

CHAPTER 11 EXCEPTIONS

Article 11.1: General Exceptions

1. For purposes of Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Rules of Origin and Origin Procedures), Chapter Four (Customs Procedures and Trade Facilitation), and Chapter Five (Trade Remedies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For purposes of Chapters Six (Trade in Services) and Seven (Investment), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 11.2: Security Exceptions

Nothing in this Agreement shall be construed to:

- (a) require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
- (b) prevent a Party from taking any action 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;
 - (iii) taken so as to protect critical public infrastructure, including communications, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure; or
 - (iv) taken in time of domestic emergency, or war or other emergency in international relations; or

- (c) 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.

Article 11.3: Taxation Measures

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

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

- (a) corresponding rights and obligations are also granted or imposed under Article III of GATT 1994;
- (b) they are granted or imposed under Article 7.11 (Transfers); or
- (c) they are granted or imposed under Article 7.12 (Expropriation and Compensation).

3. Where paragraph 2(b) or (c) apply, Article 7.19 (Investor-State Dispute Settlement) shall also apply in respect of taxation measures.

4. (a) Where an investor claims that the disputing Party has breached Article 7.11 (Transfers) or Article 7.12 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the competent authorities of the disputing Party shall request consultations with the competent authorities of the non-disputing Party at the time that the disputing Party receives the investor's notice of intent under Article 7.19 (Investor-State Dispute Settlement). The competent authorities of the Parties shall hold consultations with a view to determining whether Article 7.11 (Transfers) has been breached or whether the taxation measure in question has an effect equivalent to expropriation. Any tribunal that may be established in accordance with Article 7.19 (Investor-State Dispute Settlement) shall accept as binding the decision of the competent authorities under this paragraph.

- (b) If the competent authorities of the Parties fail to determine whether Article 7.11 (Transfers) has been breached or

whether the taxation measure has an effect equivalent to expropriation within 180 days of the date of receipt of the request for consultations by the non-disputing Party, the investor may submit its claim to arbitration under Article 7.19 (Investor-State Dispute Settlement).

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

(i) with respect to Korea, the Deputy Minister for Tax and Customs, Ministry of Economy and Finance; and

(ii) with respect to Indonesia, the Minister of Finance or his or her authorised representative;

or their respective successors.

5. In assessing whether a measure related to taxation constitutes expropriation, the following considerations shall be taken into account:

(a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of taxes in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;

(b) enforcement activities of the tax laws including seizure of property for the purpose of tax collection generally do not constitute expropriation;

(c) a taxation measure that is consistent with internationally recognized tax policies, principles, and practices does not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxes generally does not constitute an expropriation;

(d) a taxation measure that is applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers¹, is not likely to constitute an expropriation; and

¹ For greater certainty, the term “individual taxpayers” includes natural person, juridical person, and enterprise.

- (e) a taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was made public or otherwise made publicly available.

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 such tax convention, that convention shall prevail to the extent of the inconsistency. The competent authorities under that convention shall have sole responsibility for jointly determining whether any inconsistency exists between this Agreement and that convention.

7. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any tax convention by which the Party is bound.

8. For purposes of this Article:

- (a) **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and
- (b) taxes and taxation measures do not include customs duty as defined in Article 1.1 (General Definitions) and measures listed as exceptions in subparagraphs (b), (c), (d), and (e) of that definition.

Article 11.4: Confidentiality of Information

1. Nothing in this Agreement shall require a Party to furnish or allow access to information that would be contrary to its law or impede law enforcement, or otherwise be contrary to the public interest or that would be prejudice the legitimate commercial interests of any particular enterprises, public or private.

2. 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 disclosure of information is necessary to comply with the legal requirements of a Party.