

CHAPTER TWENTY-THREE EXCEPTIONS

ARTICLE 23.1: GENERAL EXCEPTIONS

1. For purposes of Chapters Two through Four (National Treatment and Market Access for Goods, Agriculture, and Textiles and Apparel) and Six through Nine (Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and 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 purposes of Chapters Twelve (Cross-Border Trade in Services), Fourteen (Telecommunications), and Fifteen (Electronic Commerce),¹ 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 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.²

ARTICLE 23.3: TAXATION

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

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

² For greater certainty, if a Party invokes Article 23.2 in an arbitral proceeding initiated under Chapter Eleven (Investment) or Chapter Twenty-Two (Institutional Provisions and Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.

- (b) In the case of a tax convention between the Parties, the competent authorities under that 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) Articles 2.11 (Export Duties, Taxes, or Other Charges) and 2.12 (Engine Displacement Taxes) shall apply to taxation measures.
- 4. Subject to paragraph 2:
 - (a) Articles 12.2 (National Treatment), 13.2 (National Treatment), and 13.5.1 (Cross-Border Trade) 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 11.3 (National Treatment) and 11.4 (Most-Favored-Nation Treatment), Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment), and Articles 13.2 (National Treatment) and 13.3 (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) any most-favored-nation 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 11.8 (Performance Requirements) shall apply to taxation measures.

- 6. (a) Article 11.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or an investment authorization.
- (b) Article 11.6 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 11.6 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 11.6 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 (Submission of a Claim to Arbitration), 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.
- (c) For purposes of this paragraph, **competent authorities** means:
 - (i) in the case of Korea, the Deputy Minister for Tax and Customs, Ministry of Finance and Economy; and
 - (ii) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy).

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

- (a) a customs duty as defined in Article 1.4 (Definitions); or
- (b) the measures listed in exceptions (b) and (c) of that definition.

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.