

CHAPTER 19

GENERAL EXCEPTIONS

Article 19.1: General Exceptions

1. For the purposes of Chapters 3 through 8 (*Trade in Goods, Rules of Origin, Customs Procedures, Sanitary and Phytosanitary Measures, Technical Barriers to Trade and Trade Remedies*), 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 greater certainty, the Parties understand that the measures referred to in Article XX(f) of GATT 1994 include measures necessary to protect specific sites of historical or archaeological value, or to support creative arts of national value.¹
4. For the purposes of Chapter 12 (*Trade in Services*), 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.
5. For the purposes of Chapter 12 (*Trade in Services*), 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 necessary to protect national works or specific sites of historical or archaeological value, or to support creative arts of national value.¹

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.

Article 19.2: 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 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 interests²
 - (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, 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 Commission shall be informed to the fullest extent possible of measures taken under Subparagraphs 1(b) and (c) and of their termination.

Article 19.3: Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may adopt or maintain restrictive measures with regard to trade in goods and in services including on payments and transfers.
2. Restrictions adopted or maintained under Paragraph 1 shall :
 - (a) be consistent with the conditions established in the WTO Agreement and consistent with the *Articles of Agreement of the International Monetary Fund*;

² For greater certainty, nothing in this Agreement shall be construed to prevent a Party from taking any action which it considers necessary for the protection of critical infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Parties;
- (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 non discriminatory basis.

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 promptly commence consultations with the other Parties in order to review the measures adopted or maintained by it.

Article 19.4: Taxation Measures

1. For the purposes of this Article:

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

taxation measures do not include a “customs duty” as defined in Article 2.1 (*Definitions of General Application*).

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

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under Article III of GATT 1994 and, with respect to services, Articles I and XIV (d) of GATS where applicable.

4. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and 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.

Article 19.5: Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties 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 15 (*Dispute Settlement*) shall otherwise apply to this Article. An arbitral tribunal established under Article 15.6 (*Establishment of an Arbitral Tribunal*) may be requested by Brunei Darussalam, Chile or Singapore to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.