

## CHAPTER 16

### GENERAL PROVISIONS

#### **Article 16.1: Application**

1. Each Party is fully responsible for the observance of all provisions in this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities, and, in respect of trade in services under Chapter 8 (Services), by non-governmental bodies (in the exercise of powers delegated by central, regional or local government or authorities) within its territory.
2. The provisions of Chapter 14 (Dispute Settlement) may be invoked in respect of measures affecting the observance of this Agreement taken by regional or local governments or authorities within the territory of a Party. When an arbitral tribunal appointed under Chapter 14 (Dispute Settlement) has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. The provisions of Chapter 14 (Dispute Settlement) relating to the suspension of the application of benefits of equivalent effect shall apply in cases where it has not been possible to secure such observance.
3. This Article does not apply to Chapter 10 (Government Procurement).

#### **Article 16.2: Transparency**

1. Each Party shall promptly make public all laws, rules, regulations, judicial decisions and administrative rulings of general application pertaining to trade in goods, services, and investment; shall promptly make available administrative guidelines which significantly affect trade in services covered by its commitments; and shall endeavour to make available promptly administrative guidelines which significantly affect trade in goods and investment.
2. Each Party shall endeavour to provide opportunity for comment by the other Party on its proposed laws, rules, regulations and procedures affecting trade in goods and services and investments if it is of the view that any such proposed laws, rules, regulations and procedures are likely to affect the rights and obligations of either Party under this Agreement.
3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application. Each Party shall establish one or more enquiry points to provide specific information upon request on all such measures.
4. In view of the importance of transparency of domestic legislation and procedures affecting trade in goods and the supply of services and in investment to the operation of this Agreement, the Parties shall discuss any concerns which may arise in this area at the reviews referred to in Article 15.4 (Review), in order to address means of overcoming such concerns.

### **Article 16.3: Business Law**

With a view to facilitating business through addressing issues of common interest in relation to business law, the Parties shall exchange information on their respective business laws as a first step in identifying issues for attention and consideration of an appropriate ongoing process for addressing these issues.

### **Article 16.4: General Exceptions**

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Technical Barriers to Trade), Chapter 7 (Investment), and Chapter 13 (Regulatory Cooperation), Article XX of GATT 1994 and its interpretive notes 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 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.

3. For the purposes of Chapter 7 (Investment), Chapter 8 (Services), Chapter 9 (E-Commerce), Chapter 13 (Regulatory Cooperation), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*. 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.

4. For the purposes of Chapter 10 (Government Procurement), Article III(2) of the Revised Agreement on Government Procurement is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article III(2) of the Revised Agreement on Government Procurement include environmental measures necessary to protect human, animal or plant life or health.

5. 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 and investment, 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>1</sup> of national value.

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<sup>1</sup> “Creative arts” include ngā toi Māori (Māori arts), the performing arts – including theatre, dance, music, haka and waiata – visual arts and craft such as painting, sculpture, whakairo (carving), raranga (weaving) and tā moko, literature, film and video, language arts, creative online 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 16.5: Movement of Natural Persons**

1. This Agreement applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.
2. This Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Party nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. In accordance with Article 8.4 (Market Access), Article 8.5 (National Treatment), Article 8.6 (Additional Commitments) and Article 8.7 (Specific Commitments), the Parties may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under this Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
4. This Agreement shall also not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to either Party under the terms of a specific commitment.<sup>2</sup>

## **Article 16.6: Measures to Safeguard the Balance of Payments**

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may 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. In the case of investments, a Party may adopt or maintain restrictions with regards to payments relating to the transfer of proceeds from investment.
2. The restrictions referred to in paragraph 1:
  - (a) shall be consistent with the *Articles of Agreement of the International Monetary Fund*;
  - (b) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

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<sup>2</sup> The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

- (c) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
- (e) shall be applied on a national treatment basis.

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

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party within 90 days of the date of notification in order to review the measures adopted by it.

5. In the case of trade in goods, where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may, in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of GATT 1994, adopt restrictive import measures.

#### **Article 16.7: 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 or investment, 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 14 (Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal appointed under Article 14.4 (Appointment of Arbitral Tribunals) may be requested by Singapore to determine only whether any measure (referred to in paragraph 1) is inconsistent with its rights under this Agreement.

