

## CHAPTER 19

### EXCEPTIONS

#### Article 1 General Exceptions

1. For the purposes of this Agreement, Article XX of *GATT 1994* and its interpretive notes and Article XIV of *GATS* (including its footnotes) are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the measures referred to in Article XX(b) of *GATT 1994* and Article XIV(b) of *GATS* as incorporated into this Agreement include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of *GATT 1994* as incorporated into this Agreement applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of this Agreement, 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 goods or services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national works or specific sites of historical or archaeological value, or to support creative arts<sup>29</sup> of national value.

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<sup>29</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.

## **Article 2**

### **Security Exceptions**

1. 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 prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests
    - (i) 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;
    - (ii) taken in time of war or other emergency in external relations;
    - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
  - (c) to prevent either Party from taking any action in pursuance of the obligations applicable to it under the *United Nations Charter* for the maintenance of international peace and security.
2. Each Party shall promptly inform the other Party to the fullest extent possible of measures taken under Paragraphs 1(b) and (c) and of their termination.

### **Article 3**

#### **Treaty of Waitangi**

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the 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 16 (Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established under Article 6 (Establishment of an Arbitral Tribunal) of Chapter 16 (Dispute Settlement) may be requested by Hong Kong, China to determine only whether any measure (referred to in Paragraph 1) is inconsistent with its rights under this Agreement.

### **Article 4**

#### **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 corresponding rights or obligations are also granted or imposed under the *WTO Agreement*.

3. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention relating to the avoidance of double taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any tax convention

relating to the avoidance of double taxation in force between the Parties, the latter shall prevail. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall include representatives of the tax administration of each Party.

### **Article 5 Prudential Measures**

Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, 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. Where such measures do not conform with this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

### **Article 6 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 *WTO Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994*, adopt restrictive import measures; and/or
  - (b) in the case of services, in accordance with Article XII(2) of *GATS*, adopt or maintain restrictions on trade in services, including on payments or transfers.
2. In determining the incidence of restrictions adopted or maintained under Paragraph 1, each Party may give priority to economic sectors which are more essential to its

economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

3. Any restrictions adopted or maintained by a Party under Paragraph 1, or any changes therein, shall be notified to the other Party within 14 days from the date such measures are taken.

4. The Party adopting or maintaining any restrictions under Paragraph 1 shall commence consultations with the other Party within 45 days from the date of notification in order to review the measures adopted or maintained by it.