

## CHAPTER 32

### EXCEPTIONS

#### ARTICLE 32.1

##### General Exceptions

1. For the purposes of Chapter 2 [Trade in Goods], Chapter 4 [Customs and Trade Facilitations], Chapter 8 [Energy and Raw Materials], Chapter 22 [State Owned Enterprises], Chapter 10 [Investment Liberalisation]<sup>1</sup>, Chapter 19 [Digital Trade], Article XX of the GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment liberalization or trade in services, nothing in Chapter 10 [Investment Liberalisation]<sup>2</sup>, Chapter 11 [Trade in Services], Chapter 20 [Capital Movement]<sup>3</sup>, Chapter 19 [Digital Trade], Chapter 8 [Energy and Raw Materials] and Chapter 22 [State-Owned Enterprises] shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order<sup>4</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

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<sup>1</sup> This provision shall not apply to Article 10.7 (Public Procurement) of Chapter 10 [Investment Liberalisation].

<sup>2</sup> This provision shall not apply to Article 10.7 (Public Procurement) of Chapter 10 [Investment Liberalisation].

<sup>3</sup> For greater certainty, nothing in this Article shall be construed as a means of limiting the rights set out in Annex XX (Transfers) of the Investment Chapter.

<sup>4</sup> The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety.

3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions of the aforementioned Chapters/Sections:

(a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 2 of this Article include environmental measures, which are necessary to protect human, animal or plant life or health;

(b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and

(c) measures taken to implement multilateral environmental agreements can fall under points (b) or (g) of Article XX of GATT 1994 or under point (b) of paragraph 2 of this Article.

4. Before a Party takes any measures provided for in points (i) and (j) of Article XX of GATT 1994 that Party shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If no agreement is reached within 30 days of providing the information, the Party may apply the relevant measures. Where exceptional and critical circumstances requiring immediate action that makes prior information or examination impossible, the Party intending to take the measures may apply forthwith precautionary measures necessary to deal with the situation. That Party shall inform the other Party immediately thereof.

## ARTICLE 32.2

### Security exceptions

1. 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 considers contrary to its essential security interests; or
  - (b) to prevent a Party from taking an action which it considers necessary for the protection of its essential security interests:
    - (i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;
    - (ii) relating to fissionable and fusionable materials or the materials from which they are derived; or
    - (iii) taken in time of war or other emergency in international relations; or
  - (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. The Trade Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

## ARTICLE 32.3

### Taxation

1. For the purposes of this Article:
- (a) "residence" means residence for tax purposes;
  - (b) "tax agreement" means an agreement for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which the European Union or its Member States or Chile is party; and

- (c) "taxation measure" means a measure in application of the tax legislation of the European Union, of its Member States or Chile.
2. This Agreement applies to taxation measures only in so far as such application is necessary to give effect to the provisions of this Agreement.
  3. Nothing in this Agreement shall affect the rights and obligations of the European Union, of its Member States or of Chile under any tax agreement. In the event of any inconsistency between this Agreement and any such tax agreement, the tax agreement shall prevail to the extent of the inconsistency. With regard to a tax agreement between the European Union or its Member States and Chile, the relevant competent authorities, of the European Union and/or of its Member States, on the one hand, and of Chile, on the other hand, under this Agreement and that tax agreement shall jointly determine whether an inconsistency exists between this Agreement and the tax agreement.
  4. Any most-favoured-nation obligation in this Agreement shall not be applicable with respect to an advantage accorded by the European Union, by its Member States or by Chile pursuant to a tax agreement.
  5. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes that:
    - (a) distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested; or
    - (b) aims at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax agreement or domestic fiscal legislation.

## ARTICLE 32.4

### Disclosure of Information

1. Nothing in this Agreement shall be construed to require a Party to make available 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 except where a panel requires such confidential information in dispute settlement proceedings under Chapter 31 [Dispute Settlement]. In such cases, the panel shall ensure that confidentiality is fully protected.
2. When a Party submits information to the Trade Committee or to specialised committees which is considered as confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

## ARTICLE 32.5

### WTO Waivers

If an obligation in this Agreement is substantially equivalent to an obligation contained in the WTO Agreement, any measure taken in conformity with a waiver adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the substantively equivalent provision in this Agreement.