

CHAPTER TWENTY-THREE
EXCEPTIONS

第二十三章 例外

ARTICLE 23.1: GENERAL EXCEPTIONS

1. For purposes of Chapters Two through Four (National Treatment and Market Access for Goods, Agriculture, and Textiles and Apparel) and Six through Nine (Rules of Origin and Origin Procedures, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive 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 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
2. For purposes of Chapters Twelve (Cross-Border Trade in Services), Fourteen (Telecommunications), and Fifteen (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 23.2: ESSENTIAL SECURITY

Nothing in this Agreement shall be construed:

- (a) to 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) to 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.²

ARTICLE 23.3: TAXATION

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. (a) Nothing in this Agreement shall affect the rights and obligations of either

¹ Article 23.1 is without prejudice to whether digital products should be classified as goods or services.

² For greater certainty, if a Party invokes Article 23.2 in an arbitral proceeding initiated under Chapter Eleven (Investment) or Chapter Twenty-Two (Institutional Provisions and Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.

第23.1条：一般例外

1. 就第二章至第四章（货物的国民待遇和市场准入、农业、纺织品和服装）及第六章至第九章（原产地规则和原产地程序、海关管理和贸易便利化、卫生与植物卫生措施、技术性贸易壁垒）而言，1994年关税与贸易总协定第二十条及其解释性说明经必要修改后纳入本协议并成为其组成部分。缔约方理解，1994年关税与贸易总协定第二十条**(b)**款所指的措施包括为保护人类、动物或植物的生命或健康所必需的环境措施，且1994年关税与贸易总协定第二十条**(g)**款适用于与保护可耗竭的自然资源，无论是有生命的还是无生命的相关的措施。

2. 就第十二章（跨境服务贸易）、第十四章（电信）和第十五章（电子商务）而言，¹ 服务贸易总协定第十四条（包括其脚注）经必要修改后纳入本协议并成为其组成部分。缔约方理解，服务贸易总协定第十四条**(b)**款所指的措施包括为保护人类、动物或植物的生命或健康所必需的环境措施。

第23.2条：基本安全

本协议的任何规定不得解释为：

- (a) 要求一缔约方提供或允许获取其认为披露将违背其基本安全利益的任何信息；或 (b) 阻止一缔约方采取其认为对履行有关维护或恢复国际和平或安全或其自身基本安全利益的义务所必需的措施。²

第二十三条 例外

1. 除本条另有规定外，本协议的任何规定均不适用于税收措施。

2. (a) 本协议的任何规定均不影响任一

¹ 第23.1条不影响数字产品应归类为货物还是服务。

² 为进一步明确，如一缔约方在根据第十一章（投资）或第二十二章（机构条款和争端解决）提起的仲裁程序中援引第23.2条，审理该事项的法庭或专家组应认定该例外适用。

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.

- (b) 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) Articles 2.11 (Export Duties, Taxes, or Other Charges) and 2.12 (Engine Displacement Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

- (a) Articles 12.2 (National Treatment), 13.2 (National Treatment), and 13.5.1 (Cross-Border Trade) shall apply to taxation measures on income, on capital gains, or on 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 relating to the purchase or consumption of particular services on requirements to provide the service in its territory; and
- (b) Articles 11.3 (National Treatment) and 11.4 (Most-Favored-Nation Treatment), Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment), and Articles 13.2 (National Treatment) and 13.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, or on the taxable capital of corporations, or taxes on estates, inheritances, gifts, and generation-skipping transfers;

except that nothing in the Articles referred to in subparagraphs (a) and (b) shall apply:

- (c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
- (d) to a non-conforming provision of any existing taxation measure;
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) to an amendment to a non-conforming provision of any existing taxation

缔约方在任何税收协定下的权利和义务。若本协议与任何此类协定存在不一致之处，则以该协定的规定为准，但仅限于不一致的范围。

- (b) 如缔约方之间存在税收协定，则该协定项下的主管机关应全权负责确定本协议与该税收协定之间是否存在任何不一致之处。

3. 尽管有第2款规定：

- (a) 第2.2条（国民待遇）及本协议中为实施该条所必需的其他条款，应适用于税收措施，其适用程度与1994年关贸总协定第三条相同；且(b) 第2.11条（出口关税、税收或其他费用）和第2.12条（发动机排量税）应适用于税收措施。

