TITLE VII

GENERAL EXCEPTIONS

ARTICLE 89

General exception clause

Subject to the requirement that such measures are not to be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions must prevail, or a disguised restriction on trade in goods, services or establishment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by the Parties of measures which:

(a) are necessary to protect public security or public morality or to maintain public order;

(b) are necessary to protect the health or life of humans, animals or plants;

(c) are necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to:

  (i) prevention of deceptive and fraudulent practices or ways of dealing with the effects of a default on contracts;

  (ii) protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) security;

(iv) the application of customs regulations and procedures; or

(v) protection of intellectual property rights;

(d) relate to imports or exports of gold or silver;

(e) are necessary to protect national treasures of artistic, historical or archaeological value;

(f) relate to the conservation of exhaustible natural resources if such measures involve restrictions on domestic production or consumption of goods or the provision or consumption of domestic services, and on domestic investors;

(g) relate to the products of prison labour; or

(h) are inconsistent with the articles of this Agreement on national treatment, provided that the difference in treatment is intended to ensure the effective or equitable imposition or collection of direct taxes in respect of the economic activities of investors or of service providers of the other Party[1].

ARTICLE 90

Security exceptions

1. Nothing in this Agreement shall be construed:

(a) to require the Parties to furnish any information the disclosure of which they consider contrary to their essential security interests;

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[1] Measures aimed at ensuring the effective or equitable imposition or collection of direct taxes shall include measures taken by one of the Parties under its tax system which:
(i) apply to non-resident investors and service providers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable entities outsourcing from or located in the territory of one of the Parties;
(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the territory of one of the Parties;
(iii) apply to non-residents or residents in order to prevent tax evasion or avoidance, including measures taken to comply;
(iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the territory of one of the Parties;
(v) distinguish investors and service providers subject to taxes on global taxable entities from other investors and service providers, in recognition of the differences between their tax bases; or
(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Parties' tax bases.

(b) to prevent the Parties from taking any action which they consider necessary for the protection of their essential security interests:

(i) relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) relating to economic activities carried out directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) relating to the production of, or trade in, arms, munitions or war materials;

(iv) relating to government procurement indispensable for national security or for national defence purposes; or

(v) taken in time of war or other emergency in international relations; or

(c) to prevent the Parties from taking any action in pursuance of the obligations they accepted in order to maintain international peace and security.

2. The EPA Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and 1(c) and of their termination.

ARTICLE 91

Taxation

1. Nothing in this Agreement or in any agreement adopted in implementation of this Agreement shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

2. Nothing in this Agreement or in any agreement adopted in implementation of this Agreement shall be construed to prevent the adoption or enforcement of any measure intended to prevent the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax agreements or domestic fiscal legislation.

3. Nothing in this Agreement shall affect the rights and obligations of the Parties 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.