

1. A Party may have recourse to dispute settlement under this Chapter if it considers that any benefit it could reasonably have expected to accrue to it under any provision of one of the following:

- (a) Chapter Three (National Treatment and Market Access for Goods);
Chapter Four (Rules of Origin),
Chapter Five (Customs Procedures),
Chapter Six (Trade Facilitation),
Chapter Nine (Emergency Action),
and Chapter Seventeen (Government Procurement); or
- (b) Chapter Eleven (Cross-Border Trade in Services),

is nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement. A panel established under this Chapter shall consider the jurisprudence interpreting Article XXIII:1(b) of the GATT 1994, or Article XXIII(3) of the GATS.

2. A Party may not invoke paragraph 1(b), with respect to any measure subject to an exception under Article 22.2 (Exceptions – General Exceptions).

3. A Party may not invoke paragraph 1 with respect to any measure subject to the exception under Article 22.7 (Exceptions – Cultural Industries).

Chapter Twenty-Two : Exceptions

Article 22.1: Definitions

For the purposes of this Chapter:

competition authority means:

- for Canada, the Commissioner of Competition or a successor; and
- for Honduras, the Commission for the Defence and Promotion of Competition (*Comisión para la Defensa y Promoción de la Competencia*), or a successor;

designated authority means:

- for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance or a successor; and
- for Honduras, the Executive Director of Income (*Director Ejecutivo de Ingresos*) or a successor;

information protected under its competition laws means:

- for Canada, information within the scope of section 29 of the *Competition Act*, R.S.C. 1985, c. 34, or a successor provision; and
- for Honduras, information within the scope of:
 - Article 47 of the Regulation of the Law for the Defence and Promotion of Competition (*Reglamento de la Ley para la Defensa y Promoción de la Competencia*), Approved No. 001-2007, made under the Law for the Defence and Promotion of the Competition (*Ley para la Defensa y Promoción de la Competencia*), Decree No. 357-2005, or a successor provision,
 - Articles 3(6), 16, 17 and 18 of the Law for Transparency and Access to Public Information (*Ley de Transparencia y Acceso a la Información Pública*), Decree No. 170-2006, or a successor provision, and
 - those provisions relating to competition matters in the Regulation of the Law on Transparency and Access to Public Information (*Reglamento de la Ley de Transparencia y Acceso a la Información Pública*), Order No. IAIP-0001-2008, made under Decree No. 170-2006, including Articles 4(1), 4(15), 24, 25, 26, 27, 28, 30, 31, 32, and 33, or a successor provision;

international capital transactions means transactions “for the purpose of transferring capital” as the term is used in Article XXX of the *Articles of Agreement of the International Monetary Fund*, done at Washington on 27 December 1945 (“Articles of Agreement of the IMF”);

investor has the same meaning as in Article 10.1 (Investment – Definitions);

payments for current international transactions means “payments for current transactions” as defined under Article XXX of the Articles of Agreement of the IMF;

person engaged in a cultural industry means a person engaged in the following activities:

- the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
- the production, distribution, sale, or exhibition of film or video recordings;
- the production, distribution, sale, or exhibition of audio or video music recordings;
- the publication, distribution, or sale of music in print or machine readable form; or
- radio communications in which the transmissions are intended for direct reception by the general public; radio, television and cable broadcasting undertakings; and satellite programming and broadcast network services;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

taxation measures does not include:

- a customs duty as defined in Article 2.1 (General Definitions – Definitions of General Application); or
- a measure listed in exceptions (b), (c), or (d) in that definition;
- transfers means international transactions and related international transfers and payments; and

Tribunal has the same meaning as in Article 10.1 (Investment – Definitions).

Article 22.2: General Exceptions

1. For the purposes of Chapters Three through Nine and Chapter Sixteen (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures, Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action, and Electronic Commerce), Article XX of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters Eleven, Twelve, Fourteen, and Sixteen (Cross Border Trade in Services, Telecommunications, Temporary Entry for Business Persons, and Electronic Commerce), Article XIV (a), (b) and (c) of GATS 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 Ten (Investment):

- a Party may adopt or enforce a measure necessary:
 - to protect human, animal or plant life or health, which the Parties understand to include environmental measures necessary to protect human, animal or plant life or health,
 - to ensure compliance with laws and regulations that are not inconsistent with this Agreement, or
 - for the conservation of living or non-living exhaustible natural resources;
- provided that the measure referred to in sub-paragraph (a) is not:
 - applied in a manner that constitutes arbitrary or unjustifiable discrimination between investments or between investors, or
 - a disguised restriction on international trade or investment.

Article 22.3: National Security

This Agreement does not:

- require a Party to furnish or allow access to information if that Party determines that the disclosure of the information would be contrary to its essential security interests;
- prevent a Party from taking an action that it considers necessary to protect its essential security interests:
 - relating to the traffic in arms, ammunition, and implements of war and to traffic and transactions in other goods, materials, services, and technology that is undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
 - taken in time of war or other emergency in international relations, or
 - relating to the implementation of a national policy or international agreement respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- prevent a Party from fulfilling its obligations under the *Charter of the United Nations* for the maintenance of international peace and security.

