

CHAPTER 32

EXCEPTIONS AND GENERAL PROVISIONS

Section A: Exceptions

Article 32.1: General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Agriculture), Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures), Chapter 6 (Textile and Apparel Goods), Chapter 7 (Customs Administration and Trade Facilitation), Chapter 9 (Sanitary and Phytosanitary Measures), Chapter 11 (Technical Barriers to Trade), Chapter 12 (Sectoral Annexes), and Chapter 22 (State Owned Enterprises and Designated Monopolies), Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis
2. For the purposes of Chapter 15 (Cross-Border Trade in Services), Cha

³ For the purposes of Chapter 22 (State Owned Enterprises and Designated Monopolies), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis, with respect to measures of a Party (including the implementation of measures through the activities of an enterprise or a designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

trade agreement to which the Party taking action and the Party against which the action is taken are party.

Article 32.2: Essential Security

1. Nothing in this Agreement shall be construed to:

- (a) require a Party to furnish or allow access to information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) preclude a Party from applying measures that it considers necessary for the maintenance of its essential security interests in respect of its international peace or security, or the protection of its own essential security interests.

Article 32.3: Taxation Measures

1. For the purposes of this Article:

designated authorities means:

- (a) for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance;
- (b) ()

3. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of any inconsistency between this Agreement and a tax convention, that convention prevails to the extent of the inconsistency.

4. In the case of a tax convention between two or more Parties, if an issue arises as to whether an inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the designated authorities of the Parties in question. The designated authorities of those Parties 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 those 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 31 (Dispute Settlement) or, as between the United States and Mexico, Annex D (Mexico-United States Investment Disputes) or Annex 14E (Mexico-United States Investment Disputes Related to Covered Government Contracts) until the expiry of the six month period, or any other period as

7. Subject to paragraph 3, and without prejudice to the rights and obligations of the Parties under paragraph 5, Article 14.10.2 (Performance Requirements), Article 14.10.3 and Article 14.10.4 apply to a taxation measure.

8. Article 14.8 (Expropriation and Compensation) applies to a taxation measure. However, as between the United States and Mexico, no investor may invoke Article 14.8 (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 of the United States or Mexico that seeks to invoke Article 14.8 (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 14.D.3 (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 after the referral, the investor of the United States or Mexico may submit its claim to arbitration under, as applicable, Annex 34.D (Submission of a Claim to Arbitration) or paragraph 2 of Annex 14-E (Mexico-

4. A measure adopted or maintained under paragraph 2 or 3 must:

(a) not be inconsistent with Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 15.3 (National Treatment), Article 15.4 (Most-Favored-Nation Treatment), Article 17.3 (National Treatment) and Article 17.4 (Most-Favored-Nation Treatment);

(b) be consistent with the Articles of Agreement of the IMF

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necessary to remove the restrictions in 3(a); and

(c) adopt or maintain economic policies consistent with those consultations.

6. Measures referred to in paragraphs 2 and 3 shall not apply to payments or transfers relating to foreign direct investment.

7. A Party shall endeavor to provide that a measure it adopts or maintains under paragraph 2 or 3 be pricebased, and if that measure is not pricebased, the Party shall explain the rationale for using quantitative restrictions when it notifies the other Parties of the measure.

8. In the case of trade in goods, Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994, set out in Annex A to the WTO Agreement, are incorporated into and made part of this Agreement, mutatis mutandis. Any measure it adopts or maintains un

services, and investment, this Agreement does not preclude a Party from adopting or maintaining a measure it deems necessary to fulfill its legal obligations to indigenous peoples.⁷

Article 32.6: Cultural Industries

1. For the purposes of this Article, “cultural industry” means a person engaged in 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) radiocommunications 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.

2. This Agreement does not apply to a measure adopted or maintained by Canada with respect to a cultural industry, except as specifically provided in Article 2.4 (Treatment of Customs Duties) or Annex 15D (Programming Services).

3. With respect to Canadian goods, services, and content, the United States and Mexico may adopt or maintain a measure that, were it adopted or maintained by Canada, would have been inconsistent with this Agreement but for paragraph 2.

4. Notwithstanding any other provision of this Agreement, a Party may take a measure of equivalent commercial effect in response to an action by another Party that would have been inconsistent with this Agreement but for paragraph 2 or 3.

5. Notwithstanding Article 31.3 (Choice of Forum):

- (a) dispute regarding a measure taken under paragraph 4 shall be settled exclusively under this Agreement unless a Party seeking to establish a panel under Article

⁷ For greater certainty, for Canada the legal obligations include those recognized and affirmed by section 35 of the Constitution Act 1982 or those set out in self-government agreements between a central or regional level of government and indigenous peoples.

the Protection of Privacy and Transborder Flows of Personal Data (2013)

3. The Parties recognize that, pursuant to paragraph 2 key principles include: limitation on collection; choice; data quality; purpose specification; use limitation; security safeguards; transparency; individual participation; and accountability.

4. Each Party shall endeavor to adopt non-discriminatory practices in protecting natural persons from personal information protection violations occurring within its jurisdiction.

non-market country is a country:

for which Mexico has not taken specific reservation in its Schedules to Annexes I, II, and IV of this Agreement, only to the extent consistent with the least restrictive measures that Mexico may adopt or maintain under the terms of applicable reservations and exceptions to parallel obligations in other trade and investment agreements that Mexico has ratified prior to entry into force of this Agreement, including the WTO Agreement, without regard to whether those other