

## Chapter 23

### Exceptions

#### Article 23.01 General Exceptions

1. For purposes of Chapters 3 through 5 (National Treatment and Market Access for Goods, Rules of Origin and Related Customs Procedures, Trade Facilitation), 8 (Sanitary and Phytosanitary Measures) and 9 (Technical Barriers to Trade), Article XX of the 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 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 purposes of Chapters 11 (Cross-Border Trade in Services), 13 (Telecommunications) and 14<sup>1</sup> (Electronic Commerce), Article XIV of the 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 the GATS include environmental measures necessary to protect human, animal, or plant life or health.

#### Article 23.02 National 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) prevent any Party from taking any actions that 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 and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purposes of supplying a military or other security establishment,
  - (ii) taken in time of war or other emergency in international relations, or
  - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

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

- (c) prevent any Party from taking action in fulfilling of its obligations under the United Nations Charter for the maintenance of international peace and security.

### **Article 23.03 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 any Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, the convention shall prevail to the extent of the inconsistency.

3. Where similar provisions with respect to a taxation measure exist under this Agreement and under a tax convention, the procedural provisions of the tax convention alone shall be used, by the competent authorities identified in the tax convention, to resolve any issue related to such provisions arising under this Agreement.

4. Notwithstanding paragraphs 2 and 3:

- (a) Article 3.02 (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 the GATT 1994; and
- (b) Article 3.13 (Export Taxes) shall apply to taxation measures.

5. Subject to paragraphs 2, 3, and 6:

- (a) Article 11.02 (National Treatment) and Article 12.02 (National Treatment) shall apply to taxation measures on income, capital gains or on the taxable capital of corporations, that relate to the purchase or consumption of particular services, and
- (b) Articles 10.3 (National Treatment) and 10.04 (Most-Favored Nation Treatment), Articles 11.02 (National Treatment) and 11.3 (Most-Favored Nation Treatment) and Articles 12.02 (National Treatment) and 12.03 (Most-Favored Nation Treatment) shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations as well as estate, inheritance and gift taxes.

6. Paragraph 5 shall not

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

- (b) impose on a Party any 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;
- (c) impose on a Party any national treatment obligation with respect to the conditioning of a receipt, or continued receipt, of an advantage relating to the purchase or consumption of a particular service on a requirement that the service be provided in its territory;
- (d) apply to a non-conforming provision of any existing taxation measure;
- (e) apply to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) 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 5; or
- (g) 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 the GATS).

7. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under paragraph 4, Article 10.09 (Performance Requirements) shall apply to taxation measures.

8. Notwithstanding paragraphs 2 and 3, Article 10.7 (Expropriation and Compensation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 10.16 (Submission of a Claim to Arbitration), where it has been determined pursuant to this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of whether a measure is not an expropriation for a determination to the designated authorities of the Party whose taxation measure is at issue and the Party of the investor at the time that it gives notice under Article 10.16.2. If, within a period of six months from the date of such referral, those authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation, the investor may submit its claim to arbitration under Article 10.16.

#### **Article 23.04 Balance of Payments**

1 Nothing in this Agreement shall be construed as to prevent a Party from adopting or maintaining measures that restrict trade of goods and services, transfers, or both, where the Party experiences financial or balance of payments difficulties or threat thereof.

2 For purposes of paragraph 1, article XII of GATT 1994, the Understanding on the Balance of Payments Provisions of the GATT 1994, and Article XII of GATS, are hereby incorporated into and made a part of this article.

#### **Article 23.05 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.

#### **Article 23.06 Definitions**

For purposes of this Chapter:

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

**taxes** and **taxation measures** do not include:

- (a) a customs duty; or
- (b) the measures listed in exceptions (b), (c) and (d) of the definition of customs duty of Article 2.01 (Definitions of General Application).

## Annex 23.03

### Competent Authorities

For purposes of this Chapter:

**competent authorities** means

- (a) in the case of the Republic of Nicaragua, the *Ministerio de Hacienda y Crédito Público* and *Banco Central de Nicaragua*; and
- (b) in the case of the Republic of China (Taiwan), the *Ministry of Finance* and *Central Bank*,

or their successors.

## Annex 23.03

### Competent Authorities

For purposes of this Chapter:

**competent authorities** means

- (c) in the case of the Republic of Nicaragua, *Ministerio de Hacienda y Crédito Público* and *Banco Central de Nicaragua*; and
- (d) in the case of the Republic of China (Taiwan), *Ministry of Finance* and *Central Bank*;

or their successors.