

CHAPTER 20

GENERAL PROVISIONS AND EXCEPTIONS

Article 20.1 : General Exceptions

1. For the purposes of Chapters 2 (Market Access for Goods), 3 (Rules of Origin and Origin Procedures), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures), 6 (Technical Barriers to Trade), 11 (Intellectual Property Rights) and 14 (Agriculture, Forestry and Fisheries Co-operation), Article XX of GATT 1994, including its interpretive notes, is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures 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.

2. For the purposes of Chapters 8 (Cross-Border Trade in Services), 9 (Temporary Entry of Business Persons), and 10 (Investment), 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 to protect human, animal or plant life or health.

3. 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 arts¹ of national value which is customarily practiced.

Article 20.2 : Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;
 - (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

¹ "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.

- (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 purposes of supplying or provisioning a military establishment,
 - (ii) taken in time of war or other emergency in international relations; or
 - (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 20.3 : Measures to Safeguard the Balance of Payments

1. When a Party is in serious balance of payments and external financial difficulties or under threat thereof, or when in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation on monetary policy or exchange rate policy in either Party, 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 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; or
- (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;
- (e) not exceed a period of one year; however, if extremely exceptional circumstances arise such that a Party seeks to extend such measures, the Party will co-ordinate in advance with the other Party concerning the implementation of any proposed extension; and
- (f) be applied on a national treatment basis and such that the other Party is treated no less favorably 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 purposes 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 promptly commence consultations in relation to the measures or any extension thereof on the request of the other Party.

Article 20.4 : Prudential Measures

Notwithstanding any other provisions 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. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding a Party's commitments or obligations under this Agreement.

Article 20.5 : Taxation Exception

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall grant rights or impose obligations with respect to taxation measures in accordance with subparagraphs (a) through (d):

- (a) Article 2.3 (National Treatment) 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;

- (b) Article 2.12 (Export Duties, Taxes, or Other Charges) shall apply to taxation measures;
- (c) Article 8.4 (National Treatment) shall apply to taxation measures on income, on capital gains, on the taxable capital of corporations or on the value of an investment or property² (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 relating to the purchase or consumption of particular services on requirements to provide the service in its territory;³
- (d) Articles 8.4 (National Treatment), 8.5 (Most-Favoured-Nation Treatment), 10.5 (National Treatment), and 10.6 (Most-Favoured-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, on the taxable capital of corporations, on 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.

3. Notwithstanding paragraph 2, nothing in the Articles referred to in paragraph 2 shall apply to:

- (a) any most-favoured-nation obligation with respect to an advantage accorded by a Party in accordance with 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;
- (e) the adoption or enforcement of any 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 or

² This is without prejudice as to the methodology used to determine the value of such investment or property under Parties' respective domestic laws.

³ For greater certainty, this subparagraph provides that a Party's tax deduction and tax credit rules in respect of the taxes referred to in this subparagraph, that relate to the expenses incurred for purchasing or consuming services covered in this subparagraph from service suppliers, shall not discriminate between a national service supplier and the service suppliers of the other Party.

⁴ This is without prejudice as to the methodology used to determine the value of such investment or property under Parties' respective domestic laws.

incorporation, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties;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, 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 such trust, fund, or other arrangement.

4. Without prejudice to the rights and obligations of the Parties under paragraphs 2(a) and (b), and Articles 10.11.2 through 10.11.4 shall apply to taxation measures.

5. Article 10.9 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 10.9 (Expropriation and Compensation) as the basis for a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 10.9 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities, at the time that it gives its notice of intent under Article 10.20 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not 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 a period of six months of such referral, the investor may submit its claim to arbitration under Article 10.20 (Submission of a Claim to Arbitration).

6. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention.

7. For the purposes of this Article, “tax convention” means a convention for the avoidance of double taxation or other international taxation agreement in force between the Parties.

8. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency.

9. 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.

10. For the purposes of this Article, taxation measures shall not include any:

- (a) customs duties as defined in Article 1.5 (Definitions);
- (b) any measures listed in exceptions (b) and (c) of the definition of customs duties in Article 1.5 (Definitions); or

⁵ The Parties understand that this paragraph 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.

- (c) import duties.

Article 20.6 : 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 19 (Dispute Settlement) shall otherwise apply to this Article. An arbitration panel established under Article 19.8 (Establishment of an Arbitration Panel) may be requested by Korea to determine only whether any measure referred to in paragraph 1 is inconsistent with its rights under this Agreement.

Article 20.7 : 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 would:

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

Article 20.8 : Confidentiality

Where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information. The information shall be used only for the purposes specified by the Party providing the information. It shall not be disclosed without the specific written permission of the Party providing the information, except to the extent that the disclosure or use is necessary to comply with the domestic legal requirements of the receiving Party, including for the purposes of judicial proceedings.