

Disclaimer: In view of the Commission's transparency policy, the Commission is publishing the texts of the Trade Part of the Agreement following the agreement in principle announced on 21 April 2018.

The texts are published for information purposes only and may undergo further modifications including as a result of the process of legal revision. The texts are still under negotiations and not finalised. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations for information purposes. These texts are without prejudice to the final outcome of the agreement between the EU and Mexico.

The texts will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement (or its provisional application).

EU-Mexico Free Trade Agreement – Exceptions

Article X.3

Security exception

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:
 - (ii) 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, carried out directly or indirectly for the purpose of supplying a military establishment;
 - (iii) relating to the supply of services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (iv) taken in time of war or other emergency in international relations; or
- (c) to prevent a Party from taking any action in order to carry out its international obligations under the UN Charter for the purpose of maintaining international peace and security.

Chapter XX

Exceptions

Article XX

General exceptions

1. For the purposes of Chapter X (Trade in Goods Chapter/NT and MA for Goods), Chapter X (Customs and Trade Facilitation), Chapter X (Energy and Raw Materials), Chapter X (State-Owned Enterprises and Designated Monopolies), Chapter X (Rules of Origin), Chapter X (Sanitary and Phytosanitary Measures) , Chapter X (Technical Barriers to Trade), Section X (liberalization of investment) of Chapter X (Investment), Article XX of the GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. The Parties understand that
 - (a) the measures referred to in Article XX(b) of the GATT 1994 include environmental measures¹, which are necessary to protect human, animal or plant life or health; and
 - (b) Article XX(g) of the GATT 1994 applies to measures for the conservation of living and non-living exhaustible natural resources.
3. If a Party intends to take any measures in accordance with subparagraphs (i) and (j) of Article XX of the GATT 1994, the Party shall:
 - (a) provide the other Party with all relevant information; and
 - (b) upon request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to such measure, with a view to seeking a mutually acceptable solution.

The Parties may agree on any means needed to put an end to the matters subject to consultation referred to in subparagraph 3(b).

If exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures concerned may apply immediately the measures necessary to deal with the circumstances and shall inform immediately the other Party thereof.

¹ The Parties acknowledge the right to invoke Article XX (b) of the GATT 1994 in relation to measures taken to pursuant to MEAs to which they are party.

4. For the purposes of Chapter XX (Cross-Border Trade in Services), Chapter XX (Temporary Entry for Business Persons), Chapter XX (Telecommunications), Chapter XX (Digital Trade), Chapter XX (Maritime Transport Delivery Services), Chapter XX (Domestic Regulation), Chapter XX (MREs), Chapter XX (Financial Services), Chapter XX (State-Owned Enterprises and Designated Monopolies) and Section X (liberalization of investment) of Chapter X (Investment), paragraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.
5. The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

Article X.4

Taxation

1.
 - (a) 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 tax convention, the tax convention shall prevail to the extent of the inconsistency.
 - (b) Articles [...] (Most-favoured nation treatment [investment/services/financial services chapters]) shall not apply to an advantage accorded by a Party pursuant to a tax convention.
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 the Parties, 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 convention or domestic fiscal legislation.
3. For greater certainty, the fact that a taxation measure constitutes a significant amendment to an existing taxation measure, takes immediate effect as of its announcement, clarifies the intended application of an existing taxation measure, or has an unexpected impact on an investor or covered investment, does not, in and of

itself, constitute a violation of Article XX (Treatment of investors and of covered investments).

4. (a) Where an investor submits a request for consultations pursuant to Article 3 (Consultations) claiming that a taxation measure breaches an obligation under Article XX(X) (National Treatment / Post-establishment) or Article XX(X) (Most Favoured Nation Treatment / Post-establishment) of Section A (Liberalisation of Investments) or Section B (Investment Protection) of Chapter XX (Investment), the respondent may refer the matter for consultation and joint determination by the Parties as to whether:
 - (i) the measure is a taxation measure;
 - (ii) the measure, if it is found to be a taxation measure, breaches an obligation under Article XX(X) (National Treatment / Post-establishment) or Article XX(X) (Most Favoured Nation Treatment / Post-establishment) of Section A (Liberalisation of Investments) or Section B (Investment Protection) of Chapter XX (Investment); or
 - (iii) there is an inconsistency between the obligations in this Agreement that are alleged to have been breached and those of a tax convention.
 - (b) A referral pursuant to subparagraph (a) cannot be made later than the date the Tribunal fixes for the respondent to submit its counter-memorial. Where the respondent makes such a referral the time periods or proceedings specified in Section C (Resolution of investment disputes between investors and states) of Chapter XX (Investment) shall be suspended. If within 180 days from the referral the Parties do not agree to consider the issue, or fail to make a joint determination, the suspension of the time periods or proceedings shall no longer apply and the investor may proceed with its claim.
 - (c) A joint determination by the Parties pursuant to subparagraph (a) shall be binding on the Tribunal.
 - (d) Each Party shall ensure that its delegation for the consultations to be conducted pursuant to subparagraph (a) shall include persons with relevant expertise on the issues covered by this Article, including representatives from the relevant tax authorities of each Party. For Mexico, this means officials from the Ministry of Finance and Public Credit.
5. For the purpose of this Article:
- (a) "residence" means residence for tax purposes;

- (b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that either Party is party to-

Article X.5

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.
2. The disclosure of information throughout the dispute settlement proceedings under Part III of this Agreement, shall be governed by the provisions of the applicable Chapters.
3. When a Party submits information to the other Party under this Agreement, including through the bodies established under the institutional framework of this Agreement, 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 X.6

WTO Waivers

If a right or obligation in this Agreement duplicates one in the WTO Agreement, any measure taken in conformity with a waiver decision adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the [duplicated] provision in this Agreement.