

CHAPTER 14

EXCEPTIONS

ARTICLE 14.1

General Exceptions

1. For the purposes of Section 2.1 (General Provisions on Trade in Goods), Annex I (Rules of Origin), Section 2.2 (Technical Barriers to Trade), Section 2.3 (Sanitary and Phytosanitary Measure), Section 2.4 (Customs and Trade Facilitation), and Section 3.2 (Investment Liberalisation), Article XX of the GATT 1994 shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapter 3 (Services and Investment), Chapter 4 (Digital Trade), Chapter 5 (Capital Movements, Payments and Transfers) and Chapter 12 (Recognition of Professional Qualifications), paragraphs (a), (b) and (c) of Article XIV of GATS shall apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions referred to under paragraphs 1 and 2 of this Article:
 - (a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of Article XIV of GATS include environmental measures, which are necessary to protect human, animal or plant life and health;
 - (b) environmental measures include climate change mitigation measures;
 - (c) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources⁸⁸; and
 - (d) measures taken to implement multilateral environmental agreements can fall under points (b) or (g) of Article XX of GATT 1994 or under point (b) of Article XIV of GATS.

⁸⁸ 'Non-living exhaustible natural resources' includes clean air and a global atmosphere with safe levels of greenhouse gases.

ARTICLE 14.2

Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) as requiring a Party to provide any information the disclosure of which it considers contrary to its essential security interests;
 - (b) as preventing a Party from taking any action, which it considers necessary for the protection of its essential security interests, including action:
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) relating to the production of or trade in arms, ammunition and implements of war as well as to the production of or trade in other goods and materials as carried out directly or indirectly for the purpose of supplying military and other security establishments;
 - (iii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning military and other security establishments; or
 - (iv) taken in time of war or other emergency in international relations; or
 - (c) as preventing a Party from taking any action in pursuance of its obligations under the United Nations Charter for the purpose of maintaining international peace and security.

ARTICLE 14.3

Taxation

1. For the purposes of this Article:
 - (a) “direct taxes” means all taxes on income or capital, including taxes on gains from the alienation of property, on estates, inheritances and gifts, on wages or salaries paid by enterprises, and on capital appreciation;
 - (b) “tax convention” means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation; and

- (c) “taxes” and “taxation measures” include excise duties,⁸⁹ but do not include:
 - (i) a “customs duty” as defined in paragraph (b) of Article 2.3 (Definitions) of Section 2.1 (General Provisions on Trade in Goods); or
 - (ii) the measures listed in subparagraphs (ii) or (iii) of that definition.
- 2. Except as provided in this Article, nothing in this Agreement applies to taxation measures.⁹⁰
- 3. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.
- 4. If an issue arises as to whether any inconsistency exists between this Agreement and a tax convention between two or more Parties, the issue shall be referred by those Parties to the competent authorities under, or in respect of, that tax convention. Those competent authorities shall have 12 months beginning with the date of that referral to make a determination as to the existence and extent of any inconsistency. If those competent authorities agree, that period may be extended by no more than a further 6 months. Only upon expiry of the 12 months, or other agreed time period (or where the competent authorities determine that no such inconsistency exists), can a panel be established under this Agreement to consider a dispute related to the measure. A panel established under this Agreement shall accept as binding a determination made by those competent authorities under this paragraph.
- 5. Notwithstanding paragraph 3:
 - (a) Article 2.4 (National Treatment on Internal Taxation and Regulation) of Section 2.1 (General Provisions on Trade in Goods), and such other measures as are necessary to give effect to that Article, apply to taxation measures to the same extent as does Article III of GATT 1994 including its interpretative notes; and

⁸⁹ Pursuant to Article 1.4 (Trade and Economic Relations Governed by this Agreement) of Chapter 1 (General Provisions), this Article shall not apply to Liechtenstein with respect to excise duties.

⁹⁰ For greater certainty, this Article does not preclude the adoption or enforcement by a Party of taxation measures under Article 14.1 (General Exceptions) and Article 14.2 (Security Exceptions).

- (b) Article 2.7 (Export Duties, Taxes or other Charges) and Article 2.8 (Fees and Charges) of Section 2.1 (General Provisions on Trade in Goods) applies to taxation measures.
6. Subject to paragraph 3, the following provisions apply to taxation measures:
- (a) Article 3.7 (National Treatment) of Section 3.2 (Investment Liberalisation);
 - (b) Article 3.8 (Most-Favoured-Nation Treatment) of Section 3.2 (Investment Liberalisation);
 - (c) Article 3.16 (National Treatment) of Section 3.3 (Cross-Border Trade in Services);
 - (d) Article 3.17 (Most-Favoured-Nation Treatment) of Section 3.3 (Cross-Border Trade in Services); and
 - (e) without prejudice to the rights and obligations of the Parties under paragraph 5, Article 3.10 (Performance Requirements) of Section 3.2 (Investment Liberalisation).
7. But nothing in the Articles referred to in paragraph 6 applies to:
- (a) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
 - (b) the adoption, maintenance or enforcement of any taxation measure aimed at ensuring the equitable or effective⁹¹ imposition or collection of direct taxes, subject to the requirement that the taxation measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment; or
 - (c) the adoption, maintenance or enforcement of any taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties.

⁹¹ The footnote to Article XIV(d) of GATS shall apply and is hereby incorporated into and made part of this Agreement *mutatis mutandis*.