

## CHAPTER 29

### EXCEPTIONS AND GENERAL PROVISIONS

#### Section A: Exceptions

##### Article 29.1: 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 (Textile and Apparel Goods), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 7 (Sanitary and Phytosanitary Measures), Chapter 8 (Technical Barriers to Trade) and Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.<sup>1</sup>

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 the purposes of Chapter 10 (Cross-Border Trade in Services), Chapter 12 (Temporary Entry for Business Persons), Chapter 13 (Telecommunications), Chapter 14 (Electronic Commerce)<sup>2</sup> and Chapter 17 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.<sup>3</sup> 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.

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<sup>1</sup> For the purposes of Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase, production or sale of goods, or affecting activities the end result of which is the production of goods.

<sup>2</sup> This paragraph is without prejudice to whether a digital product should be classified as a good or service.

<sup>3</sup> For the purposes of Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

4. 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 29.2: 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 determines to be 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 29.3: Temporary Safeguard Measures**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital:

- (a) in the event of serious balance of payments and external financial difficulties or threats thereof; or
- (b) if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

3. Any measure adopted or maintained under paragraph 1 or 2 shall:

- (a) not be inconsistent with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment),

Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment);<sup>4</sup>

- (b) be consistent with the *Articles of Agreement of the International Monetary Fund*;
- (c) avoid unnecessary damage to the commercial, economic and financial interests of any other Party;
- (d) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;
- (e) be temporary and be phased out progressively as the situations specified in paragraph 1 or 2 improve, and shall not exceed 18 months in duration; however, in exceptional circumstances, a Party may extend such measure for additional periods of one year, by notifying the other Parties in writing within 30 days of the extension, unless after consultations more than one-half of the Parties advise, in writing, within 30 days of receiving the notification that they do not agree that the extended measure is designed and applied to satisfy subparagraphs (c), (d) and (h), in which case the Party imposing the measure shall remove the measure, or otherwise modify the measure to bring it into conformity with subparagraphs (c), (d) and (h), taking into account the views of the other Parties, within 90 days of receiving notification that more than one half of the Parties do not agree;
- (f) not be inconsistent with Article 9.8 (Expropriation and Compensation);<sup>5</sup>
- (g) in the case of restrictions on capital outflows, not interfere with investors' ability to earn a market rate of return in the territory of the restricting Party on any restricted assets;<sup>6</sup> and

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<sup>4</sup> Without prejudice to the general interpretation of Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment), the fact that a measure adopted or maintained pursuant to paragraph 1 or 2 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment).

<sup>5</sup> For greater certainty, measures referred to in paragraph 1 or 2 may be non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives as referred to in Annex 9-B(3)(b) (Expropriation).

<sup>6</sup> The term "restricted assets" in this subparagraph refers only to assets invested in the territory of the restricting Party by an investor of a Party that are restricted from being transferred out of the territory of the restricting Party.

- (h) not be used to avoid necessary macroeconomic adjustment.
4. Measures referred to in paragraphs 1 and 2 shall not apply to payments or transfers relating to foreign direct investment.<sup>7</sup>
5. A Party shall endeavour to provide that any measures adopted or maintained under paragraph 1 or 2 be price-based, and if such measures are not price-based, the Party shall explain the rationale for using quantitative restrictions when it notifies the other Parties of the measure.
6. In the case of trade in goods, Article XII of GATT 1994 and the *Understanding on the Balance of Payments Provisions of the GATT 1994* are incorporated into and made part of this Agreement, *mutatis mutandis*. Any measures adopted or maintained under this paragraph shall not impair the relative benefits accorded to the other Parties under this Agreement as compared to the treatment of a non-Party.
7. A Party adopting or maintaining measures under paragraph 1, 2 or 6 shall:
- (a) notify, in writing, the other Parties of the measures, including any changes therein, along with the rationale for their imposition, within 30 days of their adoption;
  - (b) present, as soon as possible, either a time schedule or the conditions necessary for their removal;
  - (c) promptly publish the measures; and
  - (d) promptly commence consultations with the other Parties in order to review the measures adopted or maintained by it.
    - (i) In the case of capital movements, promptly respond to any other Party that requests consultations in relation to the measures adopted by it, provided that such consultations are not otherwise taking place outside of this Agreement.
    - (ii) In the case of current account restrictions, if consultations in relation to the measures adopted by it are not taking place under the framework of the WTO Agreement, a

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<sup>7</sup> For the purposes of this Article, “foreign direct investment” means a type of investment by an investor of a Party in the territory of another Party, through which the investor exercises ownership or control over, or a significant degree of influence on the management of, an enterprise or other direct investment, and tends to be undertaken in order to establish a lasting relationship. For example, ownership of at least 10 per cent of the voting power of an enterprise over a period of at least 12 months generally would be considered foreign direct investment.

Party, if requested, shall promptly commence consultations with any interested Party.