Article 22.4: Taxation

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.
2. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of inconsistency between this Agreement and a tax convention, the tax convention prevails.
3. If a provision with respect to a taxation measure under this Agreement is similar to a provision of a tax convention, the competent authorities identified in the tax convention shall use the procedural provision of that tax convention to resolve an issue that may arise under this Agreement.
4. Notwithstanding paragraphs 2 and 3:
 - Article 3.3 (National Treatment and Market Access for Goods – National Treatment) and the provisions of this Agreement necessary to give effect to that Article apply to a taxation measure to the same extent as Article III of the GATT 1994; and
 - Article 3.11 (National Treatment and Market Access for Goods – Export Taxes) applies to a taxation measure.
5. Subject to paragraphs 2, 3, and 6:

- Article 11.3 (Cross-Border Trade in Services – National Treatment) and Article 13.3 (Financial Services – National Treatment) apply to a taxation measure on income, capital gains, or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that this subparagraph does not prevent a Party from making the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services conditional on providing the service in its territory; and
- Articles 10.4 and 10.5 (Investment – National Treatment and Most – Favoured-Nation Treatment), Articles 11.3 and 11.4 (Cross-Border Trade in Services – National Treatment and Most-Favoured-Nation Treatment) and Articles 13.3 and 13.4 (Financial Services – National Treatment and Most-Favoured-Nation Treatment) apply to a taxation measure, other than a taxation measure on income, capital gains, the taxable capital of corporations, estates, inheritances, and gifts.

6. Paragraph 5 does not:

- impose a most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
- impose on a Party a national treatment obligation with respect to the conditioning of a receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan;
- apply to a non conforming provision of an existing taxation measure;
- apply to the continuation or prompt renewal of a non conforming provision of an existing taxation measure;
- apply to an amendment to a non conforming provision of an existing taxation measure provided that the amendment does not decrease its conformity, before the amendment, with the Articles referred to in paragraph 5; or
- apply to a new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, a measure that is taken by a Party in order to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods, or services of the Parties.

7. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under Article 10.7(4) (Investment – Performance Requirements) applies to a taxation measure.

8. Notwithstanding paragraphs 2 and 3, Article 10.11 (Investment – Expropriation) applies to a taxation measure, but an investor may not invoke that Article as the basis for a claim under Article 10.19 (Investment – Claim by an Investor of a Party on its Own Behalf) or Article 10.20 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), if the designated authorities of the Parties have determined under this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of determining whether a measure is not an expropriation to the

designated authorities of the Parties at the time that the investor gives notice under Article 10.21 (Investment – Notice of Intent to Submit a Claim to Arbitration). If, within a period of 6 months from the date of this referral, the designated authorities do not agree to consider the issue or, having decided to consider it, fail to decide that the measure is not an expropriation, the investor may submit its claim to arbitration under Article 10.23 (Investment – Submission of a Claim to Arbitration).

9. In order to give effect to paragraphs 1 to 3:

- If an issue arises as to whether a measure of a Party is a taxation measure in a dispute between the Parties, a Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind a panel established under Article 21.11 (Institutional Arrangements and Dispute Settlement Procedures – Panel Composition) for the dispute. If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the panel shall decide the issue.
- If an issue arises as to whether a measure of a Party is a taxation measure in connection with a claim by an investor of a Party, the Party that has received notice of intention to submit a claim to arbitration or against which an investor of the other Party has submitted a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall decide whether the measure is a taxation measure, and their decision shall bind a Tribunal with jurisdiction over the claim. A Tribunal seized of a claim in which the same issue arises may not proceed while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the Tribunal shall decide the issue.
- If an issue arises as to whether a tax convention prevails over this Agreement in a dispute between the Parties, a Party may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within 6 months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, procedures concerning that measure may not be initiated under Article 21.10 (Institutional Arrangements and Dispute Settlement Procedures – Establishment of a Panel). Procedures concerning the measure may not be initiated while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the panel shall decide the issue.
- If an issue arises as to whether a tax convention prevails over this Agreement prior to the submission of a claim by an investor of a Party, the Party that has received notice of intention to submit a claim to arbitration may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within 6 months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, a claim concerning that measure may not be submitted under Article 10.23 (Investment – Submission of a Claim to Arbitration). A

claim concerning the measure may not be submitted while the designated authorities are considering the issue. An investor of a Party that fails to identify a taxation measure in its notice of intention to submit a claim may not submit a claim to arbitration concerning that measure under Article 10.23 (Investment – Submission of a Claim to Arbitration). If a Party has referred the issue to the designated authorities and they have not decided the issue within 6 months of the referral, the Tribunal shall decide the issue.

10. If an investor invokes Article 10.11 (Investment – Expropriation) as the basis for a claim under Article 10.19 (Investment – Claim by an Investor of a Party on Its Own Behalf) or Article 10.20 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), the designated authorities shall make a determination under paragraph 8 of whether a measure is an expropriation concurrently with a decision under paragraph 9(b) of whether the measure is a taxation measure.

