

## CHAPTER EIGHT

### PAYMENTS AND CAPITAL MOVEMENTS

#### ARTICLE 8.1: CURRENT PAYMENTS

The Parties undertake to impose no restrictions on, and to allow, all payments and transfers on the current account of balance of payments between residents of the Parties to be made in freely convertible currency, in accordance with the *Articles of Agreement of the International Monetary Fund*.

#### ARTICLE 8.2: CAPITAL MOVEMENTS

1. With regard to transactions on the capital and financial account of balance of payments, the Parties undertake to impose no restrictions on the free movement of capital relating to direct investments made in accordance with the laws of the host country, to investments and other transactions liberalised in accordance with Chapter Seven (Trade in Services, Establishment and Electronic Commerce) and to the liquidation and repatriation of such invested capital and of any profit generated therefrom.

2. Without prejudice to other provisions in this Agreement, the Parties shall ensure, with regard to transactions not covered by paragraph 1 on the capital and financial account of balance of payments, in accordance with the laws of the host country, the free movement by investors of the other Party of capital relating to, *inter alia*:

- (a) credits related to commercial transactions including the provision of services in which a resident of a Party is participating;
- (b) financial loans and credits; or
- (c) capital participation in a juridical person with no intention of establishing or maintaining lasting economic links.

3. Without prejudice to other provisions in this Agreement, the Parties shall not introduce any new restrictions on the movement of capital between residents of the Parties and shall not make the existing arrangements more restrictive.

4. The Parties may hold consultations with a view to further facilitating the movement of capital between them in order to promote the objectives of this Agreement.

#### ARTICLE 8.3: EXCEPTIONS

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like

conditions prevail, or a disguised restriction on capital movements, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security and public morals or to maintain public order; or
- (b) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of criminal or penal offenses, deceptive and fraudulent practices or to deal with the effects of a default on contracts (bankruptcy, insolvency and protection of the right of creditors);
  - (ii) measures adopted or maintained to ensure the integrity and stability of a Party's financial system;
  - (iii) issuing, trading or dealing in securities, options, futures or other derivatives;
  - (iv) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
  - (v) ensuring compliance with orders or judgements in juridical or administrative proceedings.

#### ARTICLE 8.4: SAFEGUARD MEASURES

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy<sup>1</sup> in Korea or one or more Member States of the European Union, safeguard measures with regard to capital movements that are strictly necessary<sup>2</sup> may be taken by the Parties concerned<sup>3</sup> for a period not exceeding six months.<sup>4</sup>

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<sup>1</sup> "serious difficulties for the operation of monetary policy or exchange rate policy" shall include, but not be limited to, serious balance of payments or external financial difficulties, and the safeguard measures under this Article shall not apply with respect to foreign direct investments.

<sup>2</sup> In particular, safeguard measures provided for in this Article should be applied in such a way that they:

- (a) are not confiscatory;
- (b) do not constitute a dual or multiple exchange rate practice;
- (c) do not otherwise interfere with investors' ability to earn a market rate of return in the territory of the Party who took safeguard measures on any restricted assets;
- (d) avoid unnecessary damage to the commercial, economic or financial interests of the other Party;
- (e) are temporary and phased out progressively as the situation calling for imposition of such measures improves; and
- (f) are promptly published by the competent authorities responsible for foreign exchange policy.

<sup>3</sup> The European Union or Member States of the European Union or Korea.

<sup>4</sup> As long as the circumstances present at the time of initial adoption of safeguard measures or any equivalent thereto still exist, the application of safeguard measures can be extended once for another six months by the Party concerned. However, if extremely exceptional circumstances arise such that a Party seeks further extension of the safeguard measures, it will co-ordinate in advance with the other Party concerning the implementation of any proposed extension.

2. The Trade Committee shall be informed forthwith of the adoption of any safeguard measure and, as soon as possible, of a time schedule for its removal.