

CHAPTER 15: GENERAL EXCEPTIONS

ARTICLE 15.1

General Exceptions for Trade in Goods

For the purposes of Chapters 2 to 7, 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 the same conditions prevail, or a disguised restriction on international trade in goods, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII of GATT 1994, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) necessary to protect national treasures or specific sites of historical or archaeological value, or to support creative arts of national value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;

- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all WTO members are entitled to an equitable share of the international supply of such products, and that any such measures which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

ARTICLE 15.2

General Exceptions for Investment and Trade in Services⁴

For the purposes of Chapters 8 and 9, 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, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals or to maintain public order;⁵
- (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 services 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;

⁴ This Article shall come into effect with respect to trade in services on entry into force of any commitments to liberalise trade in services under this Agreement.

⁵ 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.

- (d) relating to the products of prison labour;
- (e) necessary to protect national treasures or specific sites of historical or archaeological value, or to support creative arts of national value;
- (f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (g) inconsistent with the requirement for national treatment provided that the difference in treatment is aimed at ensuring the equitable or effective⁶ imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

ARTICLE 15.3

Security Exceptions

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;
- (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 materials or the materials from which they are derived;

⁶ 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.

Tax terms or concepts in paragraph (g) of this Article and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

- (ii) relating to the 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;
 - (iii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (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.

ARTICLE 15.4

Disclosure of Information

Nothing in this Agreement shall require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 15.5

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;
 - (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;⁷
 - (c) in the case of investments, adopt or maintain restrictions with regard to payments relating to the transfer of proceeds from investment.

⁷ This Sub-paragraph shall come into effect with respect to trade in services on entry into force of any commitments to liberalise trade in services under this Agreement.

2. Restrictions adopted or maintained under Sub-paragraph (b) or (c) of Paragraph 1 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 non-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 promptly notified to the other Party.

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

ARTICLE 15.6

Measures for Macro-Economic and Financial Stability

Notwithstanding any other provision 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 or the stability of the macroeconomy.⁸ 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 the Agreement.

⁸ These include measures to prevent currency manipulation or to ensure the stability of the exchange rate or the financial system. Such measures shall be no more than necessary to meet the objectives of ensuring the integrity and stability of the financial system or the stability of the macroeconomy.

ARTICLE 15.7

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:
 - (a) corresponding rights or obligations are also granted or imposed under the WTO Agreement; or
 - (b) under Article 9.11.
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 9.16 (1) that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 9.16 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 the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, done at Wellington on 22 October 1998, 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.⁹

⁹ 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.

ARTICLE 15.8

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 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 17 shall otherwise apply to this Article. An arbitral tribunal appointed under Article 17.4 may be requested by Thailand to determine only whether any measure (referred to in Paragraph 1) is inconsistent with its rights under this Agreement.