11. The designated authorities seized of an issue under paragraphs 8 or 9 may modify the time period allowed to decide the issue.

12. This Agreement does not require a Party to furnish or allow access to information the disclosure of which would be contrary to the Party's law protecting information concerning the taxation affairs of a taxpayer.

Article 22.5: Balance of Payments

1. This Agreement does not prevent a Party from adopting or maintaining a measure that restricts transfers if:

- the Party experiences serious balance of payments difficulties, or the threat of balance of payment difficulties; and
- the restriction is consistent with:
 - paragraphs 2 through 4,
 - paragraph 5 to the extent that the restriction is imposed on transfers other than transfers related to cross-border trade in financial services, and
 - paragraphs 6 and 7 to the extent the restriction is imposed on cross-border trade in financial services.

General Rules

2. As soon as practicable after a Party imposes a measure permitted by paragraph 1, the Party shall:

- submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF;
- enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and
- adopt or maintain economic policies consistent with those consultations.

3. A measure permitted by paragraph 1 must:

- avoid unnecessary damage to the commercial, economic or financial interests of the other Party;
- not be more burdensome than necessary to deal with the balance of payments difficulties or threat of balance of payment difficulties;
- be temporary and be phased out progressively as the balance of payments situation improves;
- be consistent with sub-paragraph 2(c) and with the Articles of Agreement of the IMF; and
- be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party adopting or maintaining a measure referred to in paragraph 1 may give priority to services that are essential to its economic program, if:

- the Party does not impose a measure for the purpose of protecting a specific industry or sector; or
- further to sub-paragraph 3(d), the measure is consistent with sub-paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

Restrictions on Transfers other than transfers related to Cross-Border Trade in Financial Services

5. Restrictions imposed on transfers, other than on cross-border trade in financial services:

- if imposed on payments for current international transactions must, further to sub-paragraph 3(d), be consistent with the Articles of Agreement of the IMF, including Article VIII(3);
- if imposed on international capital transactions must, further to sub paragraph 3(d), be consistent with the Articles of Agreement of the IMF, including Article VI, and be imposed only in conjunction with a measure imposed on current international transactions under sub-paragraph 2(a);
- if imposed on transfers covered by Article 10.10 (Investment – Transfers) and transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and
- may not take the form of tariff surcharges, quotas, licenses, or similar measures.

Restrictions on Cross-Border Trade in Financial Services

6. A Party imposing a restriction on cross-border trade in financial services:

- may not impose more than 1 measure on a transfer, unless, further to paragraph 3(d), it is consistent with paragraph 2(c) and the Articles of Agreement of the IMF, including Article VIII(3); and

- shall promptly notify and discuss with the other Party to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements:
 - the nature and extent of the balance of payments difficulties of the Party,
 - the external economic and trading environment of the Party, and
 - alternative corrective measures that may be available.

7. In discussions under sub-paragraph 6(b), the Parties shall accept all statistical and other findings presented by the IMF relating to foreign exchange, monetary reserves, and balance of payments, and shall base their conclusions on the assessment by the IMF regarding the balance of payments and the external financial situation of the Party adopting the measures.

Article 22.6: Disclosure of Information

1. This Agreement does not require a Party to furnish or allow access to information that:

- would impede law enforcement, if disclosed; or
- would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy, or the financial affairs and accounts of individual customers of financial institutions.

2. This Agreement does not require, in the course of dispute settlement procedures under this Agreement:

- a Party to furnish or allow access to information protected under its competition laws; or
- a competition authority of a Party to furnish or allow access to information that is privileged or otherwise protected from disclosure.

Article 22.7: Cultural Industries

This Agreement does not apply to a measure adopted or maintained by a Party with respect to a person engaged in a cultural industry, except as specifically provided for in Article 3.4 (National Treatment and Market Access for Goods – Tariff Elimination).

Article 22.8: World Trade Organization Waivers

If a right or obligation in this Agreement duplicates a right or obligation in the WTO Agreement, a measure adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX:3 of the WTO Agreement is also deemed to be in conformity with this Agreement, except as otherwise decided by the Parties.

The conforming measure of either Party may not give rise to a claim under Section C of Chapter Ten (Investment – Settlement of Disputes between a Party and an Investor of the Other Party).

Chapter Twenty-three: Final Provisions

Article 23.1: Annexes, Appendices and Footnotes

The annexes, appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 23.2: Amendments

- 1. The Parties may agree, in writing, to amend this Agreement.*
- 2. Unless otherwise agreed by the Parties, an amendment enters into force following an exchange of written notifications by the Parties certifying the completion of their respective internal procedures, and on a date agreed on by the Parties.*
- 3. An amendment shall constitute an integral part of this Agreement.*

Article 23.3: Reservations

This Agreement may not be subject to unilateral reservations or unilateral interpretative declarations.

Article 23.4: Entry into Force