

## CHAPTER 17

### GENERAL PROVISIONS AND EXCEPTIONS

#### Article 17.1: Definition

For the purposes of this Chapter, **administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct, but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of another Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

#### Article 17.2: Geographical Scope of Application<sup>1, 2</sup>

This Agreement shall apply to the geographical scope for which a Party assumes its obligations in relation to another Party under the WTO Agreement.

#### Article 17.3: Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published, including on the internet where feasible, or otherwise made available in such a manner as to enable interested persons and other Parties to become acquainted with them.

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<sup>1</sup> Nothing in this Agreement shall prejudice the position of any Party with regard to any issues concerning territorial sovereignty or any issues concerning the law of the sea.

<sup>2</sup> For the purposes of this Agreement, "territory" has the same geographical scope as determined in accordance with this Article.

2. To the extent possible and practicable, each Party shall:
  - (a) publish in advance any such laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement that it proposes to adopt; and
  - (b) provide, where appropriate, interested persons and other Parties with a reasonable opportunity to comment on any such laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement.

#### **Article 17.4: Provision of Information**

On request of any Party, the requested Party shall promptly provide information and respond to questions pertaining to any actual or proposed laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement that the requesting Party considers may affect the operation of this Agreement.

#### **Article 17.5: Administrative Proceedings**

With a view to administering its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement in a consistent, impartial, objective, and reasonable manner, each Party shall ensure in its administrative proceedings applying such measures to a particular person, good, or service of another Party in specific cases that:

- (a) wherever possible, a person of another Party that is directly affected by such a proceeding is provided with reasonable notice, in accordance with its domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issue in question;
- (b) a person of another Party that is directly affected by such a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time,

the nature of the proceeding, and the public interest permit;  
and

- (c) it follows its procedures in accordance with its laws and regulations.

#### **Article 17.6: Review and Appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purposes of prompt review and, where warranted, correction of final administrative actions with respect to any matter covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or procedures, each party to a proceeding is provided with the right to:
  - (a) a reasonable opportunity to support or defend that party's positions; and
  - (b) a decision based on the evidence and submissions of record or, where required by its laws and regulations, the record compiled by the relevant office or authority.
3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that the decision referred to in subparagraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

#### **Article 17.7: Disclosure of Information**

Nothing in this Agreement shall require any Party to provide confidential 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 17.8: Confidentiality**

Unless otherwise provided in this Agreement, where a Party provides information to another Party in accordance with this Agreement and designates the information as confidential, the other Party shall, subject to its laws and regulations, maintain the confidentiality of the information.

#### **Article 17.9: Measures against Corruption**

1. Each Party shall, in accordance with its laws and regulations, take appropriate measures to prevent and combat corruption with respect to any matter covered by this Agreement.
2. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Article.

#### **Article 17.10: Convention on Biological Diversity**

Each Party affirms its rights and responsibilities under the *Convention on Biological Diversity* done at Rio de Janeiro on 5 June 1992.

#### **Article 17.11: Screening Regime and Dispute Settlement**

A decision by a competent authority, including a foreign investment authority, of a Party<sup>3, 4</sup> on whether or not to approve or admit a foreign

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<sup>3</sup> For the purposes of this Article, “a competent authority, including a foreign investment authority” means, as of the date of entry into force of this Agreement:

