

PART NINE
OTHER PROVISIONS

Chapter Twenty-One

Exceptions

Article 2101: General Exceptions

1. For purposes of:

(a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment, and

(b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services,

GATT Article XX and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement. The Parties understand that the measures referred to in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in:

(a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services,

(b) Part Three (Technical Barriers to Trade), to the extent that a provision of that Part applies to services,

(c) Chapter Twelve (Cross-Border Trade in Services), and

(d) Chapter Thirteen (Telecommunications),

shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and

consumer protection, or

3. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in Article 1106(1)(b) or (c) or (3)(a) or (b) (Performance Requirements) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) necessary for the conservation of living or non-living exhaustible natural resources.

Article 2102: National Security

1. Subject to Articles 607 (Energy) and 1018 (Government Procurement), nothing in this Agreement shall be construed:

(a) to require any 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 any 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 any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 2103: Taxation

1. Except as set out in this Article, 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 the provisions of this Agreement and any such convention, the provisions of that convention shall prevail to the extent of the inconsistency.

3. Notwithstanding paragraph 2:

(a) Article 301 (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, and

(b) Article 315 (Market Access - Export Taxes) and Article 604 (Energy - Export Taxes), shall apply to taxation measures.

4. Subject to paragraph 2:

(a) Article 1202 (Cross-Border Trade in Services - National Treatment) and Article 1407 (Financial Services - National Treatment) shall apply to taxation measures on income, capital gains or on the taxable capital of corporations, and to those taxation measures set out in Annex 2103.4 that relate to the purchase or consumption of particular services, and

(b) Articles 1102 and 1103 (Investment - National Treatment and MFN), Articles 1202 and 1203 (Cross-Border Trade in Services - National Treatment and MFN) and Articles 1407 and 1408 (Financial Services - National Treatment and MFN) and shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations and those taxes listed in Annex 2103.4,

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 any new taxation measure aimed at ensuring the equitable and effective imposition or collection 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 2004, or

(h) to the measures set out in Annex 2103.4.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties, Article 1106(3), (4), (5) and (6) (Performance Requirements) shall apply to taxation measures.

6. Article 1110 (Expropriation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 1116 or 1117, where it has been determined pursuant to this paragraph that the measure is not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the appropriate competent authorities set out in Annex 2104.6 at the time that it gives notice under Article 1119. 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 after such referral, the investor may submit its claim to arbitration under Article 1120.

Article 2104: Balance of Payments

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures that restrict international transactions or related international transfers and payments ("transfers") where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are:

(a) consistent with paragraphs 4 through 8 when imposed on cross-border trade in financial services; or

(b) consistent with paragraphs 2 through 6 when imposed on any other transaction or transfer.

2. Restrictions imposed on transactions or transfers other than cross-border trade in financial services shall:

(a) when imposed on payments for current international transactions, be consistent with Article VIII(3) of the Articles of Agreement of the International Monetary Fund ("IMF");

(b) when imposed on international capital transactions, be consistent with Article VI of the Articles of Agreement of the IMF and imposed only in conjunction with measures imposed on current international transactions under paragraphs 2(a) and 4(a); and

(c) when imposed on transfers covered by Article 1109 (Investment - Transfers) and transfers related to trade in goods, be made in a freely usable currency at a market rate of exchange such that the payments and transfers are not substantially impeded.

3. No Party may adopt or maintain measures such as tariff surcharges, quotas or licenses under this Article.

4. As soon as practicable after imposing a restriction under this Article, the Party imposing the restriction shall:

(a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF; and

(b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties and receive endorsement of such measures by the IMF.

5. Each Party shall ensure that any measure that it adopts or maintains under this Article shall:

(a) avoid unnecessary damage to the commercial, economic and financial interests of another Party;

(b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;

(c) be temporary and be phased out progressively as the situation improves;

(d) be consistent with any economic adjustment measures endorsed by the IMF under paragraph 4(b) and consistent with the Articles of Agreement of the IMF; and

(e) be applied on a national treatment and most-favored-nation treatment basis.

6. A Party may adopt or maintain a measure under this Article that gives priority to services which are more essential to its economic program, provided that, except as specifically approved under an IMF-endorsed adjustment program in effect under paragraph 4, no such measure is imposed for the purpose of protecting a specific industry or sector.

7. A Party imposing a restriction on cross-border trade in financial services shall:

(a) not impose more than one measure on any given transaction and its related transfer, except as specifically approved under an IMF-endorsed adjustment program;

(b) promptly notify the other Parties; and

(c) consult promptly with the other Parties to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements

(i) the nature and extent of the balance of payments and external financial difficulties of the Party,

(ii) the external economic and trading environment of the Party, and

(iii) alternative corrective measures that may be available.

8. In consultations under paragraph 7(c), the Parties shall:

(a) consider if measures adopted under this Article comply with paragraph 5, in particular subparagraph 5(c); and

(b) accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments, and shall base their conclusions on the assessment by the IMF of the balance of payments and external financial situation of the Party adopting the measures.

Article 2105: Disclosure of Information

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 laws protecting personal privacy.

Annex 2106 applies to cultural industries.

Article 2107: Definitions

For purposes of this Chapter:

cultural industries means any 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) radio communication 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;

international capital transactions means "international capital transactions" as defined under the Articles of Agreement of the IMF;

payments for current international transactions means "payments for current international transactions" as defined under the Articles of Agreement of the IMF;

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 319; or
- (b) the measures listed in exceptions (b), (c), (d) and (e) of that definition.

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ANNEX 2103.4

Specific Taxation Measures

1. Article 2103(4)(a) (Taxation) shall apply to an asset tax under the Asset Tax Law ("Ley del Impuesto al Activo") of Mexico.
2. Article 2103(4)(a) and (b) shall not apply to any excise tax on insurance premiums adopted by Mexico to the extent that such tax would, if levied by Canada or the United States, be covered by Article 2103(4)(d), (e) or (f).

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ANNEX 2104.6

Competent Authorities

1. The competent authority for Canada is the Assistant Deputy Minister for Tax Policy, Department of Finance.
2. The competent authority for Mexico is the Deputy Minister of Revenue of the Ministry of Finance and Public Credit. (Secretaria de Hacienda y Credito Publico)
3. The competent authority for the United States is the Assistant Secretary of the Treasury (Tax Policy), U.S. Department of the Treasury.

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ANNEX 2106

Cultural Industries

Notwithstanding any other provision of this Agreement, as between the United States and Canada, any measure adopted or maintained with respect to cultural industries, except as specifically provided in Article 302 (Market Access - Tariff Elimination), and any measure of equivalent commercial effect taken in response, shall be governed exclusively in accordance with the terms of the Canada - United States Free Trade Agreement. The rights and obligations between Canada and any other Party with respect to such measures shall be identical to

those applying between Canada and the United States.