

CHAPTER 32

GENERAL EXCEPTIONS AND GENERAL PROVISIONS

Article 32.1 General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Animal Welfare), Chapter 7 (Technical Barriers to Trade), Articles 14.5 (Market Access – Investment) to Article 14.9 (Senior Management and Boards of Directors – Investment), Chapter 15 (Digital Trade), and Chapter 19 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Domestic Regulation), Chapter 11 (Financial Services), Chapter 12 (Telecommunications), Chapter 13 (Temporary Entry of Business Persons), Articles 14.5 (Market Access – Investment) to Article 14.9 (Senior Management and Boards of Directors – Investment), Chapter 15 (Digital Trade), and Chapter 19 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b), and (c) of Article XIV of GATS including its footnotes are incorporated into and made part of this Agreement, *mutatis mutandis*.
3. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 and Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health and measures necessary to mitigate climate change, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.¹
4. 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

¹ “non-living exhaustible natural resources” includes clean air and a global atmosphere with safe levels of greenhouse gases.

creative arts² of national value. This paragraph shall not apply to Chapter 17 (Intellectual Property).

5. Nothing in this Agreement shall be construed to prevent a Party from taking action, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO or is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which the Party taking action and the Party against which the action is taken are party.

Article 32.2 Security Exceptions

Nothing in this Agreement shall be construed to:

- (a) 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) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 32.3 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 including the *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, in accordance with GATS, adopt or maintain restrictions on trade in services on which it has undertaken commitments, including on payments or transfers for transactions related to those commitments; and

² “creative arts” include ngā toi Māori (Māori arts), the performing arts – including theatre, dance, and music, haka (traditional Māori posture dance), waiata (song or chant) – visual arts and craft such as painting, sculpture, whakairo (carving), raranga (weaving), and tā moko (traditional Māori tattoo), 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.

- (c) in the case of investments, adopt or maintain restrictions with regard to the transfer of funds related to investment, including those on capital account and the financial account.
- 2. Restrictions adopted or maintained under subparagraphs 1(b) or 1(c) shall:
 - (a) be consistent with the *Articles of Agreement of the International Monetary Fund* (“IMF”) done at New Hampshire on 22 July 1944;
 - (b) avoid unnecessary damage to the commercial, economic, and financial interests of the other Party;
 - (c) not be more restrictive than 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;
 - (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-party; and
 - (f) not be used to avoid necessary macroeconomic adjustment.
- 3. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be promptly notified to the other Party. Such notification shall be made within 30 days of the date any new or changed restrictions are adopted.
- 4. The Party adopting or maintaining any restrictions under paragraph 1 shall commence consultations with the other Party within 45 days of the date of notification referred to in paragraph 3, in order to review the measures adopted or maintained by it.
- 5. The consultations pursuant to paragraph 4 shall address the compliance of any restrictive measures with paragraphs 1 and 2. The Parties shall accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves, balance of payments, and their conclusions shall take into account the assessment by the IMF of the balance of payments and the external financial situation of the Party concerned.

Article 32.4 **Taxation Measures**

- 1. For the purposes of this Article:

“competent authorities” means:

- (a) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
- (b) for the United Kingdom, the Commissioners for Revenue and Customs or their authorised representative; or

any successor of these competent authorities as notified in writing to the other Party;

“tax convention” means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

“taxes and taxation measures” include excise duties, but do not include:

- (a) a customs duty as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions); or
 - (b) the measures listed in subparagraphs (b) and (c) of that definition.
2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.
 3. Nothing in this Agreement shall affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.
 4. In the case of a tax convention between the Parties, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the competent authorities of the Parties. The competent authorities of the Parties shall have six months after the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If the competent authorities agree, the period may be extended by no more than a further 12 months. No procedures concerning the measure giving rise to the issue may be initiated under Chapter 31 (Dispute Settlement) until the expiry of the six month period, or any other period as may have been agreed by the competent authorities. Any panel established to consider a dispute related to a taxation measure shall accept as binding a determination of the competent authorities of the Parties made under this paragraph.
 5. Notwithstanding paragraph 3:
 - (a) Article 2.3 (National Treatment – National Treatment and Market Access for Goods) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and

- (b) Article 2.15 (Export Duties, Taxes, and Other Charges – National Treatment and Market Access for Goods) shall apply to taxation measures.
- 6. Subject to paragraph 3:
 - (a) Article 9.5 (National Treatment – Cross-Border Trade in Services) and Article 11.5 (National Treatment – Financial Services) shall apply to taxation measures on income, capital gains, the taxable capital of corporations, or on the value of an investment or property³ (but not on the transfer of that investment or property), that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory; and
 - (b) Article 9.5 (National Treatment – Cross-Border Trade in Services), Article 9.6 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services), Article 11.5 (National Treatment – Financial Services), Article 14.6 (National Treatment – Investment), and Article 14.7 (Most-Favoured-Nation Treatment – Investment) shall apply to all taxation measures, other than those on income, capital gains, the taxable capital of corporations, the value of an investment or property⁴ (but not on the transfer of that investment or property), or taxes on estates, inheritances, gifts, and generation-skipping transfers.
- 7. But nothing in the Articles referred to in paragraph 6 shall apply to:
 - (a) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
 - (b) a non-conforming provision of any existing taxation measure;
 - (c) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
 - (d) an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

³ This is without prejudice to the methodology used to determine the value of such investment or property under the respective law of each Party.

⁴ This is without prejudice to the methodology used to determine the value of such investment or property under the respective law of each Party.

- (e) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including any taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods, or services of the other Party;⁵ or
 - (f) a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, pension plan, superannuation fund, or other arrangement to provide pension, superannuation, or similar benefits, on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over that trust, plan, fund, or other arrangement.
8. Subject to paragraph 3, and without prejudice to the rights and obligations of a Party under paragraph 5, Article 14.8 (Performance Requirements – Investment) shall apply to taxation measures.
 9. Article 14.14 (Expropriation and Compensation – Investment) applies to taxation measures.

Article 32.5

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 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 31 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 31.6 (Establishment of a Panel – Dispute Settlement) may be requested by the other Party to determine only whether any measure (referred to in paragraph 1) is inconsistent with its rights under this Agreement.

⁵ The Parties understand that this subparagraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

Article 32.6
The National Health Service of the United Kingdom and the New Zealand Health and Disability System

The Parties recall the exclusions and exceptions in this Agreement that are applicable to the National Health Service of the United Kingdom,⁶ and to the New Zealand health and disability system, including as set out in the relevant provisions of this Chapter, of Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Domestic Regulation), Chapter 14 (Investment), Chapter 16 (Government Procurement), Chapter 17 (Intellectual Property), and of Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures) and Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures).

Article 32.7
Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information, the disclosure of which would be contrary to its laws and regulations or 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 32.8
Confidentiality

Where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific written permission of the Party providing the information, except to the extent that the Party receiving the information is required under its law to provide the information, including for the purpose of judicial proceedings.

⁶ For greater certainty, the National Health Service of the United Kingdom includes the National Health Service in England, Scotland, and Wales, and Health and Social Care in Northern Ireland.