

Chapter 29: Exceptions – Text of the 2023 Canada - Ukraine Free Trade Agreement

The 2017 CUFTA will remain in force until entry into force of the 2023 modernized agreement. Until such time, please refer to the [2017 CUFTA text](#) for information on the existing trade agreement between Canada and Ukraine.

Article 29.1: Definitions

For the purposes of this Chapter:

competition authority means:

- (a) for Canada, the Commissioner of Competition and includes a successor notified to the other Party through the Coordinators; and
- (b) for Ukraine, the Antimonopoly Committee of Ukraine and includes a successor notified to the other Party through the Coordinators;

designated authority means:

- (a) for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance and includes a successor notified to the other Party through the Coordinators; and
- (b) for Ukraine, the State Tax Service of Ukraine and includes a successor notified to the other Party through the Coordinators;

information protected under its competition laws means:

- (a) for Canada, information within the scope of Section 29 of the *Competition Act*, R.S.C. 1985, c. C-34, and includes any successor provision; and

- (b) for Ukraine, information with restricted access according to Article 221 of the Law of Ukraine *On the Antimonopoly Committee of Ukraine* and includes any successor provision;

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

- (a) 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;
- (b) the production, distribution, sale, or exhibition of film or video recordings;
- (c) the production, distribution, sale, or exhibition of audio or video music recordings;
- (d) the publication, distribution, or sale of music in print or machine-readable form; or
- (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services;

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

tax and **taxation measure** do not include:

- (a) a customs duty as defined in Article 1.5 (Definitions of General Application); or
- (b) a measure listed in exceptions (b), (c), or (d) of that definition.

Article 29.2: General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Trade Facilitation), Chapter 5 (Trade Remedies), Chapter 6 (Sanitary and Phytosanitary Measures),

Chapter 7 (Technical Barriers to Trade), and Chapter 8 (Digital Trade), Article XX of the GATT 1994 is incorporated into this Agreement.

2. For the purposes of Chapter 8 (Digital Trade), Chapter 10 (Designated Monopolies and State-Owned Enterprises), Chapter 18 (Cross-border Trade in Services), Chapter 21 (Temporary Entry for Business Persons), and Chapter 22 (Telecommunications), paragraphs (a), (b), and (c) of Article XIV of the GATS are incorporated into this Agreement. [Footnote1](#)

3. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 and Article XIV(b) of the GATS include environmental measures necessary to protect human, animal, or plant life or health. The Parties recognize that the measures referred to in Article XX(b) of GATT 1994 and Article XIV(b) of the GATS include environmental measures taken by the Parties to address climate change. The Parties understand that Article XX(g) of the GATT 1994 applies to measures for the conservation of living and non-living exhaustible natural resources.

Article 29.3: National Security

1. This Agreement does not:

- (a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;
- (b) prevent a Party from taking an action that it considers necessary to protect 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 purpose 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
- (c) prevent a Party from fulfilling its obligations under the Charter of the United Nations for the maintenance of international peace and security.

Article 29.4: Taxation

1. Except as provided in this Article, this Agreement does not apply to a taxation measure.

2. This Agreement does not affect the rights and obligations of either Party under a tax convention. In the event of any inconsistency between this Agreement and a tax convention, that convention prevails to the extent of the inconsistency.

3. In the case of a tax convention between the Parties, if an issue arises as to whether an inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the designated authorities of the Parties. The designated authorities of the Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If those designated authorities agree, the period may be extended up to 12 months from the date of referral of the issue. No procedures concerning the measure giving rise to the issue may be initiated under Chapter 28 (Dispute Settlement) or Article 17.23 (Submission of a Claim to Arbitration) until the expiry of the six-month period, or any other period as may have been decided by the designated authorities. A panel or tribunal established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties.

4. Notwithstanding paragraph 2:

(a) Article 2.3 (National Treatment) and other provisions of this Agreement as are necessary to give effect to that Article apply to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 2.9 (Customs Duties on Exports) applies to taxation measures.

