Chapter 22
General Provisions and Exceptions

Article 22.1: General Exceptions

1. For the purposes of Chapters 3 to 7 (National Treatment and Market Access for Goods, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Regulations, Standards and Conformity Assessment Procedures), GATT 1994 Article XX and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in GATT 1994 Article XX(b) include environmental measures necessary to protect human, animal, or plant life or health, and that GATT 1994 Article XX(g) applies to measures relating to the conservation of living and nonliving exhaustible natural resources.

2. For the purposes of Chapters 9, 11 and 16 (Cross-Border Trade in Services, Telecommunications and Electronic Commerce[22-1]), GATS Article XIV (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in GATS Article XIV(b) include environmental measures necessary to protect human, animal, or plant life or health.

3. Nothing in this Agreement shall be construed to prevent a Party from taking action authorised by the Dispute Settlement Body of the WTO. A Party taking such action shall inform the Joint FTA Committee to the fullest extent possible of measures taken and of their termination.

Article 22.2: Security Exceptions

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;

   (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

      (i) relating to fissionable and fusionable materials or the materials from which they are derived;

      (ii) 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; or

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[22-1] This Article is without prejudice to whether electronic transmissions should be classified as goods or services.

(iii) taken in time of war or other emergency in international relations; 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.

2. A Party taking action under paragraphs 1(b) and (c) shall inform the Joint FTA Committee to the fullest extent possible of measures taken and of their termination.

Article 22.3: 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 treaty. In the event of any inconsistency between this Agreement and any such treaty, that treaty shall prevail to the extent of the inconsistency. In the case of a tax treaty between the Parties, the competent authorities under that treaty shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that treaty.

3. Notwithstanding paragraph 2, the following Articles shall apply to taxation measures:

(a) Article 3.3 (National Treatment – National Treatment and Market Access for Goods Chapter), and such other provisions of this Agreement as are necessary to give effect to that Article, to the same extent as does GATT 1994 Article III; and

(b) Article 3.11 (Export Taxes – National Treatment and Market Access for Goods Chapter).

4. Subject to paragraph 2, the following Articles shall apply to taxation measures:

(a) Article 9.3 (National Treatment – Cross-Border Trade in Services Chapter) and Article 12.3 (National Treatment – Financial Services Chapter), only where the taxation measure is a direct tax that relates to the purchase or consumption of particular services, except that nothing in this sub-paragraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on requirements to provide the service in its territory;

(b) Article 9.3 (National Treatment – Cross-Border Trade in Services Chapter), Article 9.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services Chapter), Article 10.3 (National Treatment – Investment Chapter), Article 10.4 (Most-Favoured-Nation Treatment –

Investment Chapter), Article 12.3 (National Treatment – Financial Services Chapter), and Article 12.4 (Most-Favoured-Nation Treatment – Financial Services Chapter), only where the taxation measure is an indirect tax; and

(c) Without prejudice to the rights and obligations of the Parties under paragraph 3, Articles 10.7.2, 10.7.3 and 10.7.4 (Performance Requirements – Investment Chapter);

except that nothing in those Articles shall apply:

(d) any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax treaty;

(e) to a non-conforming provision of any existing taxation measure;

(f) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(g) to an amendment to a non-conforming provision of any existing tax measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles[22-2];

(h) to the adoption of any non-conforming provision of a taxation measure which is substantially similar to an existing non-conforming provision of the other Party;

(i) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or

(j) to a provision that conditions the receipt, or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, superannuation fund or other arrangement to provide pension**,** superannuation or similar benefits on a requirement that the Party maintains continuous jurisdiction, regulation or supervision over such trust, fund or other arrangement.

5. Article 10.11 (Expropriation and Compensation – Investment Chapter), Article 10.16 (Submission of a Claim to Arbitration – Investment Chapter) and Chapter 21 (Dispute Settlement) shall apply to a taxation measure alleged to be an expropriation. However, no investor may invoke Article 10.11 (Expropriation and Compensation – Investment Chapter) as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.11 (Expropriation and Compensation – Investment Chapter) with respect to a taxation measure must first refer to the designated authorities at the time that it gives its notice of intent under Article 10.16 (Submission of a Claim to Arbitration – Investment Chapter) the issue of whether that taxation measure involves an expropriation. If the designated authorities do not agree to consider the issue or,

[22-2] For greater certainty, such an amendment may include the adoption of an excise tax on insurance premiums in place of an income tax on insurance premiums.

having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.16 (Submission of a Claim to Arbitration – Investment Chapter).

6. For the purposes of this Article, "taxation measure" means any measure relating to direct or indirect taxes, but does not include:

(i) a customs duty; or

(ii) the measures listed in exceptions (iii) and (iv) of the definition of customs duty in Article 2.1(d).

7. For the purposes of paragraph 4, "designated authority" means:

(i) in the case of Australia, the Secretary to the Treasury or its successor, or an authorised representative of the Secretary; and

(ii) in the case of Chile, the *Director del Servicio de Impuestos Internos, Ministerio de Hacienda*, or an authorised representative of the *Ministro de Hacienda*.

Article 22.4: Restrictions to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and in services and with regard to payments and capital movements, including those related to direct investment.

2. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 1.

3. Any restrictive measure adopted or maintained under this Article shall be non-discriminatory and of limited duration and shall not go beyond what is necessary to remedy the balance of payments and external financial situation. They shall be in accordance with the conditions established in the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.

4. The Party maintaining or having adopted restrictive measures, or any changes thereto, shall promptly notify them to the other Party and present, as soon as possible, a time schedule for their removal.

5. The Party applying restrictive measures shall consult promptly with the other Party within the Joint FTA Committee. Such consultations shall assess the balance of payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:

(a) the nature and extent of the balance of payments and the external financial difficulties;

(b) the external economic and trading environment of the consulting Party; and

(c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 3 and 4. All findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the Fund of the balance of payments and external financial situation of the consulting Party.

Article 22.5: Disclosure of Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

2. Nothing in this Agreement shall be construed as requiring a Party to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest[22-3] or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

[22-3]For the purposes of this paragraph the public interest includes, for Australia, compliance with the Privacy Act (Cth) 1988.