CHAPTER 21

EXCEPTIONS

ARTICLE 21.1 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), Chapter 7 (Technical Barriers to Trade), and Chapter 10 (Digital Trade), Article XX of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 9 (Trade in Services) and Chapter 10 (Digital Trade), Article XIV of the GATS, including its footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

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.

ARTICLE 21.2 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; or

¹ "Creative arts" include ngā toi Māori (Māori arts), the performing arts – including theatre, dance, and music, haka (traditional Māori posture dance), waiata (song or chant) – visual arts and craft such as painting, sculpture, whakairo (carving), raranga (weaving), and tā moko (traditional Māori tattoo), literature, film and video, language arts, creative online 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.

- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (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 as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (iv) taken in time of 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 21.3 Taxation

1. For the purposes of this Article:

designated authorities means:

- (a) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;
- (b) for the United Arab Emirates, the Ministry of Finance or the authority assigned by the Ministry of Finance;

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

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 - Definition of Customs Duty); 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 either 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 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 designated authorities of the Parties. The designated authorities shall determine the existence and the extent of such inconsistency. A determination made under this paragraph by the designated authorities shall be binding.

5. For greater certainty, advantages accorded by a Party pursuant to a tax convention are not subject to any most-favoured nation obligation.

6. This Agreement shall apply to taxation measures only to the same extent as does Article III of the GATT 1994.

7. For greater certainty, nothing in this Article shall prevent the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition of 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 other Party.

ARTICLE 21.4 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, 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 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 20 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 20.8

(Establishment of a Panel) may be requested by the other Party to determine only whether any measure (referred to in paragraph 1) is inconsistent with its rights under this Agreement.

ARTICLE 21.5 Restrictions 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 Understanding on the Balance-of-Payments Provisions of the GATT 1994 in Annex 1A to the WTO Agreement, adopt restrictive import measures;
- (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. Any restrictions adopted or maintained under paragraph 1(b) shall:
 - (a) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party;
 - (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 the other Party;
 - (d) not exceed those necessary to deal with the circumstances described in paragraph 1(b); and
 - (e) be temporary and be phased out progressively as the situations specified in paragraph 1(b) improve.
- 3. A Party adopting or maintaining any restrictions under paragraph 1 shall:
 - (a) promptly notify, in writing, the other Party of the measures, including any changes therein; and
 - (b) upon the request of the other Party, promptly commence consultations with the other Party in order to review the measures adopted or maintained by it.