

CHAPTER TWENTY-FOUR EXCEPTIONS

ARTICLE 24.1: GENERAL EXCEPTIONS

1. For purposes of Chapters Two (National Treatment and Market Access for Goods), Three (Rules of Origin), Four (Origin Procedures), Five (Customs Administration and Trade Facilitation), Six (Sanitary and Phytosanitary Measures), Seven (Technical Barriers to Trade), and Eight (Trade Remedies), Article XX of GATT 1994 and its interpretative 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 shall apply to measures related to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Nine (Investment), Ten (Cross-border Trade in Services), Eleven (Temporary Entry for Business Persons), Thirteen (Telecommunications), and Fourteen (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 24.2: ESSENTIAL SECURITY

Nothing in this Agreement shall be construed to:

- (a) 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) 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.

ARTICLE 24.3: DISCLOSURE OF INFORMATION

Nothing in this Agreement shall be construed to require a Party to disclose, 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 24.4: TAXATION

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

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

2. 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. 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 2.11 (Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Articles 10.2 (National Treatment) and 12.2 (National Treatment) shall apply to taxation measures on income, capital gains, or 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 related to the purchase or consumption of particular services on requirements to provide the service in its territory; and

(b) Articles 9.3 (National Treatment) and 9.4 (Most-Favored-Nation Treatment), 10.2 (National Treatment) and 10.3 (Most-Favored-Nation Treatment), and 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains, or the taxable capital of corporations or taxes on inheritances and gifts.

5. Paragraph 4 shall not:

(a) impose any most-favored-nation obligation with respect to an advantage accorded by a Party in accordance with a tax convention;

(b) apply to a non-conforming provision of any existing taxation measure;

(c) apply to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(d) apply 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 the Articles referred to in paragraph 4; or

- (e) apply 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.

6. Subject to paragraph 2, and without prejudice to the rights and obligations of the Parties under paragraph 3, Article 9.7 (Performance Requirements) shall apply to taxation measures.

- 7. (a) Articles 9.12 (Expropriation) and 9.16 (Investor-State Dispute Settlement) shall apply to a taxation measure alleged to be an expropriation. However, no investor may invoke Article 9.12 (Expropriation) as the basis of a claim where it has been determined in accordance with this paragraph that the measure is not an expropriation². An investor that seeks to invoke Article 9.12 (Expropriation) with respect to a taxation measure must first refer to the competent authorities, at the time that it gives written notice of intent under Article 9.16 (Investor-State Dispute Settlement), the issue of whether that taxation measure involves 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 six months of such referral, the investor may submit its claim to arbitration under Article 9.16 (Investor-State Dispute Settlement).

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

- (i) for Korea, the Deputy Minister for Tax and Customs, *Ministry of Strategy and Finance*, or its successor; and
- (ii) for Peru, the *Ministry of Economy and Finance (Ministerio de Economía y Finanzas)*, or its successor.

8. For purposes of this Article,

- (a) **taxes and taxation measures** do not include:

² With reference to Article 9.12 (Expropriation) in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant :

- (a) the imposition of taxes does not generally constitutes expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment does not in itself constitute expropriation;
- (b) taxation measures which are consistent with internationally recognized tax policies, principles, and practices do not constitute expropriation and in particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory; and
- (c) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are less likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force, and information about the measure was made public or otherwise made publicly available.

- (i) a customs duty as defined in Article 1.4 (General Definitions); or
 - (ii) the measures listed in subparagraphs (b) and (c) of the definition of customs duty set out in Article 1.4 (General Definitions); and
- (b) **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement.

ARTICLE 24.5: BALANCE OF PAYMENTS EXCEPTIONS

1. Where a Party is in serious balance-of-payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and services.

2. The Parties shall endeavor to avoid the application of the restrictive measures referred to in paragraph 1. Any restrictive measures adopted or maintained under this Article shall be non-discriminatory and of limited duration, and shall not go beyond what is necessary to remedy the balance of payments and external financial situation. They shall be in accordance with the conditions established in the WTO Agreement and consistent with the *Articles of Agreement of the International Monetary Fund*, as applicable.

3. Any Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify the other Party of them and present, as soon as possible, a time schedule for their removal.

4. Where the restrictions are adopted or maintained, consultation shall be held promptly within the Joint Commission. Such consultation shall assess the balance-of-payments situation of the concerned Party and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:

- (a) the nature and extent of the balance of payments and the external financial difficulties;
- (b) the external economic and trading environment; or
- (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 2 and 3. All findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves, and balance of payments shall be accepted and conclusions shall be based on the assessment by the IMF of the balance of payments and the external financial situation of the concerned Party.