#### **Article 29.4: Taxation Measures**

1. For the purposes of this Article:

**designated authorities** means:

- (a) for Australia, the Secretary to the Treasury or an authorised representative of the Secretary;
- (b) for Brunei Darussalam, the Minister of Finance or the Minister's authorised representative;
- (c) for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance;
- (d) for Chile, the Undersecretary of the Ministry of Finance (*Subsecretario de Hacienda*);
- (e) for Japan, the Minister for Foreign Affairs and the Minister of Finance;<sup>8</sup>
- (f) for Malaysia, the Minister of Finance or the Minister's authorised representative;
- (g) for Mexico, the Minister of Finance and Public Credit (*Secretario de Hacienda y Crédito Público*);
- (h) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
- (i) for Peru, the General Director of International Economy, Competition and Productivity Affairs (*Director General de Asuntos de Economía Internacional, Competencia y Productividad del Ministerio de Economía y Finanzas*);
- (j) for Singapore, the Chief Tax Policy Officer, Ministry of Finance;
- (k) for the United States, the Assistant Secretary of the Treasury (Tax Policy); and
- (l) for Viet Nam, the Minister of Finance,

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<sup>8</sup> For the purposes of consultations between the designated authorities of the relevant Parties, the contact point of Japan is the Ministry of Finance.

or any successor of these designated authorities as notified in writing to the other Parties;

**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); 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 any 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 two or more 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 designated authorities of the Parties in question. The designated authorities of those Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If those designated authorities agree, the period may be extended up to 12 months from the date of referral of the issue. No procedures concerning the measure giving rise to the issue may be initiated under Chapter 28 (Dispute Settlement) or Article 9.19 (Submission of a Claim to Arbitration) until the expiry of the six-month period, or any other period as may have been agreed by the designated authorities. A panel or tribunal established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties made under this paragraph.
5. Notwithstanding paragraph 3:
  - (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; and
  - (b) Article 2.15 (Export Duties, Taxes or other Charges) shall apply to taxation measures.
6. Subject to paragraph 3:

- (a) Article 10.3 (National Treatment) and Article 11.6.1 (Cross-Border Trade) shall apply to taxation measures on income, on capital gains, on the taxable capital of corporations, or on the value of an investment or property<sup>9</sup> (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;
- (b) Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.6.1 (Cross-Border Trade) and Article 14.4 (Non-Discriminatory Treatment of Digital Products) 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 property<sup>9</sup> (but not on the transfer of that investment or property), or taxes on estates, inheritances, gifts and generation-skipping transfers; and
- (c) Article 14.4 (Non-Discriminatory Treatment of Digital Products) shall apply to taxation measures on income, on capital gains, on the taxable income of corporations, or on the value of an investment or property<sup>9</sup> (but not on the transfer of that investment or property), that relate to the purchase or consumption of particular digital products, 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 digital products on requirements to provide the digital product in its territory,

but nothing in the Articles referred to in subparagraphs (a), (b) and (c) shall apply to:

- (d) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;
- (e) a non-conforming provision of any existing taxation measure;
- (f) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

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<sup>9</sup> This is without prejudice to the methodology used to determine the value of such investment or property under Parties' respective laws.

- (g) 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;
- (h) 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 Parties;<sup>10</sup>
- (i) 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; or
- (j) any excise duty on insurance premiums to the extent that such tax would, if levied by the other Parties, be covered by subparagraph (e), (f) or (g).

7. Subject to paragraph 3, and without prejudice to the rights and obligations of the Parties under paragraph 5, Article 9.10.2 (Performance Requirements), Article 9.10.3 and Article 9.10.5 shall apply to taxation measures.

8. Article 9.8 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 9.8 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 9.8 (Expropriation and Compensation) with respect to a taxation measure must first refer to the designated authorities of the Party of the investor and the respondent Party, at the time that it gives its notice of intent under Article 9.19 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the designated 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 the referral, the investor may submit its claim to arbitration under Article 9.19 (Submission of a Claim to Arbitration).

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<sup>10</sup> 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.



9. Nothing in this Agreement shall prevent Singapore from adopting taxation measures no more trade restrictive than necessary to address Singapore's public policy objectives arising out of its specific constraints of space.

#### **Article 29.5: Tobacco Control Measures<sup>11</sup>**

A Party may elect to deny the benefits of Section B of Chapter 9 (Investment) with respect to claims challenging a tobacco control measure<sup>12</sup> of the Party. Such a claim shall not be submitted to arbitration under Section B of Chapter 9 (Investment) if a Party has made such an election. If a Party has not elected to deny benefits with respect to such claims by the time of the submission of such a claim to arbitration under Section B of Chapter 9 (Investment), a Party may elect to deny benefits during the proceedings. For greater certainty, if a Party elects to deny benefits with respect to such claims, any such claim shall be dismissed.

#### **Article 29.6: Treaty of Waitangi**

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties 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 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 28 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 1 is inconsistent with a Party's rights under this Agreement.

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<sup>11</sup> For greater certainty, this Article does not prejudice: (i) the operation of Article 9.15 (Denial of Benefits); or (ii) a Party's rights under Chapter 28 (Dispute Settlement) in relation to a tobacco control measure.

<sup>12</sup> A tobacco control measure means a measure of a Party related to the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures, such as inspection, recordkeeping, and reporting requirements. For greater certainty, a measure with respect to tobacco leaf that is not in the possession of a manufacturer of tobacco products or that is not part of a manufactured tobacco product is not a tobacco control measure.

## **Section B: General Provisions**

### **Article 29.7: 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 law or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

### **Article 29.8: Traditional Knowledge and Traditional Cultural Expressions**

Subject to each Party's international obligations, each Party may establish appropriate measures to respect, preserve and promote traditional knowledge and traditional cultural expressions.