CHAPTER 15

GENERAL PROVISIONS AND EXCEPTIONS

Article 1
General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods) Chapter 3 (Rules of Origin) Chapter 4 (Customs Procedures), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures), Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis.*

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Movement of Natural Persons) and Chapter 11 (Investment), Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, *mutatis mutandis.*

3. For the purposes of this Agreement, the Parties understand that measures referred to in Article XX(f) of GATT 1994 include measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.[1]

4. For the purposes of Chapter 8 (Trade in Services) and Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would

[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.

第15章

总则和例外

第1条 一般例外

1. 就第2章（货物贸易）第3章（原产地规则）第4章（海关程序）、第5章（卫生与植物卫生措施）和第6章（标准、技术法规和合格评定程序）而言，1994年关税及贸易总协定第XX条应并入本协议，并构成本协议的一部分，相应修改。

2. 就第8章（服务贸易）、第9章（自然人的流动）和第11章（投资）而言，包括其脚注在内的一般贸易服务协定第XIV条应并入本协议，并构成本协议的一部分，相应修改。

3. 就本协议而言，缔约方理解，1994年关税及贸易总协定第XX(f)条所指的措施包括保护国家宝藏或具有历史或考古价值的特定地点的措施，或支持具有国家价值的创意艺术的措施。[1]

4. 对于第8章（服务贸易）和第11章（投资）的目的，在要求此类措施不得以构成对类似条件下缔约方之间任意或不合理的歧视手段，或对服务贸易或投资的隐蔽限制的方式实施的前提下，

[1] "创意艺术"包括表演艺术——包括戏剧、舞蹈和音乐——视觉艺术和手工艺、文学、电影和视频、语言艺术、创意在线内容、土著传统实践和当代文化表达，以及数字互动媒体和混合艺术作品，包括那些使用新技术以超越离散艺术形式划分的作品。该术语涵盖涉及艺术展示、执行和解释的活动，以及这些艺术形式和活动的学习和技术发展。

constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.[2]

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 8 (Trade in Services) and Chapter 11 (Investment) if requested by a Party affected by the measures referred to in Paragraph 4.

Article 2
Security Exceptions

1. 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:

      (i) relating to fissionable materials or the materials from which they are derived;

[2] "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.

不得解释为阻止一方采用或执行保护国家宝藏或具有历史或考古价值的特定地点的必要措施，或支持具有国家价值的创意艺术的必要措施。[2]

5. 一方应当进行磋商，以期就为维持第8章（服务贸易）和第11章（投资）下缔约方所承担的承诺的整体平衡而必要的调整达成协议，如果受第4段所述措施影响的任何一方提出请求。

第2条 安全例外

1. 本协议的任何内容均不得作如下解释：

   (a) 要求任何方提供其认为与其基本安全利益相悖的任何信息；(b) 阻止任何方采取其认为为保护其基本安全利益所必需的任何行动：(i) 与裂变材料或其来源材料相关；

[2] "创意艺术"包括表演艺术——包括戏剧、舞蹈和音乐——视觉艺术和手工艺、文学、电影和视频、语言艺术、创意在线内容、土著传统实践和当代文化表达，以及数字互动媒体和混合艺术作品，包括那些使用新技术以超越离散艺术形式划分的作品。该术语涵盖涉及艺术展示、执行和解释的活动，以及这些艺术形式和活动的学习和技术发展。

(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[3] including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such 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.

2. The FTA Joint Committee shall be informed to the fullest extent possible of measures taken under Paragraph 1(b) and (c) and of their termination.

Article 3
Taxation Measures

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

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

[3] For clarity, this includes critical public infrastructures whether publicly or privately owned.

(ii) 与武器交易、弹药和战争工具的交易以及为向军事设施供应用途而直接或间接进行的其他商品和材料的交易相关，或与为向军事设施供应用途而直接或间接提供的劳务相关；

(iii) 采取保护关键公共基础设施[3]，包括通信、电力和水力基础设施，免受旨在使这些基础设施瘫痪或退化的蓄意企图；

(iv) 在国家紧急状态或战争或其他国际关系紧急情况下采取；或

(c) 防止任何一方采取任何行动，以履行其根据联合国宪章维护国际和平与安全的义务。

2. 自贸区联合委员会应尽可能充分地被告知根据第1段(b)和(c)采取的措施及其终止。

Article 3 税收措施

1. 除本文规定外，本协议中的任何内容均不适用于税收措施。

2. 本协议仅就税收措施授予权利或施加义务，其中：

(a) 相应的权利和义务也根据世界贸易组织协定授予或施加；

[3] 为明确起见，这包括无论公营或私营的关键公共基础设施。

(b) they are granted or imposed under Article 8 (Transfers) of Chapter 11 (Investment); or

(c) they are granted or imposed under Article 9 (Expropriation and Compensation) of Chapter 11 (Investment).

3. Where Paragraph 2(b) or (c) apply, Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall also apply in respect of taxation measures.

4. If there is a dispute described in Article 18.1 (Scope and Definitions) of Chapter 11 (Investment) that may relate to a taxation measure, the relevant Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established pursuant to Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall accord serious consideration to a joint decision of the relevant Parties as to whether the measure in question is a taxation measure. For this purpose, Article 25.7 (Conduct of the Arbitration) of Chapter 11 (Investment) shall apply *mutatis mutandis*.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention relating to the avoidance of double taxation in force between any of the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the relevant Parties about whether an inconsistency relates to a taxation measure shall be done by the competent tax authorities, as stipulated under the domestic laws and regulations of the relevant Parties. The request for such consultations shall be addressed through the contact points designated in accordance with Article 2 (Communications) of Chapter 16 (Institutional Provisions).