- (a) for Australia, the Treasurer of the Commonwealth of Australia under Australia’s Foreign Investment Framework including the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth), and any amendments thereto;
- (b) for Cambodia, the Council for the Development of Cambodia designated under the following laws and regulations, and any amendments thereto:
  - (i) *Royal Kram No. 03/NS/94* dated 5 August 1994 promulgating *Law on Investment of the Kingdom of Cambodia*;
  - (ii) *Royal Kram No. NS/RKM/0303/009* dated 24 March 2003 promulgating *Law on the Amendment of the Law on Investment of the Kingdom of Cambodia*;
  - (iii) *Sub-Decree No. 88/ANK/BK* dated 29 December 1997 on the *Implementation of the Law on Investment of the Kingdom of Cambodia*;
  - (iv) *Sub-Decree No. 111 ANK/BK* dated 27 September 2005 on the *Implementation of the Law on the Amendment of the Law on Investment of the Kingdom of Cambodia*; and
  - (v) *Sub-Decree No. 148.ANK.BK* dated 29 December 2005 on the *Establishment and Management of Special Economic Zones*;
- (c) for China, the authorities responsible for granting approval of foreign investment for sectors requiring governmental approval under the relevant laws and regulations including *Foreign Investment Law of the People’s Republic of China* (Adopted on 15 March 2019), and any amendments thereto;
- (d) for Indonesia, a competent authority including a foreign investment authority designated under the *Law Number 25 Year 2007 on Investment* and other relevant laws, regulations, and policies, as may be amended;
- (e) for Korea, the competent authorities as listed in the *Foreign Investment Promotion Act (Law No. 16479, 20 August 2019)*, the *Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 29172, 18 September 2018)*, the *Regulations on Foreign Investment (Notice of the Ministry of Trade, Industry, and Energy, No. 2018-137, 6 July 2018)*, the *Consolidated Public Notice for Foreign Investment (No. 2018-191, 27 February 2018, Ministry of Trade, Industry, and Energy)*, and the *Act on Prevention of Divulgence and Protection of Industrial Technology (Law No. 16476, 20 August 2019)*, and any amendments thereto;
- (f) for Lao PDR, the Ministry of Planning and Investment under the *Law on Investment Promotion (Law No. 14, dated 17 November 2016)*, and any amendments thereto, and the Ministry of Industry and Commerce under the *Law on Enterprise (Law No. 46, dated 26 December 2013)*, and any amendments thereto;

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- (g) for Malaysia, the Ministers performing functions and exercising powers under, but not limited to, the *Promotion of Investments Act 1986 [Act 327]*, the *Income Tax Act 1967 [Act 53]*, the *Petroleum Development Act 1974 [Act 144]*, and the *Industrial Co-ordination Act 1975 [Act 156]*, and any amendments thereto;
- (h) for Myanmar, the Myanmar Investment Commission and Region/State Investment Committees under the *Myanmar Investment Law*, the *Pyidaungsu Hluttaw Law No. 40/2016* dated 18 October 2016 and the *Myanmar Investment Rules, Notification No. 35/2017* of the Ministry of Planning and Finance of the Government of the Republic of the Union of Myanmar dated 30 March 2017, and committees under the *Myanmar Special Economic Zone Law*, the *Pyidaungsu Hluttaw Law No. 1/2014* dated 23 January 2014 and the *Industrial Zone Law*, the *Pyidaungsu Hluttaw Law No.7/2020* dated 26 May 2020, and any amendments thereto;
- (i) for New Zealand, the decision-making Ministers authorised under New Zealand’s overseas investment framework including the *Overseas Investment Act 2005* and the *Fisheries Act 1996*, and any amendments thereto;
- (j) for Thailand, the competent authorities responsible under its laws and regulations, as may be amended, for the sectors or activities where foreign investment is proposed or approved; and
- (k) for Viet Nam, the competent authority as defined in the *Law on Investment* and other relevant laws and regulations such as *Law on Securities*, *Law on Credit Institutions*, *Law on Insurance Business*, and *Law on Oil and Gas*, as may be amended.

If a Party establishes a competent authority, including a foreign investment authority after the date of entry into force of this Agreement, this Article shall also apply to such competent authority.

