

## CHAPTER 15

### GENERAL PROVISIONS AND EXCEPTIONS

#### Article 1 General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods) Chapter 3 (Rules of Origin) Chapter 4 (Customs Procedures), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures), Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Movement of Natural Persons) and Chapter 11 (Investment), Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. For the purposes of this Agreement, the Parties understand that measures referred to in Article XX(f) of GATT 1994 include measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.<sup>1</sup>

4. For the purposes of Chapter 8 (Trade in Services) and Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would

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<sup>1</sup> "Creative arts" include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.<sup>2</sup>

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 8 (Trade in Services) and Chapter 11 (Investment) if requested by a Party affected by the measures referred to in Paragraph 4.

## **Article 2 Security Exceptions**

1. Nothing in this Agreement shall be construed:
  - (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
  - (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
    - (i) relating to fissionable materials or the materials from which they are derived;

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<sup>2</sup> “Creative arts” include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

- (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;
  - (iii) taken so as to protect critical public infrastructures<sup>3</sup> including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures;
  - (iv) taken in time of national emergency or war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the *United Nations Charter* for the maintenance of international peace and security.

2. The FTA Joint Committee shall be informed to the fullest extent possible of measures taken under Paragraph 1(b) and (c) and of their termination.

### **Article 3 Taxation Measures**

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

- (a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

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<sup>3</sup> For clarity, this includes critical public infrastructures whether publicly or privately owned.

- (b) they are granted or imposed under Article 8 (Transfers) of Chapter 11 (Investment); or
- (c) they are granted or imposed under Article 9 (Expropriation and Compensation) of Chapter 11 (Investment).

3. Where Paragraph 2(b) or (c) apply, Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall also apply in respect of taxation measures.

4. If there is a dispute described in Article 18.1 (Scope and Definitions) of Chapter 11 (Investment) that may relate to a taxation measure, the relevant Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established pursuant to Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall accord serious consideration to a joint decision of the relevant Parties as to whether the measure in question is a taxation measure. For this purpose, Article 25.7 (Conduct of the Arbitration) of Chapter 11 (Investment) shall apply *mutatis mutandis*.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention relating to the avoidance of double taxation in force between any of the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the relevant Parties about whether an inconsistency relates to a taxation measure shall be done by the competent tax authorities, as stipulated under the domestic laws and regulations of the relevant Parties. The request for such consultations shall be addressed through the contact points designated in accordance with Article 2 (Communications) of Chapter 16 (Institutional Provisions).

6. Nothing in this Agreement shall oblige a Party to extend to any other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement relating to the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

7. For the purposes of this Article, taxation measures do not include any import or customs duties.

#### **Article 4**

#### **Measures 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:

- (a) in the case of trade in goods, in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement, adopt restrictive import measures;
- (b) in the case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments;
- (c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 2(a) (Definitions) of Chapter 11 (Investment)

2. Restrictions adopted or maintained under Paragraph 1(b) or (c) shall:

- (a) be consistent with the IMF Articles of Agreement;

- (b) avoid unnecessary damage to the commercial, economic and financial interests of any other Party;
  - (c) not exceed those necessary to deal with the circumstances described in Paragraph 1;
  - (d) be temporary and be phased out progressively as the situation specified in Paragraph 1 improves; and
  - (e) be applied on a non-discriminatory basis such that no Party is treated less favourably than any other Party or non-Party.
3. With respect to trade in services and investment,
- (a) it is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition;
  - (b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.
4. Any restrictions adopted or maintained by a Party under Paragraph 1, or any changes therein, shall be notified promptly to the other Parties.

5. A Party adopting or maintaining any restrictions under Paragraph 1 shall:

- (a) in the case of investment, respond to any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement;
- (b) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with any interested Party.

## **Article 5 Treaty of Waitangi**

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfillment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 17 (Consultations and Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) of Chapter 17 (Consultations and Dispute Settlement) may be requested to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.