

(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.

3. Nothing in this Chapter shall be construed to derogate from either Party's rights or obligations under the GPA 1994, or from an agreement which replaces it.

4. For all procurement covered by this Chapter, the Parties shall apply the provisionally agreed revised GPA text ⁽⁴⁹⁾ (hereinafter referred to as the 'revised GPA'), with the exception of the following:

- (a) most favoured treatment for goods, services and suppliers of any other Party (subparagraph 1(b) and paragraph 2 of Article IV of the revised GPA);
- (b) special and differential treatment for developing countries (Article V of the revised GPA);
- (c) conditions for participation (paragraph 2 of Article VIII of the revised GPA) which shall be replaced by: 'shall not impose the condition that, in order for a supplier of a Party to participate in a procurement or be awarded a contract, the supplier has previously been awarded one or more contracts by a procuring entity of the other Party or that the supplier has prior work experience in the territory of that Party, except when prior work experience is essential to meet the requirements of the procurement';
- (d) institutions (Article XXI of the revised GPA); and
- (e) final provisions (Article XXII of the revised GPA).

5. For the purposes of the application of the revised GPA under paragraph 4:

- (a) 'Agreement' in the revised GPA means 'Chapter,' except that 'countries not Parties to this Agreement' means 'non-Parties' and 'Party to the Agreement' means 'Party';
- (b) 'other Parties' in the revised GPA means 'the other Party'; and
- (c) 'the Committee' in the revised GPA means 'the Working Group'.

Article 9.2

Scope and coverage

1. The procurement covered by this Chapter shall be all procurement covered by each Party's Annexes to the GPA 1994 and any note attached thereto, including their amendments or replacements.

2. For the purposes of this Agreement, build-operate-transfer contracts (hereinafter referred to as 'BOT contracts') and public works concessions, as defined in Annex 9, shall be subject to Annex 9.

Article 9.3

Government Procurement Working Group

The Working Group on Government Procurement established pursuant to Article 15.3.1 (Working Groups) shall meet, as mutually agreed or upon request of a Party, to:

- (a) consider issues regarding government procurement and BOT contracts or public works concessions that are referred to it by a Party;
- (b) exchange information relating to the government procurement and BOT contracts or public works concessions opportunities in each Party; and
- (c) discuss any other matters related to the operation of this Chapter.

CHAPTER TEN

INTELLECTUAL PROPERTY

SECTION A

General provisions

Article 10.1

Objectives

The objectives of this Chapter are to:

- (a) facilitate the production and commercialisation of innovative and creative products in the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

Article 10.2

Nature and scope of obligations

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are party including the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement (hereinafter referred to as the 'TRIPS Agreement'). The provisions of this Chapter shall complement and specify the rights and obligations between the Parties under the TRIPS Agreement.

2. For the purposes of this Agreement, intellectual property rights embody:

- (a) copyright, including copyright in computer programs and in databases, and related rights;
- (b) the rights related to patents;
- (c) trademarks;
- (d) service marks;

⁽⁴⁹⁾ Contained in WTO Document negs 268 (Job No[1].8274) dated 19 November 2007.