

CHAPTER SEVENTEEN

GENERAL EXCEPTIONS

Article 17.1 General Exceptions

1. For the purposes of Chapters 2 through 10, (Trade in Goods, Rules of Origin, Customs Procedures and Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, and Investment) 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 include 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 Chapters 2 through 10, (Trade in Goods, Rules of Origin, Customs Procedures and Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, and Investment) 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 and services or 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 of national value.¹⁶

Article 17.2 Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the

¹⁶ "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.

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 international relations;
 - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
- (c) to prevent a 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 Joint Commission shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article 17.3

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 GATT 1994 and the *WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994*, adopt restrictive import measures;
 - (b) in the case of 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 with regard to payments relating to the transfer of proceeds from investment.
2. Restrictions adopted or maintained under paragraph 1(b) or (c) shall:
 - (a) be consistent with the *Articles of Agreement of the International*

Monetary Fund;

- (b) avoid unnecessary damage to the commercial, economic and financial interests of the 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 national treatment basis and such that the other Party is treated no less favourably than any third party.

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, or any changes therein, shall be notified promptly to the other Party from the date such measures are taken.

5. The Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations with the other Party from the date of notification in order to review the measures adopted or maintained by it.

Article 17.4
Prudential Measures

Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures affecting the supply of financial services 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 the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

Article 17.5
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:

- (a) where corresponding rights or obligations are also granted or imposed under the WTO Agreement; or
- (b) under Article 10.8 (Expropriation).

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.

4. If there is a dispute described in Article 10.19(1) (Scope) that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 10.21 (Submission of a Claim to Arbitration) shall accept a decision of the Parties as to whether the measure in question is a taxation measure.

5. In the event of any inconsistency relating to a taxation measure between this Agreement and the *Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, done at Kuala Lumpur on 19 March 1976, with Protocols, 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.¹⁷

Article 17.6

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 Maori 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 16.8 (Request for the Establishment of an Arbitral Tribunal) may be requested by Malaysia to determine only whether any measure referred to in paragraph 1 is inconsistent with their rights under this Agreement.

¹⁷ 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 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.