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

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

第22章 一般规定和例外

第22.1条：一般例外

1. 对于第3章至第7章（国民待遇和货物市场准入、原产地规则、海关管理、卫生与植物卫生措施以及技术法规、标准和合格评定程序）而言，1994年关税及贸易总协定第20条及其解释性注释被纳入并成为本协定的一部分，相应修改。缔约方理解，1994年关税及贸易总协定第20条(b)所指的措施包括保护人类、动物或植物的生命或健康所必需的环境措施，并且1994年关税及贸易总协定第20条(g)适用于与保护可再生和不可再生自然资源相关的措施。

2. 对于第9章、第11章和第16章（跨境贸易服务、电信和电子商务[22-1]

), GATS第14条（包括其脚注）被纳入并成为本协定的一部分，mutatis mutandis。缔约方理解，GATS第14条(b)中提到的措施包括保护人类、动物或植物的生命或健康所必需的环境措施。

3. 本协定任何条款均不得解释为阻止缔约方采取世界贸易组织的争端解决机构授权的行动。采取此类行动的缔约方应尽可能通知联合自由贸易委员会所采取的措施及其终止。

Article 22.2: Security Exceptions

1. 本协定任何条款均不得解释：

(a) 要求一方提供其认为与其基本安全利益相悖的任何信息； (b) 阻止一方采取其认为对其基本安全利益保护必要的任何行动： (i) 与可裂变和可聚变材料或其衍生物有关； (ii) 与武器、弹药和战争工具的贸易以及此类其他货物和材料的贸易有关，或与作为向军事设施直接或间接供应或提供而开展的服务供应有关；或

22-[1]本条不受电子传输是否应被归类为货物或服务的限制。

(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 –

(iii) 在战争或其他国际关系紧急情况下采取的；或

(c) 防止一方采取任何履行其
根据联合国宪章维护国际和平与安全所承担义务的行动。

2. 根据第1(b)和(c)款采取行动的一方应尽可能向联合自由贸易委员会通报所采取的措施及其终止。

第22.3条：税收

1. 除本条规定的情形外，本协定中的任何内容均不适用于税收措施。

2. 本协定任何规定均不影响任何一方根据任何税收协定所享有的权利和应履行的义务。如本协定与任何此类协定之间存在任何不一致，该协定应优先适用，其优先适用的程度以不一致的程度为限。如双方之间存在税收协定，该协定项下的主管当局应 sole responsibility for determining whether any inconsistency exists between this Agreement and that treaty.

3. 不论第2段的规定如何，下列各条应适用于税收措施：

(a) 第3.3条（国民待遇——国民待遇和货物市场准入章节），以及为使该条得以实施而必需的协定其他条款，其适用程度与1994年关税及贸易总协定第III条相同；以及(b) 第3.11条（出口税——国民待遇和货物市场准入章节）。

4. 不论第2段的规定如何，下列各条应适用于税收措施：

(a) 第9.3条（国民待遇——跨境贸易服务
第22章总则和例外)和第12.3条(国民待遇——金融服务章节)，仅当税收措施是直接税且与购买或消费特定服务相关时，除外；但本款中的任何内容均不得阻止一方将获得或继续获得与购买或消费特定服务相关的利益，条件是该服务在其领土内提供；

(b) 第9.3条（国民待遇——跨境服务贸易章节），第9.4条（最惠国待遇——跨境服务贸易章节），第10.3条（国民待遇——投资章节），第10.4条（最惠国待遇——

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.