5. Subject to paragraph 2:

- (a) Article 20.3 (National Treatment) and Article 18.3 (National Treatment) apply to a taxation measure on income, capital gains, the taxable capital of corporations, or the value of an investment or property^{Footnote2} (but not on the transfer of that investment or property), that relate to the purchase or consumption of particular services, except that this subparagraph does not prevent a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory; and
- (b) Article 17.6 (National Treatment), Article 17.7 (Most-Favoured-Nation Treatment), Article 18.3 (National Treatment), Article 18.4 (Most-Favoured-Nation Treatment), Article 20.3 (National Treatment) and Article 20.4 (Most-Favoured-Nation Treatment) apply to a taxation measure, other than a taxation measure on income, capital gains, the taxable capital of corporations, the value of an investment or property^{Footnote3} (but not on the transfer of that investment or property), or taxes on estates, inheritances, gifts and generation-skipping transfers;

but nothing in the Articles referred to in subparagraphs (a) and (b) apply to:

- (c) a most-favoured nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
- (d) a non-conforming provision of an existing taxation measure;
- (e) the continuation or prompt renewal of a non-conforming provision of an existing taxation measure;
- (f) an amendment to a non-conforming provision of an 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) the adoption or enforcement of a new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including a 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^{Footnote4}; or
- (h) a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, pension plan, superannuation fund or other arrangement to provide pension, superannuation or similar benefits, on a requirement that the Party maintain continuous jurisdiction, regulation or supervision over that trust, plan, fund, or other arrangement.

6. Subject to paragraph 2, and without prejudice to the rights and obligations of the Parties under paragraph 4, paragraphs 2 and 3 of Article 17.12 (Performance Requirements), apply to a taxation measure.

7. Article 17.10 (Expropriation) applies to a taxation measure. However, no investor may invoke Article 17.10 (Expropriation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 17.10 (Expropriation) with respect to a taxation measure must first refer to the issue of whether that taxation measure is not an expropriation of the designated authority of the Party of the investor and the designated authority of the respondent Party, at the time that it gives its notice of intent under Article 17.23 (Submission of a Claim to Arbitration). If the designated authorities decide not to consider the issue or, having decided to consider it, fail to decide that the measure is not an expropriation within a period of six months of the referral, the investor may submit its claim to arbitration under Article 17.23 (Submission of a Claim to Arbitration).

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

Article 29.5: Disclosure of Information

1. This Agreement does not require a Party to furnish or allow access to information that if disclosed would impede law enforcement, 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. In the course of a dispute settlement procedure under this Agreement:

- (a) a Part required to furnish or allow access to information protected under its competition laws; and
- (b) a competition authority required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

Article 29.6: Indigenous Peoples' Rights

This Agreement does not prevent Canada from adopting or maintaining a measure it considers necessary to fulfill its legal obligations to Aboriginal peoples, including those recognized and affirmed by section 35 of the *Constitution Act, 1982*, or those set out in self-government agreements between central or regional levels of government and Aboriginal peoples.

Article 29.7: 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 in Article 2.4 (Tariff Elimination on Imports).

Article 29.8: World Trade Organization Waivers

If a right or obligation in this Agreement duplicates a right or obligation under the WTO Agreement, a measure adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with this Agreement.

Footnotes

Footnote 1

For the purposes of Chapter 10 (Designated Monopolies and State-Owned Enterprises), Article XIV of the GATS (including its footnotes) is incorporated into this Agreement, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

[Return to footnote1referrer](#)

Footnote 2

This is without prejudice to the methodology used to determine the value of that investment or property under the Parties' respective laws.

[Return to footnote2referrer](#)

Footnote 3

This is without prejudice to the methodology used to determine the value of that investment or property under the Parties' respective laws.

[Return to footnote3referrer](#)

Footnote 4

The Parties understand that this subparagraph must be interpreted by reference to the footnote to Article XIV(d) of the GATS as if the Article was not restricted to services or direct taxes.