

## CHAPTER 23 EXCEPTIONS

### ARTICLE 23.1: GENERAL EXCEPTIONS

1. For the purposes of Chapters 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures) and 6 (Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are 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 necessary 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 9 (Investment), 10 (Cross-border Trade in Services), 11 (Financial Services), 12 (Temporary Entry for Business Persons), 13 (Telecommunications) and 14 (Electronic Commerce)<sup>1</sup>, 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 the GATS include environmental measures necessary to protect human, animal, or plant life or health.

### ARTICLE 23.2: ESSENTIAL SECURITY

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 determines to be contrary to its essential security interests; or
- (b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security or the protection of its own essential security interests.

### ARTICLE 23.3: TAXATION

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. 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 such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that

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<sup>1</sup> Article 23.1 is without prejudice to whether digital products should be classified as goods or services.

convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. Notwithstanding paragraph 2:

- (a) Article 2.2 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and
- (b) Article 2.12 (Export Duties, Taxes, or Other Charges) shall apply to taxation measures.

4. Subject to paragraph 2:

- (a) Articles 10.2 (National Treatment) and 11.2 (National Treatment) shall apply to taxation measures on income, on capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and
- (b) Articles 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment), 11.2 (National Treatment) and 11.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, or on the taxable capital of corporations, or taxes on estates, inheritances, gifts, and generation-skipping transfers;

except that nothing in the Articles referred to in subparagraphs (a) and (b) shall apply:

- (c) to any MFN obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
- (d) to a non-conforming provision of any existing taxation measure;
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) to 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;
- (g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS); or
- (h) to a provision that conditions the receipt, or continued receipt, of an

advantage relating to the contributions to, or income of, a pension trust or pension plan on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, paragraphs 2, 3, and 4 of Article 9.9 (Performance Requirements) shall apply to taxation measures.

6. (a) Article 9.17 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation.

(b) Article 9.7 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 9.7 as the basis for a claim where it has been determined pursuant to this subparagraph that the measure is not an expropriation. An investor that seeks to invoke Article 9.7 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 9.17.3 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation<sup>2</sup>. 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 9.17.4.

(c) For the purposes of this paragraph, **competent authorities** means:

(i) for Korea, the Deputy Minister for Tax and Customs, Ministry of Strategy and Finance;

(ii) for Costa Rica, the Minister of Finance (*Ministro de Hacienda*);

(iii) for El Salvador, the Minister of Finance (*Ministro de Hacienda*);

(iv) for Honduras, the Secretary of State in the Office of Finance (*Secretario de Estado en el Despacho de Finanzas*);

(v) for Nicaragua, the Minister of Finance and Public Credit (*Ministro de Hacienda y Crédito Público*); and

(vi) for Panama, the Minister of Economy and Finance (*Ministro de Economía y Finanzas*),

or their successors.

7. For the purposes of this Article, “taxes” and “taxation measures” do not include:

(a) a customs duty as defined in Article 1.6 (Definitions); or

(b) the measures listed in exceptions (b) and (c) of that definition.

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<sup>2</sup> For greater certainty, Annex 9-E (Taxation and Expropriation) shall apply.

#### ARTICLE 23.4: 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 23.5: MEASURES TO SAFEGUARD THE BALANCE OF PAYMENTS

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with GATT 1994, which includes the Understanding on Balance-of-Payments Provisions of GATT 1994, adopt restrictive import measures. In adopting such measures, the Party shall immediately consult with the other Party.