

## **CHAPTER TWENTY-ONE EXCEPTIONS**

### **Article 21.1: General Exceptions**

1. For the purposes of Chapters Two (National Treatment and Market Access for Goods), Three (Rules of Origin and Origin Procedures), Four (Customs Procedures and Trade Facilitation), Five (Sanitary and Phytosanitary Measures), and Six (Technical Barriers to Trade), Article XX of the *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 the *GATT 1994* include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the *GATT 1994* applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters Eight (Cross Border Trade in Services), Nine (Temporary Entry for Business Persons), Eleven (Telecommunications), and Twelve (Digital Trade)<sup>1</sup>, Article XIV of the *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 21.2: Essential Security**

1. Nothing in this Agreement shall be construed:
  - (a) to require a Party to furnish or allow access to any information

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<sup>1</sup> This paragraph is without prejudice to whether a digital product should be classified as a good or service.

the disclosure of which it determines to be contrary to its essential security interests;

- (b) to prevent a Party from taking any measures which it considers necessary for the protection of its essential security interests:
  - (i) 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 purposes of supplying or provisioning a military establishment;
  - (ii) relating to fissionable and fusionable materials or the materials from which they are derived; or
  - (iii) taken in time of war or other emergency in international relations; and
- (c) to prevent a Party from any action in order to carry out its international obligations for the purpose of maintaining or restoring international peace and security.

### **Article 21.3: 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<sup>2</sup>. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of

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<sup>2</sup> Tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement in force between the Parties.

the inconsistency.

- (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 2.12 (Export Duties, Taxes, or Other Charges) shall apply to taxation measures.

4. Subject to paragraph 2:

- (a) Articles 8.2 (National Treatment) and 10.2 (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 8.2 (National Treatment) and 8.3 (Most-Favored-Nation Treatment), and Articles 10.2 (National Treatment) and 10.3 (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 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. For purposes of this Article, “taxes” and “taxation measures” do not include customs duties as defined in Article 1.4 (Definitions) including the exceptions listed therein except for subparagraph (a).

#### **Article 21.4: 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 21.5: Confidentiality**

Whenever, according to this Agreement, a Party provides information to another Party that it has designated as confidential, such Party shall treat that information as confidential.

#### **Article 21.6: Balance of Payments**

1. When a Party is in serious balance of payments and external financial difficulties or under threat thereof, or when in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation on monetary policy or exchange rate policy in either Party, it may:

- (a) in the case of trade in goods, adopt restrictive import measures in accordance with GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions of GATT 1994; and
- (b) in the case of cross-border supply of services, adopt or maintain restrictions including on payments or transfers, in accordance with Article XII of GATS and Annex 8-A in Chapter Eight (Cross-Border Trade in Services)<sup>3</sup>.

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<sup>3</sup> In the event of any inconsistency between Article XII of GATS and Annex 8-A in Chapter Eight (Cross-Border Trade in Services), Annex 8-A in Chapter Eight (Cross-Border Trade in Services) shall prevail to the extent of the inconsistency.

2. Any restrictive measure adopted or maintained pursuant to paragraph 1 shall be non- discriminatory and of limited duration, shall not go beyond what is necessary to remedy the balance-of-payments situation, and shall be in accordance with the conditions established in the WTO Agreement and consistent with the Articles of the Agreement of the International Monetary fund, and Articles and Annexes of this Agreement, as applicable.

3. In the event of the introduction or modification by a Party of such measures, such Party, shall promptly notify such measures to the other Party and present, as soon as possible, a time schedule for their removal.

4. The Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations in relation to the measures or any extension thereof at the request of the other Party.