

## CHAPTER 11

### GENERAL PROVISIONS AND EXCEPTIONS

#### Article 1: General Exceptions

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

2. The Parties understand that the measures referred to in Article XX(b) of the GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, that measures referred to in Article XX(f) of the GATT 1994 include measures necessary to protect national works or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value,<sup>1</sup> and that Article XX(g) of the GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of Chapter 7 (Trade in Services), Article XIV of the GATS including its footnotes shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

4. The Parties understand that the measures referred to in Article XIV(b) of the GATS include environmental measures necessary to protect human, animal or plant life or health.

5. For the purposes of Chapter 9 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investments and investors of the Parties or of a non-Party where like conditions prevail, or a disguised restriction on international trade or investment flows, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures:

- (a) necessary to protect public morals or to maintain public order;<sup>2</sup>
- (b) necessary to protect human, animal or plant life or health;

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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.

<sup>2</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (c) necessary to ensure compliance with laws and regulations that are not inconsistent with this Agreement, including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
  - (iii) safety; or
- (d) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

6. The Parties understand that the measures referred to in paragraph 5(b) of this Article include environmental measures to protect human, animal or plant life or health, and that the measures referred to in paragraph 5(d) of this Article include environmental measures relating to the conservation of living and non-living exhaustible natural resources.

7. For the purposes of Chapter 7 (Trade in Services) and Chapter 9 (Investment), and subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures:

- (a) necessary to protect national works or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value;<sup>3</sup> or
- (b) relating to the conservation of living or non-living exhaustible natural resources.

## **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; or

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<sup>3</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.

- (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 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;
  - (iii) taken so as to protect critical public infrastructures<sup>4</sup> including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures;
  - (iv) taken in time of 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. A Party taking action under this Article shall, to the fullest extent possible, inform the Joint Committee of measures that have been taken and of their termination.

### **Article 3: 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 the GATT 1994, including Article XVIII:B, and the WTO 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 for which it has undertaken commitments, including payments or transfers for transactions related to such commitments; and
- (c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 1 (Definitions) of Chapter 9 (Investment).

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

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<sup>4</sup> For greater certainty, this includes critical public infrastructures whether publicly or privately owned.

- (a) be consistent with the IMF Articles of Agreement;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Parties;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves;
- (e) be applied on a non-discriminatory basis such that the other Parties are treated no less favourably than any non-Party; and
- (f) take into account that particular pressures on the balance of payments of a Party in the process of economic development 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.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. 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 of this Article, or any changes therein, shall be notified promptly to the other Parties from the date such measures are taken.

5. The Party adopting or maintaining any restrictions under paragraph 1 of this Article shall promptly commence consultations with any interested Parties if requested in order to review the restrictions adopted or maintained by it.

#### **Article 4: Prudential Measures**

Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons,<sup>5</sup> including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. If such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

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<sup>5</sup> For greater certainty, it is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety and financial and operational integrity of payment and clearing systems.

## **Article 5: Taxation Measures**

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures. For the purposes of this Article, taxes and taxation measures include excise duties, but do not include:

- (a) a “Customs duty” as defined in Article 2 of Chapter 1 (Initial Provisions and General Definitions); or
- (b) the measures listed in subparagraphs (ii) and (iii) of that definition.

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; or
- (b) they are granted or imposed under Article 11 of Chapter 9 (Investment).

3. Notwithstanding paragraph 2, nothing in the Articles referred to in that paragraph shall apply to:

- (a) any non-conforming provision of any existing taxation measure;
- (b) the continuation or prompt renewal of any non-conforming provision of any existing taxation measure;
- (c) an amendment to any non-conforming provision of any existing taxation measure, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with any of those Articles;
- (d) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence or incorporation, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties;<sup>6</sup> or
- (e) 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.

4. Article 13 of Chapter 9 (Investment) shall apply to taxation measures.

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<sup>6</sup>The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention.<sup>7</sup> In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention that convention shall prevail to the extent of the inconsistency.

6. If an issue arises as to whether any inconsistency exists between this Agreement and a tax convention between two or more Parties, the issue shall be referred to the competent authorities of the Parties. The competent authorities of the Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of the inconsistency. If the competent authorities agree, such a period may be extended up to twelve months from the date of referral of the issue. No procedure concerning the measure giving rise to the issue may be initiated under Chapter 14 (Consultations and Dispute Settlement) or Chapter 9 (Investment) until the expiry of the six month period, or such other period as may have been agreed by the competent authorities pursuant to the previous sentence. A panel established to consider a dispute related to a taxation measure shall accept as binding a determination of the competent authorities of the Parties made under this paragraph. For the purpose of this Article, competent authorities shall include representatives of the tax administration of each Party.

7. 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 tax convention by which the Party is bound.

### **Article 6: Treaty of Waitangi**

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of any other Party 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 Māori in respect of matters covered by this Agreement including in fulfilment 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 14 (Consultations and Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 11 of Chapter 14 (Consultations and Dispute Settlement) may be requested by any other Party to determine only whether any measure (referred to in paragraph 1 of this Article) is inconsistent with its rights under this Agreement.

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<sup>7</sup> For greater certainty, “tax convention” means a convention for the avoidance of double taxation or other international taxation agreement.