

## CHAPTER 24

### EXCEPTIONS

#### Article 24.1: General Exceptions

1. For the purposes of Chapters 3 (National Treatment and Market Access for Goods), 4 (Rules of Origin and Origin Procedures), 5 (Customs Administration and Trade Facilitation), 6 (Sanitary and Phytosanitary Measures), and 7 (Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are incorporated into this Agreement and made part of this Agreement, *mutatis mutandis*.
2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary for protecting human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to the measures related to the conservation of living and non-living exhaustible natural resources.
3. For the purposes of Chapters 9 (Cross-Border Trade in Services), 10 (International Maritime Transport Services), 11 (Temporary Entry for Business Persons), 12 (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*. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary for protecting human, animal or plant life or health.

#### Article 24.2: Security Exceptions

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 considers contrary to its essential security interests;
- (b) preclude a Party from applying measures that it considers necessary for the protection of its essential security interests; or
- (c) preclude a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

#### Article 24.3: Taxation Measures

1. For the purposes of this Article:

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<sup>1</sup> This paragraph is without prejudice to whether a digital product should be classified as a good or service.

**designated authorities** means:

- (a) for Chile, the Undersecretariat of Finance;
- (b) for Colombia, the Technical Vice-Ministry of the Ministry of Finance and Public Credit;
- (c) for Mexico, the Ministry of Finance and Public Credit;
- (d) for Peru, the Ministry of Economy and Finance;
- (e) for Singapore, Chief Tax Policy Officer, Ministry of Finance, or any such public officer as may be designated by Singapore;

or a successor of these designated authorities as notified in writing to the other Party.

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

**taxes and taxation measures** include excise duties, but do not include:

- (a) a customs duty, as defined in Article 2.1 (General Definitions); or
- (b) the measures listed in subparagraphs (b) and (c) of that definition.

2. Except as provided in this Article, this Agreement shall not apply to taxation measures.

3. This Agreement shall not affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.

4. In the case of a tax convention to which one or more of the Parties to the Pacific Alliance and Singapore are party, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the designated authorities of the relevant Parties to the Pacific Alliance and Singapore. The designated authorities of the relevant Parties to the Pacific Alliance and Singapore 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 the 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 23 (Dispute Settlement) or Article 8.20 (Submission of a Claim to Arbitration) until the expiry of the six-month period, or any other period as may have been agreed 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 made under this paragraph.

5. Notwithstanding paragraph 3:
- (a) Article 3.3 (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 3.10 (Export Duties, Taxes or Other Charges) shall apply to taxation measures.
6. Subject to paragraph 3:

- (a) Article 9.3 (National Treatment) shall apply to taxation measures on income, on capital gains, on the taxable capital of corporations, or on the value of an investment or property<sup>2</sup> (but not on the transfer for that investment or property), 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 that relates to the purchase or consumption of particular services on requirements to provide the service in its territory; and
- (b) Article 8.5 (National Treatment), Article 8.6 (Most-Favoured-Nation Treatment), Article 9.3 (National Treatment) and Article 9.4 (Most-Favoured-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, on the taxable capital of corporations, on the value of an investment or property<sup>2</sup> (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) shall apply to:

- (c) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
- (d) a non-conforming provision of any existing taxation measure;
- (e) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) 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) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including any taxation measure that differentiates between persons based on their place of residence for tax purposes,

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<sup>2</sup> This is without prejudice to the methodology used to determine the value of such investment or property under the Parties' respective laws.

provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties;<sup>3</sup>

- (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; or
- (i) any excise duty on insurance premiums to the extent that such tax would, if levied by the other Party, be covered by subparagraph (d), (e) or (f).

7. Subject to paragraph 3, and without prejudice to the rights and obligations of the Parties under paragraph 5, Article 8.9.3 (Performance Requirements), Article 8.9.4, Article 8.9.5, Article 8.9.6, Article 8.9.7, Article 8.9.8, Article 8.9.9 and Article 8.9.11 shall apply to taxation measures.

8. Article 8.13 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 8.13 (Expropriation and Compensation) 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 8.13 (Expropriation and Compensation) with respect to a taxation measure must first refer to the designated authorities of the Party of the investor and the respondent Party, at the time that it gives its notice of intent under Article 8.20 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If 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 within a period of six months of the referral, the investor may submit its claim to arbitration under Article 8.20 (Submission of a Claim to Arbitration).

9. This Agreement shall not prevent Singapore from adopting taxation measures no more trade restrictive than necessary to address Singapore's public policy objectives arising out of its specific constraints of space.

#### **Article 24.4: Disclosure of Information**

1. Each Party shall in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement. When the disclosure of such information is necessary to comply with the laws and regulations of a Party, that Party shall notify the other Party which provided the information in confidence before such disclosure is made.

2. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to

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<sup>3</sup> The Parties understand that this subparagraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

information, the disclosure of which would be contrary to its laws and regulations or 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 24.5: Temporary Safeguard Measures**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to transfers or payments from the current account in the event of serious balance of payments and external financial difficulties or a threat thereof.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to the transfers or payments related to capital movements:

- (a) in the event of serious balance of payment and external financial difficulties or a threat thereof, or
- (b) if, in extraordinary circumstances, capital payments or transfers cause or threaten to cause serious difficulties in macro-economic management, in particular in monetary or foreign exchange policy.

3. Any measure that is adopted or maintained in accordance with paragraphs 1 or 2 shall:

- (a) be applied in a non-discriminatory manner so that no Party receives a less favourable treatment than any other Party to the Pacific Alliance or non-Party;
- (b) be consistent with the *Articles of Agreement of the International Monetary Fund*;
- (c) avoid unnecessary damage to commercial, economic and financial interests of the other Party;
- (d) not exceed those necessary to deal with the circumstances set out in paragraphs 1 or 2, and
- (e) be temporary and be phased out progressively as soon as the circumstances set out in paragraphs 1 or 2 improve;

4. With regard to trade of goods, no provision of this Agreement shall be construed as preventing a Party from adopting measures to restrict importations in order to safeguard its external financial position or balance of payments. These measures which restrict importations must be consistent with the GATT 1994 and *the Understanding of the Balance of Payments Provisions of the GATT 1994*.

5. With regard to trade in services, no provision in this Agreement shall be construed to prevent a Party from taking restrictive trade measures in order to safeguard its external financial position

or balance of payments. These restrictive measures must be consistent with the GATS.

6. A Party that adopts or maintains measures in accordance with paragraphs 1, 2, 4 or 5 shall:
  - (a) provide prompt notice of the measures adopted or maintained to the other Party, including any modification thereof; and
  - (b) promptly commence consultations with the other Party to review the measures maintained or adopted by it:
    - (i) in the case of capital movements, respond to the other Party that makes an enquiry on the measures adopted by it, provided that said enquiry is not otherwise taking place outside of this Agreement; and
    - (ii) in the case of current account transactions, provided that consultations related to the adopted measures are not carried out before the WTO, a Party shall, if requested to, promptly commence consultations with the other Party.