

CHAPTER 22 GENERAL PROVISIONS AND EXCEPTIONS

ARTICLE 22.1: GENERAL EXCEPTIONS

1. For the purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Administration and Trade Facilitation), 5 (Technical Barriers to Trade and Sanitary and Phytosanitary Measures) and 16 (Cooperation), Article XX of GATT 1994, including its interpretive notes, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters 7 (Cross-Border Trade in Services), 9 (Telecommunications), 10 (Movement of Natural Persons) and 15 (Electronic Commerce)⁹¹, Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures to protect human, animal or plant life or health.

3. For the purposes of Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures:

- (a) necessary to protect human, animal or plant life or health;
- (b) necessary to ensure compliance with laws and regulations that are not inconsistent with this Agreement;
- (c) imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (d) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

The Parties understand that the measures referred to subparagraph (a) include environmental measures to protect human, animal or plant life or health, and that the measures referred to in subparagraph (d) include environmental measures relating to the conservation of living and non-living exhaustible natural resources.

⁹¹ This Article is without prejudice to whether electronic transmissions should be characterised as goods or services.

4. Nothing in this Agreement shall prevent a Party from taking actions authorised by the Dispute Settlement Body of the WTO.

ARTICLE 22.2: ESSENTIAL SECURITY⁹²

1. Nothing in this Agreement shall be construed:
 - (a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
 - (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment; 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 obligations under the United Nations Charter for the maintenance of international peace and security.
2. A Party taking action under paragraphs 1(b) and (c) shall, to the extent possible, inform the Joint Committee of measures that have been taken and of their termination.

ARTICLE 22.3: TAXATION

1. Unless otherwise provided in this Article, nothing in this Agreement shall apply to taxation measures.
2. The following provisions shall apply to taxation measures:
 - (a) Chapter 2 (Trade in Goods);
 - (b) Articles 7.2 (National Treatment) and 8.2 (National Treatment);
 - (c) Articles 7.3 (Most-Favoured-Nation Treatment) and 8.3 (Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax;

⁹² For greater certainty, if a Party invokes this Article in an arbitral proceeding initiated under Section B of Chapter 11 (Investment), the tribunal hearing the matter shall find that the exception applies.

- (d) Articles 11.3 (National Treatment) and 11.4 (Most-Favoured-Nation Treatment), only where the taxation measure is an indirect tax; and
- (e) Articles 11.9.2 through 11.9.9.

3. Notwithstanding paragraph 2, nothing in the Articles referred to in paragraph 2 shall apply to:

- (a) any most-favoured-nation obligation under this Agreement with respect to an advantage accorded by a Party in accordance with a tax convention;
- (b) a non-conforming provision of any existing taxation measure;
- (c) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (d) 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;
- (e) the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes as permitted by GATS Article XIV(d) without regard to the limitation in that Article to direct taxes; or
- (f) a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, 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 such trust, fund, or other arrangement.

4. Article 11.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation.

5. Article 11.7 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 11.7 as the basis for a claim where it has been determined in accordance with this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 11.7 with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 11.16.2, the issue of whether that taxation measure is not an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 11.16.3.

6. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency relating to a taxation measure between this Agreement and any tax convention, the latter shall prevail to the extent of the inconsistency.

7. If either Party considers there is any inconsistency relating to a taxation measure between this Agreement and any tax convention, the competent authorities shall immediately consult. For the purposes of this Article, the competent authorities shall include:

- (a) for Korea, the Ministry of Strategy and Finance; and
- (b) for Australia, the Treasury.

8. For the purposes of this Article, taxation measures shall not include any customs or import duties.

ARTICLE 22.4: DISCLOSURE OF INFORMATION

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to 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.

ARTICLE 22.5: CONFIDENTIALITY

Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information. The information shall be used only for the purposes specified by the Party providing the information. It shall not be disclosed without the specific written permission of the Party providing the information, except where the release or disclosure of information is necessary to comply with the legal requirements of a Party, in which case the Party that has received the information shall notify the other Party before such release or disclosure is made.