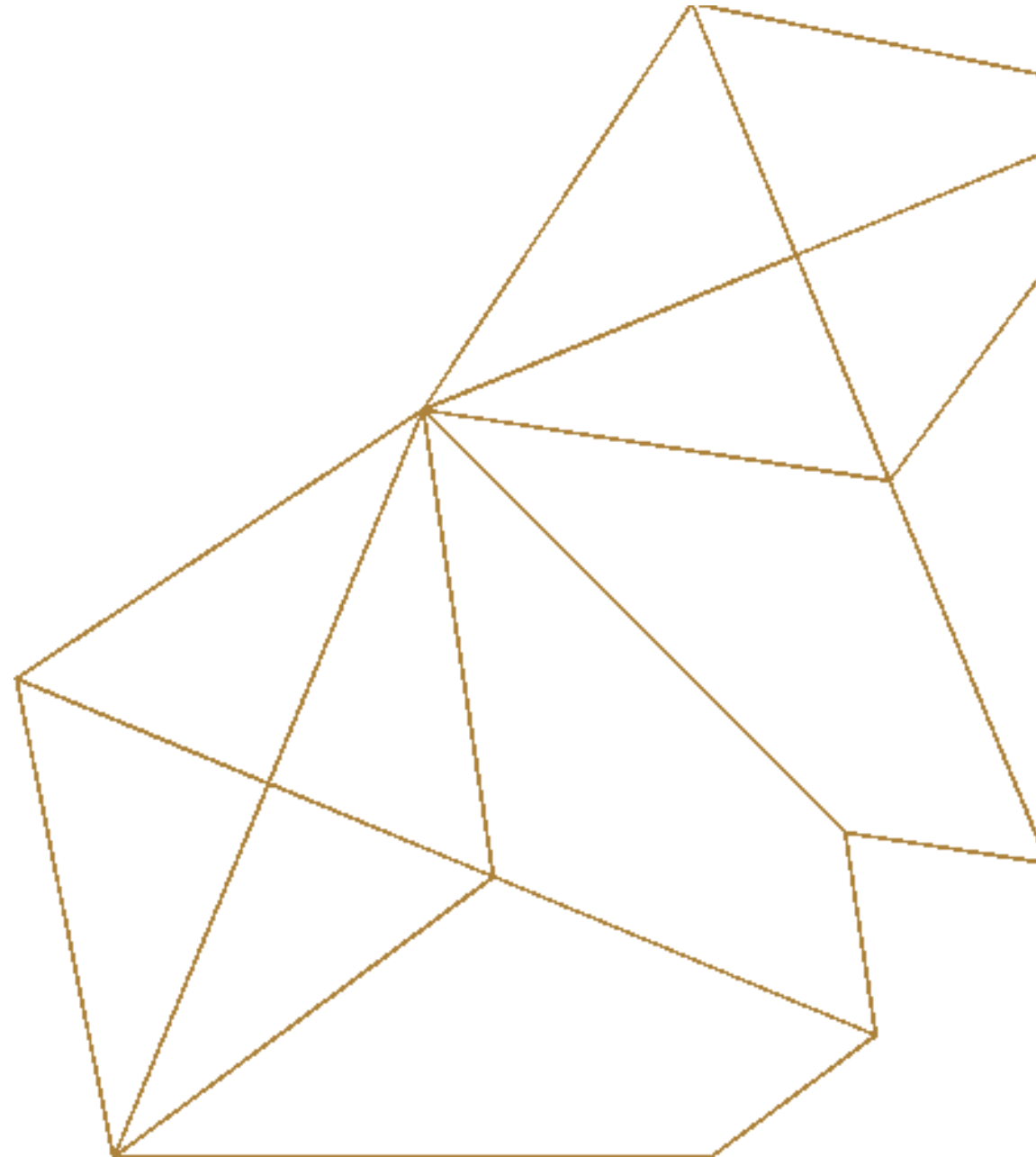


BALANCE OF PAYMENTS

- Balance of payment is basically the difference between the inflow and outflow of money.
- Implications on affecting the monetary reserve of a country.
- This Exception allows countries to impose restrictions to maintain Balance of Payments.
- Builds upon Article 12 of the GATT and Article 12 of the GATS.
- Conditions of the BoP Exceptions include conditions like:
 - *Balance of Payment-related measures should only be to the extent necessary to address the balance-of-payments issues at hand.*
 - *It should only be to the extent to “forestall the imminent threat of, or to stop, a serious decline in its monetary reserves”.*
 - *Other conditions include that the measure should avoid unnecessary damage to the commercial, economic and financial interests of any other Member.*
 - *Other obligations include that the measure be temporary and be phased out progressively as the situation.*
 - *The Balance of Payment Measures should also be consistent with the Articles of Agreement of the International Monetary Fund.*
 - *Other obligations include notification requirements and consultation-related aspects.*

STRATEGIES FOR NEGOTIATORS

- Thorough with the understanding of the WTO law.
- Coordination with negotiators of other Chapters to understand if they want Exceptions provisions to apply in their chapter.
- Familiarity with the FTA provisions that are built upon the WTO law.



THANK YOU

