

CHAPTER TWENTY-TWO

EXCEPTIONS

Article 2201: General Exceptions

1. For the purposes of Chapters Two to Seven and Fifteen (National Treatment and Market Access for Goods, Rules of Origin, Origin Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action and Trade Remedies and Electronic Commerce), except to the extent that a provision of these chapters applies to services or investment, Article XX of 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 GATT 1994 include environmental measures necessary to protect human, animal or plant life or health. The Parties further understand that Article XX (g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters Nine, Ten, Twelve and Fifteen (Cross-Border Trade in Services, Telecommunications, Temporary Entry for Business Persons and Electronic Commerce), and of Chapters Two to Seven (National Treatment and Market Access for Goods, Rules of Origin, Origin Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, and Emergency Action and Trade Remedies) to the extent that a provision of these chapters applies to services, 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 Eight (Investment), subject to the requirement that such measures are not applied in a manner that constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

- (a) 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;
- (b) to ensure compliance with laws and regulations that are not inconsistent with this Agreement; or
- (c) for the conservation of living or non-living exhaustible natural resources.

Article 2202: National Security

Nothing in this Agreement shall be construed:

- (a) to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

- (b) to prevent either 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 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) to prevent either Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 2203: Taxation

1. Except where express reference is made thereto, 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 202 (National Treatment and Market Access for Goods - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article applies to taxation measures to the same extent as does Article III of the GATT 1994; and

(b) Article 210 (National Treatment and Market Access for Goods - Export Taxes) applies to taxation measures.

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

(a) Articles 903 (Cross-Border Trade in Services - National Treatment) and Article 1102 (Financial Services - National Treatment) 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 803 and 804 (Investment - National Treatment and Most-Favoured Nation Treatment), 903 and 904 (Cross-Border Trade in Services - National Treatment and Most-Favoured Nation Treatment) and 1102 and 1103 (Financial Services - National Treatment and Most-Favoured Nation Treatment) apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations.

6. Paragraph 5 shall not:
- (a) impose any most-favoured-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 any new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, any 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 paragraph 4, Article 807 (Investment - Performance Requirements) shall apply to taxation measures.

8. Notwithstanding paragraphs 2 and 3, Article 812 (Investment - Expropriation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise), 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 Parties at the time that it gives notice under subparagraph 1(c) of Article 823 (Investment - Conditions Precedent to Submission of a Claim to Arbitration). If, within a period of six months from the date of such referral, the designated 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 824 (Investment - Submission of a Claim to Arbitration).

9. In order to give effect to paragraphs 1 to 3:
- (a) Where in a dispute between Parties, an issue arises as to whether a measure of a Party is a taxation measure, either 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 any panel established pursuant to Article 2106 (Dispute Settlement – Establishment of a Panel) for the dispute. Where the designated authorities have not decided the issue within six months of the referral, the Tribunal shall decide the issue in place of the designated authorities.

 - (b) Where in connection with a claim by an investor of a Party, an issue arises as to whether a measure is a taxation measure, the Party that has received notice of intention to submit a claim or against which an investor of a Party has submitted a claim 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 any Tribunal formed pursuant to Section B of Chapter Eight (Investment) with jurisdiction over the claim. A Tribunal seized of a claim in which the issue arises may not proceed pending receipt of the decision of the designated authorities. Where the designated authorities have not decided the issue within six months of the referral, the Tribunal shall decide the issue in place of the designated authorities.

- (c) Where in a dispute between Parties, an issue arises as to whether a tax convention prevails over this Agreement, a Party to the dispute 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 six 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, no procedures concerning that measure may be initiated under Article 2106 (Dispute Settlement - Establishment of a Panel). No procedures concerning the measure may be initiated during the period that the issue is under consideration by the designated authorities.
- (d) Where prior to the submission of a claim by an investor of a Party, an issue arises as to whether a tax convention prevails over this Agreement, the Party that has received notice of intention to submit a claim 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 six 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, no claim concerning that measure may be submitted under Article 824 (Investment - Submission of a Claim to Arbitration). No claim concerning the measure may be submitted during the period that the issue is under consideration by the designated authorities. 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 concerning that measure under Article 824 (Investment - Submission of a Claim to Arbitration).

10. Where an investor invokes Article 812 (Investment - Expropriation) as the basis for a claim under Article 819 (Investment - Claim by an Investor of a Party on Its Own Behalf) or 820 (Investment - Claim by an Investor of a Party on Behalf of an Enterprise), any determination under paragraph 8 of whether a measure is an expropriation shall be made concurrently with any decision by the designated authorities under subparagraph 9(b) of the issue whether the measure is a taxation measure.

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

12. Nothing in this Agreement shall be construed to 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 2204: Disclosure of Information

1. 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 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. Nothing in this Agreement shall be construed to require, during the course of any dispute settlement procedure 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 any other information that is privileged or otherwise protected from disclosure.

Article 2205: Cultural Industries

Nothing in this Agreement shall be construed to apply to measures adopted or maintained by either Party with respect to cultural industries except as specifically provided in Article 203 (National Treatment and Market Access for Goods - Tariff Elimination).

Article 2206: World Trade Organization Waivers

To the extent that there are overlapping rights and obligations in this Agreement and the WTO Agreement, the Parties agree that any measures adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX:3 of the WTO Agreement shall be deemed to be also in conformity with the present Agreement, except as otherwise agreed by the Parties. Such conforming measures of either Party may not give rise to legal actions by an investor of one Party against the other under Chapter Eight (Investment).

Article 2207: Definitions

For purposes of this Chapter:

competition authority means:

- (a) with respect to Canada, the Commissioner of Competition or any successor; and
- (b) with respect to Peru, the Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI) and the Organismo Supervisor de Inversión Privada en Telecomunicaciones (OSIPTEL) for the telecommunications sector, or any successor agency;

cultural industries means persons 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;

designated authority means:

- (a) with respect to Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance, or any successor;
- (b) with respect to Peru, the Superintendencia Nacional de Administracion Tributaria (SUNAT), or any successor;

information protected under its competition laws means:

- (a) with respect to Canada, information within the scope of Section 29 of the Competition Act, R.S. 1985, c.34, or any successor provision, and
- (b) with respect to Peru, information protected under Article 6 of Decreto Legislativo 807 or any successor provision;

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” as defined in Article 221 (National Treatment and Market Access for Goods – Definitions); or
- (b) the measures listed in exceptions (b) and (c) of that definition.