

CHAPTER 18

EXCEPTIONS AND GENERAL PROVISIONS

Article 18.1 General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade) of this Agreement, Article XX of GATT 1994, including its interpretative notes, is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. For the purposes of Chapter 8 (Trade in Services) and Chapter 9 (Investment Promotion and Cooperation), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 18.2 Security Exceptions

1. Nothing in this Agreement shall be construed to:
 - (a) require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
 - (b) prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the production of or 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 out directly or indirectly for the purpose of supplying or provisioning a military establishment;
 - (ii) relating to fissionable or fusionable materials or the materials from which they are derived;
 - (iii) relating to the protection of critical public infrastructure, whether publicly or privately owned, including communications, power and water infrastructure; or
 - (iv) taken in time of national emergency, war or other emergency in international relations; or

- (c) 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.

Article 18.3
Direct Taxation Measures

1. For the purposes of this Agreement, "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation; and also include the taxes covered under the *Convention between the Government of the Republic of India and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital*, done at Auckland on 17 October 1986, as amended by any Protocols thereto ("India-New Zealand DTAA").
2. Nothing in this Agreement shall apply to any direct taxation measure.¹
3. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention². In the event of any inconsistency between this Agreement and any tax convention, that convention shall prevail over this Agreement.
4. In the case of a tax convention between or including 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 relevant competent authorities of the Parties. The competent authorities shall jointly determine the existence and the extent of such inconsistency.
5. Nothing in this Agreement shall oblige a Party to apply any most-favoured-nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention.

¹ For greater certainty, "direct taxation measure" neither includes any indirect taxation measure including customs duties as defined in Article 2.1 (Definitions) nor does it include the measures listed in subparagraphs (i), (ii) and (iii) of Article 2.1 (Definitions).

² "tax convention" means the India-New Zealand DTAA, or any other international taxation agreement or arrangement including any other convention for the avoidance of double taxation.

Article 18.4
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 GATT 1994*, including its interpretative notes, adopt restrictive import measures; and
 - (b) in the case of trade in services, in accordance with Article XII of GATS, 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. The Parties recognise that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions on trade in services to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.
2. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party from the date such measures are taken.
3. To the extent that it does not duplicate the process under the WTO or the International Monetary Fund, the Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations with the other Party from the date of notification in order to review the measures adopted or maintained by it.

Article 18.5
Tiriti o Waitangi / 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 Māori in respect of matters covered by this Agreement, including in fulfilment of its obligations under te Tiriti o Waitangi / the Treaty of Waitangi.
2. The Parties agree that the interpretation of te Tiriti o Waitangi / 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. A panel established under Article 19.7 (Request for Establishment of a Panel) may be

requested by India to determine only whether any measure referred to in paragraph 1 is inconsistent with their rights under this Agreement.

Article 18.6 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:

- (a) would be contrary to the public interest;
- (b) is contrary to any of its legislation including those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (c) would impede law enforcement; or
- (d) would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 18.7 Confidentiality

- 1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information designated as confidential by the other Party pursuant to this Agreement.
- 2. Information designated as confidential shall be used only for the purposes specified by the Party providing the information.
- 3. Notwithstanding paragraph 1, the information designated as confidential and provided pursuant to this Agreement may be transmitted to a third party subject to prior consent of the Party providing the information.
- 4. Nothing in this Article shall prevent a Party from disclosing information where it is required to do so under its law, or to the extent that it may be necessary in the context of judicial or quasi-judicial proceedings. In such situations, the Party that has received the information shall notify the other Party of the release or disclosure.

Article 18.8 Financial Provisions

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the laws, regulations and

policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.