

This document contains an EU proposal for a legal text on Exceptions in the Trade Part of a possible modernised EU-Mexico Association Agreement. It has been tabled for discussion with Mexico. The actual text in the final agreement will be a result of negotiations between the EU and Mexico. The EU reserves the right to make subsequent modifications to this proposal.

EU-Mexico Free Trade Agreement

EU TEXTUAL PROPOSAL

Exceptions

Module 1 Proposal for an Exception Chapter

Chapter XX

Exceptions

Article X.1

Temporary safeguard measures on capital movements and payments

In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union, or threat thereof, the Union may take safeguard measures with regard to capital movements, payments or transfers. Such measures shall be strictly necessary to address such difficulties and shall not exceed a period of 6 months.

Article X.2

Restrictions in case of balance of payments and external financing difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers¹.
2. The measures referred to in paragraph 1:
 - (a) shall be consistent with the Articles of the Agreement of the International Monetary Fund, as applicable;
 - (b) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (c) shall be temporary and shall be phased out progressively as the situation specified in paragraph 1 improves;
 - (d) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
 - (e) shall not treat the other Party less favorably than a non-Party in like situations.
3. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. These measures shall be in accordance with the General Agreement on Trade and Tariffs (GATT) and the Understanding on the Balance of Payments provisions of the GATT 1994.
4. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. These measures shall be in accordance with Article XII of the General Agreement on Trade in Services (GATS).
5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.
6. Where restrictions are adopted or maintained under this Article, consultations shall be held promptly in the [Committee on Trade in Services] unless consultations are held in other *fora*. The consultations shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, inter alia, such factors as:
 - (a) the nature and extent of the difficulties;
 - (b) the external economic and trading environment; and

¹ In the case of the EU, such measures may be taken by a Member State of the EU in situations other than those referred to in Article x.1, which affect the economy of that Member State. For greater certainty, the situations referred to in paragraph 1 of this Article may be caused, inter alia, by difficulties for the monetary policy or exchange rate policy, or threat thereof, in a Member State of the EU.

- (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

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:
 - (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 order to carry out its international obligations under the UN Charter for the purpose of maintaining international peace and security.

Article X.4 **Taxation**

1. (a) Nothing in this Agreement shall affect the rights and obligations of either [country] or the Union or its Member States, 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.

Limited

- (b) Articles [...] (Most-favoured nation treatment [investment/services/financial services chapters; trade in goods²]) 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 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 the any Union Member States, the EU or Party X are 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 except where a panel requires such confidential information in dispute settlement proceedings under Chapter X [DS]. 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.

² If an MFN clause is not proposed in the Trade in Goods or Services chapters, article 1 (b) should not be proposed.

Article X.6
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.

Module 2
Exception in the Trade in Goods Chapter,
Customs and Trade Facilitation Chapter
Energy and Raw Materials Chapter

Article XX
General exceptions

1. For the purposes of this Chapter, 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 measures, such as measures taken to implement multilateral environmental agreements, 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. Before a Party takes any measures provided for in subparagraphs (i) and (j) of Article XX of the GATT 1994, it 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 and which make prior information or examination impossible, the Party intending to take the measures may apply forthwith precautionary measures necessary to deal with the situation. The Party shall inform the other Party immediately thereof.

Limited

Module 3
Exceptions in the Services and Investment Chapter

Article XX

General Exceptions

1. For the purpose of Chapter [investment] section [liberalization of investment], Article XX of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX (b) of the GATT 1994 include environmental measures, such as measures taken to implement MEAs, necessary to protect human, animal or plant life or health. The Parties understand that Article XX (g) of the GATT 1994 applies to measures for the conservation of living and non-living exhaustible natural resources.
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 establishment or cross-border supply of services, nothing in this Chapter 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 order³;
 - (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;
 - (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 The [public security and public] order exception(s) may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society. This footnote makes part of the proposed language.