4. 在遵守第2款的前提下：

- (a) 第12.2条（国民待遇）、第13.2条（国民待遇）及第13.5.1条（跨境贸易）应适用于与购买或消费特定服务相关的收入、资本收益或公司应税资本的税收措施，但本项任何规定不得阻止缔约方将在其领土内提供服务作为获得或继续获得与购买或消费特定服务相关优惠的条件；且
- (b) 第11.3条（国民待遇）和第11.4条（最惠国待遇）、第12.2条（国民待遇）和第12.3条（最惠国待遇），以及第13.2条（国民待遇）和第13.3条（最惠国待遇）应适用于所有税收措施，但不包括涉及收入、资本收益、公司应税资本或遗产税、继承税、赠与税及隔代转移税的措施；

但（a）项和（b）项所指条款中的任何规定均不适用于：

- (c) 缔约方根据税收协定给予优惠所涉及的最惠国义务；(d) 任何现行税收措施中不符合规定的条款；(e) 任何现行税收措施中不符合规定的条款的延续或及时更新；(f) 对任何现行税收措施中不符合规定的条款的修正案，只要该修正案在修正时未降低其与上述任何条款的符合程度；

measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

- (g) 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); or
- (h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust or pension plan on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, paragraphs 2, 3, and 4 of Article 11.8 (Performance Requirements) shall apply to taxation measures.

- 6. (a) Article 11.16 (Submission of a Claim to Arbitration) shall apply to a taxation measure alleged to be an expropriation or a breach of an investment agreement or an investment authorization.
- (b) Article 11.6 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 11.6 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 11.6 with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 11.16.2 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not 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 180 days of such referral, the investor may submit its claim to arbitration under Article 11.16.3.
- (c) For purposes of this paragraph, **competent authorities** means:
 - (i) in the case of Korea, the Deputy Minister for Tax and Customs, Ministry of Finance and Economy; and
 - (ii) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy).

7. For purposes of this Article, “taxes” and “taxation measures” do not include:

- (a) a customs duty as defined in Article 1.4 (Definitions); or
- (b) the measures listed in exceptions (b) and (c) of that definition.

(g) 采取或执行旨在确保税收公平或有效征收的税收措施（如《服务贸易总协定》第十四条(d)款所允许）；或 (h) 规定获得或持续获得与养老金信托或养老金计划的缴款或收入相关的优惠，需以缔约方对该养老金信托或养老金计划保持持续管辖权为条件的条款。

5. 在遵守第2款且不影响缔约方根据第3款享有的权利和义务的前提下，第11.8条（履行要求）第2款、第3款及第4款应适用于税收措施。

6. (a) 第11.16条（提交仲裁请求）应适用于被指控构成征收或违反投资协议或投资授权的税收措施。(b) 第11.6条（征收与补偿）应适用于税收措施。但若根据本项确定相关措施不构成征收，则任何投资者均不得援引第11.6条作为索赔依据。投资者若欲就税收措施援引第11.6条，必须首先在根据第11.16.2条（提交仲裁请求）提交意向通知时，将该税收措施是否不构成征收的问题提交主管机关。若主管机关不同意审议该问题，或在同意审议后未能在提交之日起180天内一致认定该措施不构成征收，则投资者可根据第11.16.3条提交仲裁请求。(c) 就本款而言，“主管机关”指：(i) 韩国方面为财政经济部税务关税副部长；(ii) 美国方面为财政部助理部长（税收政策）。

7. 就本条而言，“税收”和“税收措施”不包括：

- (a) 第1.4条（定义）中定义的关税；或 (b) 该定义中例外(b)和(c)所列的措施。

ARTICLE 23.4: 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.

第23.4条：信息披露

本协议的任何规定不得解释为要求缔约方提供或允许访问机密信息，如果披露此类信息会妨碍执法或以其他方式违背公共利益，或会损害特定企业（无论是公共企业还是私营企业）的合法商业利益。