

## **CHAPTER 21 EXCEPTIONS**

### **Article 21.1: General Exceptions**

1. For the purposes of Chapters 2 (National Treatment and Market Access for Goods) through 7 (Trade Remedies), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapters 8 (Trade in Services), 9 (Financial Services), 10 (Telecommunications), and 13 (Electronic Commerce)<sup>1</sup>, Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*.

### **Article 21.2: Essential Security**

For the purposes of this Agreement, Article XXI of GATT 1994 and Article XIV bis of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.

### **Article 21.3: Taxation**

1. For purposes of this Article:
  - (a) **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement to which both Parties are party; and
  - (b) taxation measures do not include:
    - (i) a customs duty defined in Article 1.6 (Definitions); or
    - (ii) the measures listed in subparagraphs (b) through (e) of the definition of customs duty set out in Article 1.6 (Definitions).
2. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
3. (a) Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention to which both Parties are party. In the event of any inconsistency relating to a taxation measure between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

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<sup>1</sup> Article 21.1 is without prejudice to whether digital products should be classified as goods or services.

- (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.
4. Notwithstanding paragraph 3, this Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under Article III of GATT 1994.
5. (a) Article 12.12 (Settlement of Investment Disputes between a Party and an Investor of the Other Party) shall apply to a taxation measure alleged to be an expropriation.
- (b) Articles 12.9 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 12.9 (Expropriation and Compensation) as the basis of a claim where it has been determined in accordance with this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 12.9 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities, at the time of the submission of written request for consultation to the disputing Party under paragraph 2 of Article 12.12 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), 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 from the date on which the written request for consultation is submitted to the disputing Party under paragraph 2 of Article 12.12 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), the investor may submit its claim to arbitration under Article 12.12.3 (Settlement of Investment Disputes between a Party and an Investor of the Other Party).
6. For the purposes of this Article, **competent authorities** means:
- (a) for China, the Ministry of Finance and State Administration of Taxation; and
- (b) for Korea, the Deputy Minister for Tax and Customs, Ministry of Strategy and Finance.

#### **Article 21.4: 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.

#### **Article 21.5: Measures to Safeguard the Balance of Payments**

Where the Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the WTO Agreement and consistent with the Articles of *Agreement of the International Monetary Fund*, adopt measures deemed necessary.