

**DRAFT**  
**SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY AND CONSISTENCY**  
**MARCH 1, 2004**

**CHAPTER TWENTY-TWO**  
**GENERAL PROVISIONS AND EXCEPTIONS**

ARTICLE 22.1 : GENERAL EXCEPTIONS

1. For the purposes of Chapters Two through Eight (National Treatment and Market Access for Goods, Agriculture, Textiles, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), GATT 1994 Article XX and its interpretive 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 non-living exhaustible natural resources.

2. For the purposes of Chapters Ten, Twelve, and Sixteen (Cross Border Trade in Services, Telecommunications, and Electronic Commerce), 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.

ARTICLE 22.2 : ESSENTIAL SECURITY

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 determines to be contrary to its essential security interests; or
- (b) to preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

ARTICLE 22.3 : TAXATION

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. (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 convention, that convention shall prevail to the extent of the inconsistency.

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- (b) In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.
3. Notwithstanding paragraph 2:
- (a) Article 2.2 (National Treatment) 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 GATT 1994 Article III; and
- (b) Article 2.11 (Export Taxes) shall apply to taxation measures.
4. Subject to paragraph 2:
- (a) Article 11.4 (National Treatment), Article 13.2 (National Treatment) and Article 13.5.1 (Cross-Border Trade) shall apply to taxation measures on income, capital gains or on the taxable capital of corporations that relate to the purchase or consumption of particular services, except that nothing in this subparagraph 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,<sup>22-1</sup> and
- (b) Articles 11.3, 11.4 (Most-Favoured Nation Treatment), 10.2 (National Treatment), 10.3 (Most-Favoured-Nation Treatment), 13.2, 13.3 (Most-Favoured-Nation Treatment) and 13.5.1 shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts and generation-skipping transfers;

except that nothing in those Articles shall apply:

- (c) any MFN obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention;
- (d) to a non-conforming provision of any existing taxation measure;
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- (f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

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<sup>22-1</sup> For the avoidance of doubt, nothing in this exception to this sub-paragraph allows a Party to condition the receipt or continued receipt of an advantage relating to the purchase or consumption of particular services on the nationality of the service supplier.

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- (g) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by GATS Article XIV(d) without regard to the limitation in Article XIV(d) to direct taxes); or
  - (h) 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 maintain continuous jurisdiction, regulation, or supervision over such trust, fund or other arrangement.
5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties under paragraph 3, paragraphs 2, 3 and 4 of Article 11.9 (Performance Requirements) shall apply to taxation measures.
6. Article 11.7 (Expropriation and Compensation) shall apply to taxation measures. Where a Party alleges in writing that a taxation measure of the other Party is an expropriation, that other Party's competent authority under this Article may request in writing consultations between the competent authorities under this Article regarding whether a determination that the taxation measure is an expropriation under this Agreement would give rise to an inconsistency with any tax convention between the Parties. Notwithstanding paragraph 2(b), the Party alleging an expropriation may pursue the matter under Section B of Chapter 21 (Dispute Settlement Procedures), unless the competent authorities under this Article agree within sixty days after receipt of the request for consultations (which period may be extended by mutual agreement of such competent authorities) that an inconsistency would arise in case of such determination.
7. For the purposes of this Article,
- (a) **competent authorities** means
    - (i) in the case of Australia, the Secretary to the Treasury or his authorized representative; and
    - (ii) in the case of the United States, the Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury;
  - (b) **taxes** and **taxation measures** do not include any import or customs duties;

**ARTICLE 22.4 : DISCLOSURE OF INFORMATION**

1. 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

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enforcement or otherwise be contrary to the public interest<sup>22-2</sup> or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. When a Party provides written information pursuant to a request or a requirement under this Agreement and informs the other Party that it considers the information to be of the type described in paragraph 1, the Party receiving the information shall not disclose or use the information for a purpose other than that for which it was requested or required, except where the disclosure or use is required or authorized pursuant to the receiving Party's law and regulations or with the prior consent of the Party providing the information.

ARTICLE 22.5 : ANTI-CORRUPTION

The Parties shall cooperate to strive to eliminate bribery and corruption and to promote transparency in international trade. They will look for avenues in relevant international fora to address these issues and build upon the potential anti-corruption efforts in these fora.

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<sup>22-2</sup>For the purposes of this Article, for Australia, the public interest includes compliance with the Privacy Act (Cth) 1988.