

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
March 31, 2004

CHAPTER TWENTY-ONE
EXCEPTIONS

ARTICLE 21.1: GENERAL EXCEPTIONS

1. For purposes of Chapters Two through Seven (Market Access for Goods, Agriculture, Textiles and Apparel, Rules of Origin, Customs Administration, 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*.
2. For purposes of Chapters Eleven, Thirteen, and Fourteen¹ (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement.

ARTICLE 21.2: 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.

For greater certainty, measures that a Party considers necessary for the protection of its own essential security interests may include, *inter alia*, measures relating to the production of or 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 purpose of supplying a military or other security establishment.

ARTICLE 21.3: TAXATION

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

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

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2. Nothing in this Agreement shall affect the rights and obligations of either Party under any existing or future tax convention. In the event of any inconsistency between this Agreement and any tax convention, the provisions of such convention shall prevail to the extent of such inconsistency. In the case of the Convention Between the Government of the United States of America and the Kingdom of Morocco for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, the competent authorities of the Parties, as defined in that convention, are exclusively responsible 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) Article 2.10 (Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

- (a) Article 11.2 (National Treatment) and Article 12.2 (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, 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 10.3 (National Treatment) and 10.4 (Most-Favored-Nation Treatment), Articles 11.2 (National Treatment) and 11.3 (Most-Favored Nation Treatment), and Articles 12.2 (National Treatment) and 12.3 (Most-Favored-Nation Treatment) shall apply to all taxation measures other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers,

except that nothing in those Articles 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;

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- (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 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, pension trusts or pension plans 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 10.8 (Performance Requirements) shall apply to taxation measures.²

6. Article 10.6 (Expropriation and Compensation) and Article 10.15 (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 investment authorization. However, no investor may invoke Article 10.6 as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.6 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 10.15.2 the issue of whether that taxation measure involves 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 six months of such referral, the investor may submit its claim to arbitration under Article 10.15.

7. For purposes of paragraph 6, **competent authorities** means (a) in the case of Morocco, the minister in charge of finances or his delegate (Director General of Taxes); and (b) in the case

² For greater certainty, nothing in paragraphs 2, 3, and 4 of Article 10.8 (Performance Requirements) shall be construed to prevent a Party from conditioning the receipt or continued receipt of a tax advantage for income earned from the export of any goods or services, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement that such income be denominated in a foreign currency and received in its territory.

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of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury.

ARTICLE 21.4: DISCLOSURE OF INFORMATION

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

ARTICLE 21.5: BALANCE OF PAYMENTS MEASURES ON TRADE IN GOODS

Should a Party decide to impose measures for balance of payments purposes, it shall do so only in accordance with that Party's rights and obligations under GATT 1994, including the *Declaration on Trade Measures Taken for Balance of Payments Purposes* (1979 Declaration) and the *Understanding on the Balance of Payments Provisions of the GATT 1994* (BOP Understanding). In adopting such measures, the Party shall immediately consult with the other Party and shall not impair the relative advantages accorded to the goods of the other Party under this Agreement.³

³ For greater certainty, this Article applies to balance of payments measures imposed on trade in goods.