

## CHAPTER 21 EXCEPTIONS

### ARTICLE 21.1: GENERAL EXCEPTIONS

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures), 6 (Technical Barriers to Trade), 7 (Trade Remedies), 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 10 (Cross-Border Trade in Services), 11 (Temporary Entry of Business Persons), 12 (Telecommunications) and 13 (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 GATS include environmental measures necessary to protect human, animal, or plant life or health.
3. For the purposes of Chapter 9 (Investment), subject to the requirement that such measures are not applied in an arbitrary or unjustifiable manner, and do not constitute a disguised restriction on international trade or investment, nothing in this agreement shall be construed to prevent a Party from adopting or maintaining measures including environmental measures:
  - (a) necessary to secure compliance with laws and regulations that are not inconsistent with this agreement;
  - (b) necessary to protect human, animal or plant life or health;
  - (c) related to the conservation of living or non-living exhaustible natural resources;
  - (d) necessary to protect national treasures of artistic, historic or archeological value; or
  - (e) necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
4. This Agreement shall not apply to financial services as defined in Article 1.7 (Definitions)

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<sup>1</sup> Article 21.1 is without prejudice to whether digital products should be classified as goods or services.

## ARTICLE 21.2: 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 under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or for the protection of its own essential security interests, or in order to carry out obligations it has accepted for the purposes of maintaining international 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. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of 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) Article 2.12 (Export Duties, Taxes, or Other Charges) shall apply to taxation measures.
4. Subject to paragraph 2:
  - (a) Article 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 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), 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) 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 and 5 of Article 9.9 (Performance Requirements) shall apply to taxation measures.

6. (a) Article 9.19 (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 9.19 (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 9.19.
- (c) For the purposes of this paragraph, **competent authorities** means:

- (i) for Korea, the Deputy Minister for Tax and Customs, Ministry of Economy and Finance; and
- (ii) for Israel, the Chief Economist, the Ministry of Finance.

7. For the purposes of this Article, “taxes” and “taxation measures” do not include:
- (a) customs duties as defined in Article 1.7 (Definitions); or
  - (b) the measures listed in exceptions (b), (c) and (d) of that definition.

#### 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 be contrary to its law, impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular individuals and enterprises, public or private.