

## **CHAPTER 21**

### **EXCEPTIONS**

#### **ARTICLE 21.1 : DEFINITIONS**

For the purposes of this Chapter:

**tax agreement** means a convention for the avoidance of double taxation or other international agreement or arrangement.

#### **ARTICLE 21.2 : GENERAL EXCEPTIONS**

1. Article XX of GATT is incorporated into and made part of this Agreement, for the purposes of:

- (a) Chapters 3 (National Treatment and Market Access for Goods), 4 (Rules of Origin), 5 (Customs Procedures), 6 (Trade Remedies), and 14 (Electronic Commerce), except to the extent that a provision of those Chapters applies to services or investment; and
- (b) Chapter 16 (Government Procurement), except to the extent that any of its provisions applies to services.

2. Subparagraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, for the purposes of:

- (a) Chapters 3 (National Treatment and Market Access for Goods), 4 (Rules of Origin), 5 (Customs Procedures), 6 (Trade Remedies), and 14 (Electronic Commerce), to the extent that a provision of those chapters applies to services;
- (b) Chapter 9 (Cross Border Trade in Services);
- (c) Chapter 10 (Investment);
- (d) Chapters 11 (Telecommunication) and 12 (Financial Services); and
- (e) Chapter 16 (Government Procurement), to the extent that a provision applies to services.

### **ARTICLE 21.3 : NATIONAL SECURITY**

1. Nothing in this Agreement shall be construed:
  - (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
  - (b) to prevent a Party from taking any actions which 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 in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
    - (ii) taken in time of war or other emergency in international relations;
    - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; 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.

A Party shall inform the other Party to the fullest extent possible, of measures taken under paragraphs 1(b) and (c) and of their termination during the meeting to review the implementation of this Agreement under Article 22.1, if such measures were taken.

### **ARTICLE 21.4 : 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 either Party under any tax agreement to which both Parties are parties. In the event of any

inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency. In the case of a bilateral tax agreement between the Parties, the competent authorities under that agreement shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that agreement.

3. Notwithstanding paragraph 2, Article 3.3 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 GATT 1994.

4. Articles 10.13 and 10.19 shall apply to taxation measures to the extent that such taxation measures constitute expropriation as provided for therein<sup>21-1</sup>. An investor that seeks to invoke Article 10.13 with respect to a taxation measure must first refer to the competent authorities described in paragraph 5, at the time that it gives notice under Article 10.19, the issue of whether that taxation measure involves an expropriation. 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 (6) months of such referral, the investor may submit its claim to arbitration under Article 10.19.

5. For the purposes of this Article, **competent authorities** means:

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<sup>21-1</sup> With reference to Article 10.13 in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant:

- (i) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and of itself constitute expropriation;
- (ii) taxation measures which are consistent with internationally recognised tax policies, principles and practices do not constitute expropriation. In particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory; and
- (iii) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are less likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force, and information about the measure was made public or otherwise made publicly available.

- (a) for Singapore, Director for Fiscal Policy, Ministry of Finance, or his successor or such other public officer as may be designated by Singapore; and
- (b) for Korea, Deputy Minister, Tax and Customs Office, Ministry of Finance and Economy or his successor.

[Date]

Mr. Han-soo Kim  
Director General  
Free Trade Agreement Bureau  
Ministry of Foreign Affairs and Trade  
Republic of Korea

Dear Mr. Kim:

I have the honour to refer to the Free Trade Agreement between the government of the Republic of Korea and the government of the Republic of Singapore (“the Agreement”) signed at [place] on [date].

Resulting from the above Agreement, I have the honour of confirming the understanding of both Parties that in relation to Chapter 21 (Exceptions) of the Agreement, under Article 21.3, a Party may take any action it considers necessary to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

I would be grateful if you would confirm that the understanding of my Government as stated above is shared by your Government and that this understanding shall be treated as an integral part of the Agreement.

Sincerely,

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[Name of Singapore’s Representative]  
[Title]

[Date]

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[Name of Singapore's Representative]

[Title]

Dear Mr./Ms. \_\_\_\_\_:

I have the honour to acknowledge the receipt of your letter dated [Date], which reads as follows:

"I have the honour to refer to the Free Trade Agreement between the government of the Republic of Korea and the government of the Republic of Singapore ("the Agreement") signed at [place] on [date].

Resulting from the above Agreement, I have the honour of confirming the understanding of both Parties that in relation to Chapter 21 (Exceptions) of the Agreement, under Article 21.3, a Party may take any action it considers necessary to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

I would be grateful if you would confirm that the understanding of my Government as stated above is shared by your Government and that this understanding shall be treated as an integral part of the Agreement."

I have the honor of confirming that this understanding is shared by my Government and that this understanding shall constitute an integral part of the Agreement.

Sincerely,

Han-soo Kim  
Director General  
Free Trade Agreement Bureau  
Republic of Korea