

## PART SEVEN: OTHER PROVISIONS

### Chapter XIV: Exceptions

#### Article XIV.1 General Exceptions

For purposes of Part Two (Trade in Goods), Article XX of the GATT 1994 and its interpretative notes, or any equivalent provision of a successor agreement to which both Parties are party, are incorporated into and made part of this Agreement. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

#### Article XIV.2 National Security

Nothing in this Agreement shall be construed:

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

#### Article XIV.3 Taxation

1. Except as set out in this Article and in Annex XIV.3.1, nothing in this Agreement shall apply to taxation measures.

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.

3. Notwithstanding paragraph 2:

(a) Article III.2 (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) Article III.12 (Export Taxes) shall apply to taxation measures.

#### Article XIV.4 Balance of Payments

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures that restrict transfers where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are consistent with this Article.

2. As soon as practicable after a Party imposes a measure under this Article, the Party shall:

- (a) submit any current account exchange restrictions to the International Monetary Fund (IMF) for review under Article VIII of the Articles of Agreement of the IMF;
- (b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties; and
- (c) adopt or maintain economic policies consistent with such consultations.

3. A measure adopted or maintained under this Article shall:

- (a) avoid unnecessary damage to the commercial, economic or financial interests of the other 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 balance of payments situation improves;
- (d) be consistent with paragraph 2(c) and with the Articles of Agreement of the IMF; and
- (e) be applied on a national treatment or most-favoured-nation treatment basis, whichever is better.

4. A Party may adopt or maintain a measure under this Article that gives priority to services that are essential to its economic program, provided that a Party may not impose a measure for the purpose of protecting a specific industry or sector unless the measure is consistent with paragraph 2(c) and with Article VIII(3) of the Articles of Agreement of the IMF.

5. Restrictions imposed on transfers:

- (a) where imposed on payments for current international transactions, shall be consistent with Article VIII(3) of the Articles of Agreement of the IMF;
- (b) where imposed on international capital transactions, shall be consistent with Article VI of the Articles of Agreement of the IMF and be imposed only in conjunction with measures imposed on current international transactions under paragraph 2(a);
- (c) where imposed on transfers covered by Article IX of the *Agreement Between the Government of the Republic of Costa Rica and the Government of Canada for the Promotion and Protection of Investments*, signed in San Jose on March 18, 1998, shall be consistent with Annex I, Section V of that Agreement;
- (d) where imposed on transfers related to trade in goods, may not substantially impede transfers from being made in a freely usable currency at a market rate of exchange; and
- (e) may not take the form of tariff surcharges, quotas, licences or similar measures.

#### **Article XIV.5 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 the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.

#### **Article XIV.6 Cultural Industries**

Measures affecting cultural industries are exempt from the provisions of this Agreement except as specifically provided for in Chapter III (National Treatment and Market Access of Goods) of this Agreement.

## **Article XIV.7**      **Definitions**

For purposes of this Chapter: cultural industries means persons 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 recording;
- (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.

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

**IMF** means the International Monetary Fund;

**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;

**taxation measures** do not include:

- (a) a "customs duty" as defined in Article III.17 (Definitions); or
- (b) the measures listed in exceptions (b), (c) and (d) of that definition; and

**transfers** means international transactions and related international transfers and payments.

## **Annex XIV.3.1**      **Double Taxation**

1. The Parties agree to conclude a bilateral double taxation agreement within a reasonable time after the date that this Agreement enters into force.

2. The Parties agree that upon conclusion of a bilateral double taxation agreement, they will agree to an exchange of letters setting out the relationship between the double taxation agreement and Article XIV.3 of the Agreement.

## **Chapter XV: Final Provisions**

### **Article XV.1**      **Annexes, Appendices and Footnotes**

The Annexes, Appendices and footnotes to this Agreement constitute integral parts of this Agreement.

### **Article XV.2**      **Amendments**

1. The Parties may agree on any modification of or addition to this Agreement.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

**Article XV.3 Reservations**

This Agreement shall not be subject to unilateral reservations or unilateral interpretative declarations.

**Article XV.4 Entry into Force**

This Agreement shall enter into force following an exchange of written notifications certifying the completion of necessary legal procedures. The Parties agree on the desirability of an exchange of such notifications by January 1, 2002.

**Article XV.5 Duration and Termination**

This Agreement shall remain in force unless terminated by either Party on 6 months' notice to the other Party.

**Article XV.6 Authentic Texts**

The English, French and Spanish texts of this Agreement are equally authentic.

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[1] If the Parties cannot agree on an arbitrator within 10 days after referring the matter to arbitration, the arbitrator shall be chosen by lot from among the panelists.

[2] The Party complained against shall provide a detailed written status report concerning its progress in the implementation of the recommendations or rulings.

[3] A compliance panel may also be established pursuant to paragraph 9 of Article XIII.18.