

2. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable recipients to request cessation free of charge and at any time.
3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

ARTICLE 8.80

Cooperation on electronic commerce

1. The Parties shall, where appropriate, cooperate and participate actively in multilateral fora to promote the development of electronic commerce.
2. The Parties agree to maintain a dialogue on regulatory matters relating to electronic commerce with a view to sharing information and experience, as appropriate, including on related laws, regulations and their implementation, and best practices with respect to electronic commerce, in relation to, *inter alia*:
 - (a) consumer protection;
 - (b) cybersecurity;
 - (c) combatting unsolicited commercial electronic messages;
 - (d) the recognition of certificates of electronic signatures issued to the public;
 - (e) challenges for small and medium-sized enterprises in the use of electronic commerce;
 - (f) the facilitation of cross-border certification services;
 - (g) intellectual property; and
 - (h) electronic government.

ARTICLE 8.81

Free flow of data

The Parties shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement.

CHAPTER 9

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES

ARTICLE 9.1

Current account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency ⁽¹⁾, and in accordance with the Articles of Agreement of the International Monetary Fund, as applicable, any payments and transfers with regard to transactions on the current account of the balance of payments which fall within the scope of this Agreement.

⁽¹⁾ For the purposes of this Chapter, 'freely convertible currency' means a currency that can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions. For greater certainty, currencies that are widely traded in international foreign exchange markets and widely used in international transactions include freely usable currencies as designated by the IMF in accordance with the Articles of Agreement of the International Monetary Fund.

ARTICLE 9.2

Capital movements

1. Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purpose of liberalisation of investments and other transactions as provided for in Chapter 8.
2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote trade and investment.

ARTICLE 9.3

Application of laws and regulations relating to capital movements, payments or transfers

1. Articles 9.1 and 9.2 shall not be construed as preventing a Party from applying its laws and regulations relating to:
 - (a) bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) issuing, trading or dealing in securities, or futures, options and other derivatives;
 - (c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;
 - (d) criminal or penal offences, or deceptive or fraudulent practices;
 - (e) ensuring compliance with orders or judgments in adjudicatory proceedings; or
 - (f) social security, public retirement or compulsory savings schemes.
2. The laws and regulations referred to in paragraph 1 shall not be applied in an inequitable, arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

ARTICLE 9.4

Temporary safeguard measures

1. In exceptional circumstances of serious difficulties for the operation of the European Union's economic and monetary union, or threat thereof, the European Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months. Those measures shall be limited to the extent that is strictly necessary and shall not constitute a means of arbitrary or unjustified discrimination between Japan and a third country in like situations.
2. A Party may adopt or maintain restrictive measures with regard to capital movements, payments or transfers: ⁽¹⁾
 - (a) in the event of serious balance of payments or external financial difficulties, or threat thereof; ⁽²⁾ or
 - (b) if, in exceptional circumstances, capital movements, payments or transfers cause or threaten to cause serious macroeconomic difficulties related to monetary and exchange rate policies.

⁽¹⁾ In the case of the European Union, such measures may be taken by a Member State of the European Union in situations other than those referred to in paragraph 1 which affect the economy of that Member State.

⁽²⁾ The Parties acknowledge that serious balance of payments or external financial difficulties, or threat thereof, as referred to in subparagraph 2(a) may be caused among other factors by serious macroeconomic difficulties related to monetary and exchange rate policies, or threat thereof, as referred to in subparagraph 2(b).

3. The measures referred to in paragraph 2 shall:
- (a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;
 - (b) not exceed those necessary to deal with the situations described in paragraph 2;
 - (c) be temporary and be phased out progressively as the situation described in paragraph 2 improves;
 - (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and
 - (e) be non-discriminatory compared to third countries in like situations.
4. In the case of trade in goods, each Party may adopt restrictive measures pursuant to Article 2.20 for balance-of-payments purposes.
5. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. Those measures shall be in accordance with the conditions set out in Article XII of GATS.
6. A Party maintaining or having adopted measures referred to in paragraphs 1 to 3 shall promptly notify the other Party of them.
7. If restrictions are adopted or maintained pursuant to this Article, the Parties shall promptly hold consultations in the Committee on Trade in Services, Investment Liberalisation and Electronic Commerce established pursuant to Article 22.3, unless consultations are held in other fora. The consultations shall assess the balance of payments or external financial difficulties or other macroeconomic difficulties that led to the respective measures, taking into account, *inter alia*, such factors as:
- (a) the nature and extent of the difficulties;
 - (b) the external economic and trading environment; and
 - (c) alternative corrective measures which may be available.
8. The consultations pursuant to paragraph 7 shall address the compliance of any restrictive measures with paragraphs 1 to 3. Those consultations shall be based on all available relevant findings of statistical or factual nature presented by the IMF, and the conclusions shall take into account the assessment by the IMF of the balance of payments and the external financial situation or other macroeconomic difficulties of the Party concerned.

CHAPTER 10

GOVERNMENT PROCUREMENT

ARTICLE 10.1

Incorporation of the GPA

The GPA is incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 10.2

Additional scope of application

The rules and procedures provided for in the provisions of the GPA specified in Part 1 of Annex 10 apply, *mutatis mutandis*, to procurement covered by Part 2 of Annex 10.

ARTICLE 10.3

Additional rules

Each Party shall apply Articles 10.4 to 10.12 to both the procurement covered by its annexes to Appendix I to the GPA and the procurement covered by Part 2 of Annex 10.