#### **Article 16.8: Critical Shortages**

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 or investment, nothing in this Agreement shall preclude the adoption by Singapore of measures it deems necessary to prevent or relieve a critical shortage or threat thereof of any such imports deemed or defined as essential to Singapore under its domestic laws and regulations, and where the situation referred to gives rise, or is likely to give rise, to

major difficulties for Singapore, provided that such measures shall, if Singapore deems fit, be discontinued as soon as the conditions giving rise to such measures have ceased to exist.

#### **Article 16.9: Security**

Nothing in this Agreement shall be construed:

- (a) as preventing either Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to action relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment, and any action taken in time of war or other emergency in domestic or international relations; or
- (b) as preventing either Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

#### **Article 16.10: Disclosure of Information**

Nothing in this Agreement shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers:

- (a) would be contrary to its essential security interests;
- (b) is contrary to the public interest as determined by its laws and regulations;
- (c) is contrary to any of its laws and regulation, including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (d) would impede law enforcement; or
- (e) would prejudice legitimate commercial interests of particular enterprises, public or private.

#### **Article 16.11: Taxation**

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:

- (a) where corresponding rights and obligations are also granted or imposed under the WTO Agreement;
- (b) under Article 2.14 (Export Duties); and
- (c) under Article 7.8 (Expropriation and Compensation).

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 such tax convention, the latter 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.

4. If there is a dispute described in Article 7.14 (Investment Disputes) that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 7.14 (Investment Disputes) shall accept a decision of the Parties as to whether the measure in question is a taxation measure.

5. For greater certainty, nothing in this Agreement shall be regarded as obliging either Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement on 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.

6. No investor may invoke Article 7.8 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 7.8 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities at least 90 days before submitting any claim to conciliation or arbitration the issue of whether that taxation measure involves an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within six months of such referral, the investor may submit the dispute to conciliation or arbitration in accordance with Article 7.14.2 (Investment Disputes).

7. For the purposes of this Article:

- (a) **competent authorities** means:
  - (i) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner; and
  - (ii) for Singapore, the Chief Tax Policy Officer, Ministry of Finance, or his successor or such other public officer as may be designated by Singapore;

- (b) **taxation measures** include excise duties, but do not include:
  - (i) any customs duty as defined in Article 1.2 (General Definitions); or
  - (ii) the measures listed in subparagraphs (b) and (c) of that definition.

#### **Article 16.12: Association with the Agreement**

1. This Agreement is open to accession or association, on terms to be agreed between the Parties, by any Member of the WTO, or by any other State or separate customs territory.
2. The terms of such accession or association shall take into account the circumstances of the Member of the WTO, State or separate customs territory, in particular with respect to timetables for liberalisation.

#### **Article 16.13: Obligations Under Other International, Regional or Bilateral Agreements**

Nothing in this Agreement shall be regarded as exempting either Party to this Agreement from its obligations under any international, regional or bilateral agreements to which it is a party. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which both Parties are party, on request, the Parties shall consult with a view to reaching a mutually satisfactory solution.

#### **Article 16.14: Preferences Under Other Agreements**

1. Nothing in this Agreement shall be regarded as obliging a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or any future customs union, free trade area, free trade arrangement, common market, monetary union or similar international agreement or other forms of bilateral or regional cooperation to which either of the Parties is or may become party; or as preventing the adoption of an agreement designed to lead to the formation or extension of such a union, area or arrangement or market.
2. Nothing in this Agreement shall be interpreted as obliging a Party to extend the benefit of any treatment, preference or privilege arising under this Agreement to legal or natural persons who otherwise only qualify for such benefit by virtue of a separate agreement or arrangement entered into by the other Party.

#### **Article 16.15: Amendments**

This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on such date or dates as may be agreed between them.

**Article 16.16: Annexes**

The Annexes to this Agreement, including any Appendices thereto, shall be an integral part of this Agreement.

**Article 16.17: Entry into Force, Duration and Termination**

1. This Agreement shall be subject to ratification. Ratification shall be effected by an exchange of Notes between the Parties. The Agreement shall enter into force on the date specified in such exchange of Notes.
2. This Agreement may be terminated by either Party on giving 180 days' written notice to the other Party.