<sup>4</sup> For the purposes of this Article, “a decision by a competent authority, including a foreign investment authority” means:

- (a) for Japan, a decision under the *Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949)*, as may be amended, regarding an investment that requires prior notification under that law, including an order to alter the content of investment or discontinue the investment process; and
- (b) for the Philippines, the decision by the Securities and Exchange Commission under *Republic Act No. 11232*, otherwise known as the *Revised Corporation Code of the Philippines*; the National Security Council under *Executive Order No. 292*, otherwise known as the *Administrative Code of 1987*, as amended; the Board of Investments under *Executive Order No. 226*, otherwise known as the *Omnibus Investments Code of 1987*, as amended; and the relevant agencies of the Philippine Government vested with jurisdiction and mandate to regulate specific sectors or activities under *Republic Act No. 7042*, otherwise known as the *Foreign Investments Act of 1991*, as amended; and any amendments thereto.

investment proposal, and the enforcement of any conditions or requirements that an approval or admission is subject to, shall not be subject to the dispute settlement provisions under Chapter 19 (Dispute Settlement).

#### **Article 17.12: 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 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Standards, Technical Regulations, and Conformity Assessment Procedures), Chapter 10 (Investment), and Chapter 12 (Electronic Commerce), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.<sup>5</sup>
2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Temporary Movement of Natural Persons), Chapter 10 (Investment), and Chapter 12 (Electronic Commerce), Article XIV of GATS including its footnotes is incorporated into and made part of this Agreement, *mutatis mutandis*.<sup>6</sup>

#### **Article 17.13: Security Exceptions**

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

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<sup>5</sup> The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

<sup>6</sup> The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

- (i) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (ii) 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;
  - (iii) taken so as to protect critical public infrastructures<sup>7</sup> including communications, power, and water infrastructures;
  - (iv) taken in time of national emergency or war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the *United Nations Charter* for the maintenance of international peace and security.

#### **Article 17.14: Taxation Measures**

1. For the purposes of this Article:
  - (a) **tax convention** means an agreement for the avoidance of double taxation or other international taxation agreement or arrangement; and
  - (b) **taxes** and **taxation measures** do not include any import or customs duties.
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:
  - (a) to the extent that the WTO Agreement grants rights or imposes obligations with respect to such taxation measures;

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<sup>7</sup> For greater certainty, this includes critical public infrastructures whether publicly or privately owned.



- (b) to the extent that Article 10.9 (Transfers) grants rights or imposes obligations with respect to such taxation measures.
- 4. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency relating to taxation measures between this Agreement and any such tax convention, the latter shall prevail.
- 5. Nothing in this Agreement shall oblige a Party to extend to any other Party the benefit of any treatment, preference, or privilege arising from any existing or future tax convention by which the Party is bound.

#### **Article 17.15: 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, adopt or maintain restrictive import measures in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions;
  - (b) in the case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken commitments, including on payments or transfers for transactions related to such commitments.
- 2. In the case of investments, where a Party is in serious balance of payments and external financial difficulties or under threat thereof, or where, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, it may adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 10.1 (Definitions).
- 3. Restrictions adopted or maintained under subparagraph 1(b) or paragraph 2 shall:
  - (a) be consistent with the IMF Articles of Agreement as may be amended;
  - (b) avoid unnecessary damage to the commercial, economic, and financial interests of any other Party;

- (c) not exceed those necessary to deal with the circumstances described in subparagraph 1(b) or paragraph 2;
  - (d) be temporary and be phased out progressively as the situation specified in subparagraph 1(b) or paragraph 2 improves; and
  - (e) be applied on a non-discriminatory basis such that no Party is treated less favourably than any other Party or a non-Party.
4. With respect to trade in services and investment:
- (a) it is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition;
  - (b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular sector.
5. Any restriction adopted or maintained by a Party under paragraph 1 or 2, or any change thereto, shall be notified promptly to the other Parties.
6. A Party adopting or maintaining any restriction under paragraph 1 or 2 shall:
- (a) in the case of investments, respond to any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement;
  - (b) in the case of trade in services, promptly commence consultations with any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not taking place at the WTO.

## **Article 17.16: 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 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 19 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 19.11 (Establishment and Reconvening 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.