

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter XXII General Exceptions

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Article 1. [Definitions]

[1.1. For purposes of this Chapter:]

[**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; or]
- [b] the measures listed in exceptions b) and c) of the definition of customs duty.]

Article 2. [Exceptions in goods and services]

[2.1. For purposes of Chapters XX (Market Access, Agriculture, Rules of Origin and Origin Procedures, 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. 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, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.]

[2.2. For purposes of Chapters XX (Cross-Border Trade in Services), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement. 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.]

Article 3. [Essential Security]

[3.1. The exceptions for national security reasons set forth in Article XXI of GATT 1994;]

[3.2. 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 [in conformity with the United Nations Charter] with respect to the maintenance [and] [or] restoration of international peace or security, or the protection of its own essential security interests.]

Article 4. [Taxation]

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

[4.2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. 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.]

[4.3. Notwithstanding Article 3.2:]

- [a] Article XX (Market Access – 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 the GATT 1994; and]
- [b] Articles XX (Market Access – Export Taxes) shall apply to taxation measures.]

[4.4. Subject to Article 4.2:]

- [a] Article XX (Cross-Border Trade in Services – National Treatment) and Article XX (Financial Services – 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 XX (Investment – National Treatment) and XX (Investment – Most-Favored-Nation Treatment), Articles XX (Cross-Border Trade in Services – National Treatment) and XX (Cross-Border Trade in Services – Most-Favored Nation Treatment), and Articles XX (Financial Services – National Treatment) and XX (Financial Services – 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;]
- [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.]

[4.5. Subject to Article 4.2. and without prejudice to the rights and obligations of the Parties under paragraph 3, Article XX (Investment – Performance Requirements) shall apply to taxation measures.]

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

[4.7. 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, that convention shall prevail to the extent of the inconsistency.]

[4.8. Notwithstanding Article 4.7:]

- [a] Article XX (National treatment on agricultural and non-agricultural goods), 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 Article III of GATT 1994; and]
- [b] Article XX (Export taxes on agricultural and non-agricultural goods), shall apply to taxation measures.]

[4.9. For purposes of this Article, taxation measures shall not include:]

- [a] a **customs duty**, which includes any import tax or duty or a charge of any other kind applied in connection with the importation of a good, including any form of surtax or surcharge applied to imports;]
- [b] any antidumping or countervailing duty that is applied pursuant to a Party's domestic law and not applied inconsistently with the provisions of Chapter XX (Unfair Trade Practices);]
- [c] fees or other charges in connection with the importation, commensurate with the cost of services provided;]
- [d] any premium offered or collected on imported goods, derived from any bidding system with respect to the administration of quantitative restrictions on imports or of quota-based tariffs or tariff preference quotas.]

[4.10. Subject to Article 4.7:]

- [a] Articles XX (National treatment on services) and XX (National treatment on financial services) 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;]
- [b] Articles XX and XX (National treatment and Most-favored-nation treatment on investment); XX and XX (National treatment and Most-favored-nation treatment on services); and XX and XX (National treatment and Most-favored-nation treatment on financial services) shall apply to all taxation measures, other than those on income,

capital gains, or on the taxable capital of corporations, and taxes on estates, inheritances, and gifts.]

[Nothing in those Articles shall apply to:]

- [i) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;]
- [ii) any new taxation measure aimed at ensuring the equitable and effective imposition of taxes and that does not arbitrarily discriminate between persons, goods, or services of the Parties or arbitrarily nullify or impair benefits accorded under those Articles, in the sense of Annex XX (Nullification and impairment of Chapter XX (Dispute Settlement).)]

Article 5. [Disclosure of Information]

[5.1. 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 personal privacy or the financial affairs and accounts of individual customers of financial institutions.]

[5.2. No Party shall be required to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.]

Article 6. [Balance of Payments]

Article 7. [Cultural Exemption]

[7.1. Nothing in this Agreement shall be construed to apply to measures adopted or maintained by a Party with respect to cultural industries except as specifically provided in Article XX (Market Access-Tariff Elimination).]