

- (f) any other issues relevant for the development of electronic commerce.

2. The dialogue can include exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

SECTION G

Exceptions

Article 7.50

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 establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order ⁽⁴³⁾;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) 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 deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

⁽⁴³⁾ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (iii) safety;

- (f) inconsistent with Articles 7.6 and 7.12, provided that the difference in treatment is aimed at ensuring the equitable or effective ⁽⁴⁴⁾ imposition or collection of direct taxes in respect of economic activities, investors or service suppliers of the other Party.

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:

⁽⁴⁴⁾ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (a) apply to non-resident investors and service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (d) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (e) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in this paragraph and this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

(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 offences, 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⁽⁴⁵⁾ in Korea or one or more Member States of the European Union, safeguard measures with regard to capital movements that are strictly necessary⁽⁴⁶⁾ may be taken by the Parties concerned⁽⁴⁷⁾ for a period not exceeding six months⁽⁴⁸⁾.

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

CHAPTER NINE

GOVERNMENT PROCUREMENT

Article 9.1

General provisions

1. The Parties reaffirm their rights and obligations under the Agreement on Government Procurement contained in Annex 4 to the WTO Agreement (hereinafter referred to as the 'GPA 1994') and their interest in further expanding bilateral trading opportunities in each Party's government procurement market.

2. The Parties recognise their shared interest in promoting international liberalisation of government procurement markets in the context of the rules-based international trading system. The Parties shall continue to cooperate in the review under Article XXIV:7 of the GPA 1994 and in other appropriate international fora.

⁽⁴⁵⁾ '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.

⁽⁴⁶⁾ 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.

⁽⁴⁷⁾ The European Union or Member States of the European Union or Korea.

⁽⁴⁸⁾ 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 coordinate in advance with the other Party concerning the implementation of any proposed extension.