(b) 它们根据第11章（投资）的第8条（转移）授予或施加；或 (c) 它们根据第11章（投资）的第9条（征收与补偿）授予或施加。

3. 当适用第2(b)段或第2(c)段时，第11章（投资）第B节（缔约方与投资者之间的投资争端）关于税收措施的规定亦应适用。

4. 如果第11章（投资）第18.1条（范围和定义）中描述的争端可能与税收措施有关，相关缔约方，包括其税务管理机构代表，应进行磋商。根据第11章（投资）第B节（缔约方与投资者之间的投资争端）设立的任何仲裁庭均应认真考虑相关缔约方就所涉措施是否为税收措施所作出的共同决定。为此，第11章（投资）第25.7条（仲裁程序）应作相应调整适用。

5. 本协议任何条款均不影响任何一方在任何缔约方之间生效的关于避免双重征税的税收协定项下的权利和义务。在本协议与任何此类税收协定之间就税收措施存在任何不一致的情况下，后者应优先适用。相关各方之间关于是否存在与税收措施相关的不一致进行的磋商应由主管税务机关根据相关各方的国内法律和法规的规定进行。此类磋商的请求应通过根据第16章（机构条款）第2条（通讯）指定的联系点提出。

6. 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 agreement relating to the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

7. For the purposes of this Article, taxation measures do not include any import or customs duties.

Article 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 *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 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 specific commitments, including on payments or transfers for transactions related to such commitments;

(c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 2(a) (Definitions) of Chapter 11 (Investment)

2. Restrictions adopted or maintained under Paragraph 1(b) or (c) shall:

(a) be consistent with the IMF Articles of Agreement;

6. 本协议任何条款均不得迫使一方将其从任何现有的或未来的关于避免双重征税的协议或任何其他国际协议或安排（该方受其约束）项下的待遇、优惠或特权扩展给另一方。

7. 根据本条文的宗旨，税收措施不包括任何进口或关税。

第4条 维护国际收支的措施

1. 当一方面临严重的国际收支和外部金融困难或面临此类威胁时，它可以:

(a) 在货物贸易的情况下，根据1994年关税及贸易总协定（GATT 1994）以及作为世界贸易组织协定附件1A的1994年关税及贸易总协定平衡支付条款谅解，采取限制性进口措施；(b) 在服务贸易的情况下，采取或维持其已作出具体承诺的服务贸易限制，包括与该等承诺相关的支付或转移；(c) 在投资的情况下，采取或维持与第11章（投资）第2(a)条（定义）中定义的受涵盖投资相关的支付或转移限制

2. 根据第1(b)款或(c)款采取或维持的限制应当:

(a) 与国际货币基金组织协定条款一致;

(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 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 such that no Party is treated less favourably than any other Party or non-Party.

3. 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 their economic or development programmes. 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 notified promptly to the other Parties.

(b) 避免对任何其他方的商业、经济和金融利益造成不必要的损害；(c) 不得超过处理第1段所述情况所必需的程度；(d) 应为临时性的，并随着第1段所述情况改善而逐步淘汰；以及 (e) 应在非歧视的基础上适用，以确保任何一方或非一方都不会受到比其他任何一方或非一方更不利的待遇。

3. 关于服务贸易和投资，

(a) 认识到，在经济发达国家或经济转型国家，国际收支面临特殊压力时，可能有必要采取限制措施，以确保，包括维持足以实施其经济发展或经济转型计划的金融储备水平；(b) 在确定此类限制措施的影响时，一方可以优先考虑对其经济或发展计划更为必要的经济部门。但是，不得以保护特定部门为目的而采取或维持此类限制措施。

4. 一方根据第1段所采纳或维持的任何限制，或对其进行的任何变更，应立即通知其他缔约方。

5. A Party adopting or maintaining any restrictions under Paragraph 1 shall:

(a) in the case of investment, 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, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with any interested Party.

Article 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 fulfillment 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 17 (Consultations and Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) of Chapter 17 (Consultations and Dispute Settlement) may be requested to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.

5. 一方根据第1段采纳或维持任何限制应:

(a) 在投资方面，如果此类磋商未在本协议之外进行，应回应任何请求磋商的另一方，有关其采行的限制；(b) 在服务贸易方面，如果其采行的限制相关的磋商未在世贸组织进行，一方如被要求，应立即与任何有关方开始磋商。

第5条 怀唐伊条约

1. 但需满足此类措施未用作对其他缔约方人员实行任意或不正当歧视的手段，或作为对货物和服务贸易的隐蔽限制，本协议的任何规定均不得妨碍新西兰采行其认为必要的措施，以向毛利人提供更优惠的待遇，有关本协议涵盖的事项，包括履行其根据怀唐伊条约的义务。

2. 缔约方同意，怀唐伊条约的解释，包括其下产生的权利和义务的性质，不应受本协议的争端解决条款的约束。第17章（磋商和争端解决）除适用于本条外，应适用于本条。根据第17章（磋商和争端解决）第11条（仲裁庭的设立和重新召集）设立的仲裁庭，可被要求仅确定第1段所述的任何措施是否与本协议下的其权利不一致。