

CHAPTER 25

EXCEPTIONS AND GENERAL PROVISIONS

ARTICLE 25.1

General exceptions

1. For the purposes of Chapter 2 (National treatment and market access for goods), Chapter 4 (Customs and trade facilitation), Section B (Investment liberalisation) of Chapter 10 (Trade in services and investment), Chapter 12 (Digital trade), Chapter 13 (Energy and raw materials) and Chapter 17 (State-owned enterprises), Article XX of GATT 1994 and its interpretative Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment or trade in services, nothing in Chapter 10 (Trade in services and investment), Chapter 11 (Capital movements, payments and transfers), Chapter 12 (Digital trade), Chapter 13 (Energy and raw materials) and Chapter 17 (State-owned enterprises) shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security or public morals or to maintain public order;¹

¹ The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (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;
 - (iii) safety.

3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with a Chapter or a Section referred to in paragraphs 1 and 2 of this Article:

- (a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 2 of this Article include environmental measures which are necessary to protect human, animal or plant life or health;
- (b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and

(c) measures taken to implement MEAs may fall under point (b) or (g) of Article XX of GATT 1994 or under point (b) of paragraph 2 of this Article.

4. Before a Party takes any measures provided for in points (i) and (j) of Article XX of GATT 1994, that Party shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If no agreement is reached within 30 days of providing the information, the Party may apply the relevant measures. Where exceptional and critical circumstances requiring immediate action prevent prior information or examination, the Party intending to take the measures may apply forthwith precautionary measures necessary to deal with the situation. That Party shall inform the other Party immediately thereof.

ARTICLE 25.2

Security exceptions

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 considers contrary to its essential security interests; or

- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology and economic activities as carried out directly or indirectly for the purpose of supplying a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the maintenance of international peace and security.

ARTICLE 25.3

Taxation

1. For the purposes of this Article, the following definitions apply:
 - (a) "direct taxes" means all taxes on income or capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, taxes on wages or salaries paid by enterprises and taxes on capital appreciation;

(b) "residence" means residence for tax purposes; and

(c) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that either any Member State, the Union or New Zealand are party to.

2. Nothing in this Agreement shall affect the rights and obligations of either the Union or the Member States or New Zealand, under any tax convention. In the event of any inconsistency between this Agreement and any tax convention, the tax convention shall prevail to the extent of such inconsistency. As regards a tax convention between the Union or the Member States and New Zealand, the relevant competent authorities under this Agreement and the tax convention shall jointly determine whether an inconsistency exists between this Agreement and the tax convention.²

3. Articles 10.7 (Most-favoured-nation treatment) and 10.17 (Most-favoured-nation treatment) shall not apply to an advantage accorded by a Party pursuant to a tax convention.

² For greater certainty, this is without prejudice to Chapter 26 (Dispute settlement).

4. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure that:

- (a) is aimed at ensuring the equitable or effective³ imposition or collection of direct taxes;
or
- (b) distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

³ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

ARTICLE 25.4

Restrictions in the event of balance-of-payments and external financial difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or the threat thereof, that Party may adopt or maintain temporary safeguard measures with regard to capital movements, payments or transfers⁴.
2. Any temporary safeguard measure adopted or maintained under paragraph 1 shall:
 - (a) be consistent with the Articles of Agreement of the International Monetary Fund;
 - (b) not exceed what is necessary to deal with the circumstances described in paragraph 1;
 - (c) be temporary and phased out progressively as the circumstances described in paragraph 1 improve;
 - (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and
 - (e) be non-discriminatory so that the other Party is treated no less favourably than any non-Party in like situations.

⁴ For greater certainty, serious balance-of-payments and external financial difficulties, or the threat thereof, may be caused, among other factors, by serious difficulties relating to monetary or exchange rate policies, or the threat thereof.

3. With respect to trade in goods, a Party may adopt temporary safeguard measures in order to safeguard its external financial position or balance of payments. Any temporary safeguard measure adopted or maintained under this paragraph shall be consistent with GATT 1994 and its Understanding on the Balance-of-Payments Provisions.

4. With respect to trade in services, a Party may adopt temporary safeguard measures in order to safeguard its external financial position or balance of payments. Any temporary safeguard measure adopted or maintained under this paragraph shall be consistent with Article XII of GATS.

ARTICLE 25.5

Temporary safeguard measures

1. In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union, or the threat thereof, the Union may adopt or maintain temporary safeguard measures with regard to capital movements, payments or transfers for a period that does not exceed six months.

2. Any temporary safeguard measure adopted or maintained under paragraph 1 shall be limited to the extent that is strictly necessary and shall not constitute a means of arbitrary or unjustified discrimination between New Zealand and a third country in like situations.

ARTICLE 25.6

Tiriti o Waitangi / 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, trade in services and investment, 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 te Tiriti o Waitangi / the Treaty of Waitangi.

2. The Parties agree that the interpretation of te Tiriti o Waitangi / 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 26 (Dispute settlement) shall otherwise apply to this Article. A panel established under Article 26.5 (Establishment of a panel) may be requested by the Union to determine only whether any measure referred to in paragraph 1 is inconsistent with its rights under this Agreement.

ARTICLE 25.7

Disclosure of information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private, except where a panel requires such confidential information in dispute settlement proceedings under Chapter 26 (Dispute settlement). In such cases, the panel shall ensure that confidentiality is fully protected.
2. Each Party shall treat as confidential any information submitted by the other Party to the Trade Committee or to specialised committees that the other Party has designated as confidential.

ARTICLE 25.8

WTO waivers

If a right or obligation in this Agreement duplicates one in the WTO Agreement, any measure taken in conformity with a decision to grant a waiver adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the duplicated provision in this Agreement.