

CHAPTER 16 EXCEPTIONS

Article 16.1 : General Exceptions

1. For the purposes of Chapters 2 (National Treatment and Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Administration and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures), 6 (Technical Barriers to Trade), and 7 (Trade Remedies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 8 (Trade in Services) and 9 (Investment), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 16.2 : Security Exceptions

1. 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.

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

Article 16.3 : Taxation

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 Viet Nam and Korea, the competent authorities under that convention shall have sole responsibility for jointly determining whether any inconsistency exists between this Agreement and that convention.
3. Paragraph 2 of Article 16.1 shall apply to taxation measures¹.
4. Notwithstanding paragraph 2, Article 2.2(National Treatment on Internal Taxation and Regulation) 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.
5. Subparagraph 4(h) of Article 9.8(Transfers) shall apply to taxation measures.
6. The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 9-B (Expropriation) and the following considerations:
 - (a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;
 - (b) 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 taxation measures generally does not constitute an expropriation;
 - (c) a taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and
 - (d) a taxation measure does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

¹ For the purposes of this paragraph, the application of paragraph 2 of Article 16.1 to taxation measures refers to Article XIV (d) and (e) of GATS.

7. (a) No investor may invoke Article 9.7(Expropriation and Compensation) 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(Expropriation and Compensation) with respect to a taxation measure must first provide written request to the competent authorities, at the time that it gives its Notice of Intent under Article 9.17(Notice of Intent to Submit a Claim to Arbitration), for decision on the issue of whether taxation measure is not an expropriation. The request should include the Notice of Intent. 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 paragraph 1 of Article 9.19(Submission of a Claim to Arbitration).

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

- (i) for Viet Nam, the Director General of the General Department of Taxation, Ministry of Finance; and
- (ii) for Korea, the Deputy Minister for Tax and Customs, Ministry of Strategy and Finance;

or their respective successors.

8. For the 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 duties as defined in Article 1.5(General Definitions) and measures listed in exceptions (b), (c), (d), and (e) of that definition.

Article 16.4 : 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.