投资章节），第12.3条（国民待遇——金融服务章节），和第12.4条（最惠国待遇——金融服务章节），仅当税收措施为间接税时；和

(c) 不影响第3段下缔约双方根据第10.7.2、10.7.3和10.7.4条（绩效要求——投资章节）所享有的权利和义务；

但下列条款不适用：

(d) 本协定中任何一方根据税收协定授予的利益所享有的最惠国义务；(e) 任何现有税收措施中的非符合条款；(f) 任何现有税收措施中非符合条款的延续或及时续期；(g) 对任何现有税收措施中非符合条款的修订，且修订内容在修订时并未降低其与上述条款的符合性[22-2]；(h) 采纳任何与另一方现有非符合条款实质性相似的税收措施中的非符合条款；(i) 采纳或执行任何旨在确保税收公平或有效征收或收取的税收措施；或 (j) 规定，关于向养老金信托、超级年金基金或其他提供养老金、超级年金或类似福利的安排捐款或收入的利益（或持续获得该利益）的条件，要求一方对该信托、基金或其他安排保持持续管辖、监管或监督。

5. 第10.11条（征收与补偿——投资章节）、第10.16条（仲裁索赔的提交——投资章节）和第21章（争端解决）应适用于被指控为征收的税收措施。然而，任何投资者均不得援引第10.11条（征收与补偿——投资章节）作为其索赔的基础，如果根据本段规定已确定该措施并非征收。寻求援引第10.11条（征收与补偿——投资章节）针对税收措施的投资者，必须首先在根据第10.16条（仲裁索赔的提交——投资章节）发出其意向通知时，向指定当局咨询该税收措施是否涉及征收的问题。如果指定当局不同意考虑该问题，或虽同意考虑但未在自提请之日起六个月内同意该措施并非征收，则该投资者可依据第10.16条（仲裁索赔的提交——投资章节）提交其仲裁索赔。

[22-2] 为进一步明确，此类修订可包括采用保险保费消费税代替保险保费所得税。

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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;

已同意考虑该问题，但在提请之日起六个月内未能同意该措施并非征收的，该投资者可依据第10.16条（仲裁索赔的提交——投资章节）提交其仲裁索赔。

6. 根据本条的规定，"税收措施"是指与直接税或间接税相关的任何措施，但不包括：

(i) 关税；或 (ii) 第2.1(d)条中海关关税定义中例外条款(iii)和(iv)中列出的措施。

7. 根据第4段的规定，"指定机构"是指：

(i) 在澳大利亚的情况下，财政部长或其继任者，或财政部长的授权代表；以及 (ii) 在智利的情况下，内部税务服务局长、财政部或财政部长的授权代表。

第22.4条：为维护国际收支平衡而采取的限制措施

1. 当一方处于严重的国际收支和外部金融困难中，或面临此类威胁时，它可以采取或维持与货物贸易、服务、支付和资本流动（包括与直接投资相关的流动）相关的限制性措施。

2. 各方应努力避免适用第1段所述的限制性措施。

3. 根据本条采取或维持的任何限制性措施应为非歧视性的，期限有限，并且不得超过弥补国际收支和外部金融状况所必需的范围。这些措施应符合世界贸易组织协定规定的条件，并与国际货币基金组织协定（如适用）保持一致。

4. 维持或已采取限制性措施的一方，或对其进行的任何变更，应立即将此类措施通知另一方，并尽快提交其解除的时间表。

5. 采取限制性措施的一方应在联合自由贸易委员会内立即与其他方进行磋商。此类磋商应评估有关一方的国际收支状况以及根据本条采取或维持的限制性措施，并考虑以下因素，例如：

(a) 国际收支的性质和范围以及外部金融困难；

(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.

(b) 咨询方的外部经济和贸易环境；和

(c) 替代纠正措施。

磋商应解决任何限制性措施是否符合第3段和第4段的规定。国际货币基金组织就外汇、货币储备和国际收支所提供的统计和其他事实均应被接受，结论应以基金对咨询方国际收支和外部金融状况的评估为基础。

第22.5条：信息披露

1. 每一方应根据其法律和法规，对根据本协议由另一方提供的机密信息保持保密。

2. 本协议的任何内容均不得解释为要求一方提供或允许访问其披露将妨碍执法或否则与公共利益[22-3]相悖的机密信息，或其披露将损害特定企业的合法商业利益，无论其是公有的还是私有的。

[22-3]根据本段的规定，公共利益包括澳大利亚遵守1988年（澳）隐私法。