

Draft
Subject to Legal Review for Accuracy, Clarity, and Consistency
June 18, 2004

CHAPTER TWENTY
EXCEPTIONS

ARTICLE 20.1: GENERAL EXCEPTIONS

1. For purposes of Chapters Two through Seven (Market Access for Goods, Textiles and Apparel, Rules of Origin, Customs Administration, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. For purposes of Chapters Ten, Twelve, and Thirteen¹ (Cross-Border Trade in Services, Telecommunications, and Electronic Commerce), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement. 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 20.2: 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 fulfillment 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 20.3: 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

¹This Article is without prejudice to whether digital products should be classified as goods or services.

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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. 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 (Market Access – 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 Article III of GATT 1994; and
- (b) Article 2.10 (Market Access – Export Taxes) shall apply to taxation measures.

4. Subject to paragraph 2:

- (a) Article 10.2 (Cross-Border Trade in Services – National Treatment) and Article 11.2 (Financial Services – National Treatment) 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; and
- (b) Articles 10.2 (Cross-Border Trade in Services – National Treatment) and 10.3 (Cross-Border Trade in Services – Most-Favored Nation Treatment) and Articles 11.2 (Financial Services – National Treatment) and 11.3 (Financial Services – Most-Favored-Nation Treatment) 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 most-favored-nation obligation 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;

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- (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;
- (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 Article XIV(d) of GATS); or
- (h) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

ARTICLE 20.4: DISCLOSURE OF INFORMATION

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions.