

- (c) exchanging information on domestic laws and regulations;
- (d) discussing any issues related to this Chapter, including deadlines for preparing, forwarding to the other Party and making public the list referred to in Article 79;
- (e) reporting the findings of the Sub-Committee to the Joint Committee; and
- (f) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

Chapter 8 Investment

Article 87 Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party; and
 - (b) investments of investors of the other Party in the Area of the former Party.
2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.
3. Nothing in this Chapter shall be construed to expand the scope of the specific commitments undertaken by either Party pursuant to Chapter 7.
4. Articles 89, 90 and 93 shall not apply to any measure that the Philippines adopts or maintains relating to investors of Japan and their investments in service sectors with respect to the establishment, acquisition or expansion of investments.

Article 88 Definitions

For the purposes of this Chapter:

- (a) the term "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS;

- (b) the term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party, including:
- (i) a juridical person;
 - (ii) shares, stocks or other forms of equity participation in a juridical person, including rights derived therefrom;
 - (iii) bonds, debentures, and loans and other forms of debt, including rights derived therefrom;
 - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
 - (v) claims to money and claims to any performance under contract having a financial value;
 - (vi) intellectual property rights, including copyrights, patent rights, rights relating to trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
 - (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations, and permits; and
 - (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

investments also include profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments. A change in the form in which assets are invested does not affect their character as investments;

- (c) the term "investor of a Party" means:
- (i) a natural person who is a national of a Party and who is not a national of the other Party; or

- (ii) juridical person of a Party,
that seeks to make, is making, or has made investments in the Area of the other Party. A branch of a juridical person of a non-Party, which is located in the Area of a Party, shall not be deemed as an investor of that Party;
- (d) a juridical person is:
 - (i) "owned" by persons if more than fifty (50) percent of the equity interest in it is owned by such persons; or
 - (ii) "controlled" by persons if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (e) the term "a juridical person of a Party" means a juridical person duly constituted or otherwise organized under the law of a Party, with its seat of control or substantial business activities in the Area of that Party; and
- (f) the term "transfers" means transfers and international payments.

Article 89 National Treatment

Each Party shall accord to investors of the other Party and to their investments treatment no less favorable than that it accords, in like circumstances, to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments (hereinafter referred to in this Chapter as "investment activities").

Article 90 Most-Favored-Nation Treatment

Each Party shall accord to investors of the other Party and to their investments treatment no less favorable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities.

Article 91

General Treatment

Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Note: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not *ipso facto* establish that there has been a breach of this Article.

Article 92

Access to the Courts of Justice

Each Party shall in its Area accord to investors of the other Party treatment no less favorable than the treatment which it accords, in like circumstances, to its own investors or investors of a non-Party with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

Article 93

Prohibition of Performance Requirements

1. Neither Party shall impose or enforce, as a condition for investment activities in its Area of an investor of the other Party, any of the following requirements:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from persons in its Area;

- (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments related to such investment activities;
- (e) to restrict sales of goods or services in its Area that investments related to such investment activities produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings;
- (f) to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;
- (g) to hire a given level of its nationals;
- (h) to transfer technology, a production process or other proprietary knowledge to a person in its Area, except when the requirement:
 - (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or
 - (ii) concerns the transfer of intellectual property rights which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to in this Chapter as "the TRIPS Agreement");
- (i) to locate the headquarters of that investor for a specific region or the world market in its Area;
- (j) to achieve a given level or value of research and development in its Area; or
- (k) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or world market, exclusively from its Area.

2. The provision of paragraph 1 above does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs (g) through (k) of paragraph 1 above.

Article 94 Reservations and Exceptions

1. Articles 89, 90 and 93 shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at the central government level, as set out in its Schedule to Part 1 of Annex 7;
- (b) any existing non-conforming measure that is maintained by:
 - (i) a prefecture in the case of Japan or a province in the case of the Philippines, for one (1) year after the date of entry into force of this Agreement, and thereafter as to be set out by a Party in its Schedule to Part 1 of Annex 7 in accordance with paragraph 2 below; or
 - (ii) a local government other than prefectures and provinces referred to in subparagraph (i) above;
- (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b) above; or
- (d) an amendment to any non-conforming measure referred to in subparagraphs (a) and (b) above, provided that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 89, 90 and 93.

2. Each Party shall set out in its Schedule to Part 1 of Annex 7, within one (1) year of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a prefecture or a province referred to in subparagraph 1(b)(i) above and shall notify thereof the other Party by a diplomatic note.

3. Articles 89, 90 and 93 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Part 2 of Annex 7, subject to the conditions set out therein.

4. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by Part 2 of Annex 7, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

5. In cases where a Party makes an amendment referred to in subparagraph 1(d) above, or where a Party adopts any new or more restrictive measure with respect to sectors, subsectors or activities as set out in its Schedule to Part 2 of Annex 7 after the date of the entry into force of this Agreement, that Party shall, prior to the implementation of the amendment or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter:

(a) notify the other Party of the following elements:

- (i) sector and subsector or activity;
- (ii) type of reservation;
- (iii) level of Government;
- (iv) measures; and
- (v) description; and

(b) hold, upon request by the other Party, consultations in good faith with that other Party with a view to achieving mutual satisfaction.

6. Each Party shall endeavor, where appropriate, to reduce or eliminate the reservation set out in its Schedules to Parts 1 and 2 of Annex 7 respectively.

7. Articles 89, 90 and 93 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

8. Articles 89 and 90 shall not apply to any measure covered by an exception to the obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

9. Nothing in this Article shall be construed so as to derogate from the obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement.

Article 95 Expropriation and Compensation

1. Neither Party shall expropriate or nationalize investments in its Area of investors of the other Party or take any measure equivalent to expropriation or nationalization (hereinafter referred to in this Chapter as "expropriation") except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due process of law; and (d) upon payment of prompt, adequate and effective compensation.

2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred without public announcement, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of the expropriation, into the currency of the Party of the investors concerned and freely usable currencies defined in the Articles of Agreement of the International Monetary Fund.

4. The investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investor's case and the amount of compensation in accordance with the principles set out in this Article.

Article 96
Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favorable than the most favorable treatment which it accords to any investors.

2. Any payments made pursuant to paragraph 1 above shall be effectively realizable, freely convertible and freely transferable.

Article 97
Transfers

1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely into and out of its Area without delay. Such transfers shall include:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments;
- (c) proceeds from the total or partial sale or liquidation of investments;
- (d) payments made under a contract including loan payments in connection with investments;
- (e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party; and
- (f) payments made in accordance with Articles 95 and 96.

2. Neither Party shall prevent transfers into and out of its Area from being made without delay in freely usable currencies at the market rate of exchange prevailing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or prevent a transfer into and out of its Area through the equitable, non-discriminatory and good-faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) criminal or penal offences;
- (d) registration, reportorial and prior approval requirement concerning transfers of currency or other monetary instruments; or

Note: Prior approval requirement applies only to short-term foreign currency loans with the original maturity of up to one (1) year.

- (e) ensuring compliance with orders or judgments in adjudicatory proceedings.

Article 98 Subrogation

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, arising from or pertaining to an investment of that investor within the Area of the other Party, that other Party shall:

- (a) recognize the assignment, to the former Party or its designated agency, of any right or claim of such investor that formed the basis of such payment; and
- (b) recognize the right of the former Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.

2. Articles 95, 96 and 97 shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency first mentioned in paragraph 1 above by virtue of such assignment of right or claim, and the transfer of such payment.

Article 99
General and Security Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investments of investors of the other Party in the Area of a Party, nothing in this Chapter other than Article 96 shall be construed to prevent a Party from adopting or enforcing measures:

- (a) necessary to protect human, animal or plant life or health;
- (b) necessary to protect public morals or to maintain public order;

Note: 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.

- (c) which it considers necessary for protection of its essential security interests;
 - (i) taken in time of war, or armed conflict, or other emergency in that Party or in international relations; or
 - (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons; or
- (d) in pursuance of its obligations under United Nations Charter for the maintenance of international peace and security.

2. In cases where a Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Chapter other than Article 96, that Party shall, prior to the entry into force of the measure or as soon thereafter as possible, notify the other Party of the following elements:

- (a) sector and subsector or activity;
- (b) obligation or article in respect of the measure;
- (c) legal source of the measure;

- (d) succinct description of the measure; and
- (e) purpose of the measure.

3. Notwithstanding the provisions of Article 89, each Party may prescribe special formalities in connection with the establishment of investments by investors of the other Party in its Area such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.

Article 100 Temporary Safeguard Measures

1. A Party may adopt or maintain measures inconsistent with its obligations provided for in Article 89 relating to cross-border capital transactions and Article 97:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1 above:

- (a) shall be consistent with the Articles of Agreement of the International Monetary Fund so long as the Party taking the measures is a party to the said Articles of Agreement;
- (b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 above;
- (c) shall be temporary and shall be eliminated as soon as conditions permit; and
- (d) shall promptly be notified to the other Party.

3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 101
Prudential Measures

Notwithstanding any other provisions of this Chapter, a Party may adopt or maintain measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a person supplying financial services, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Article 102
Environmental Measures

Each Party recognizes that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion in its Area of investments by investors of the other Party.

Article 103
Investment and Labor

1. The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in paragraph 2 below as an encouragement for the establishment, acquisition, expansion or retention of an investment in its Area. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.

2. For purposes of this Article, "labor laws" means each Party's laws or regulations that are directly related to the following internationally recognized labor rights:

- (a) the right of association;
- (b) the right to organize and bargain collectively;

- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Article 104 Taxation Measures as Expropriation

1. Article 95 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 95.
2. Where paragraph 1 above applies, Articles 92 and 106 shall also apply in respect of taxation measures.

Note: A taxation measure which is applied in a non-discriminatory manner shall not be considered to constitute expropriation.

Article 105 Denial of Benefits

A Party may deny the benefits of this Chapter to an investor of the other Party that is a juridical person of such Party and to an investment of such investor if the juridical person is owned or controlled by investors of a non-Party and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or to its investments.

Article 106
Sub-Committee on Investment

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.

2. The functions of the Sub-Committee shall be:

- (a) reviewing the implementation and operation of this Chapter;
- (b) reviewing the reservations set out in the Schedules to Parts 1 and 2 of Annex 7 for the purposes of contributing to the reduction or elimination, where appropriate, of such reservation, and encouraging favorable conditions for investors of both Parties;
- (c) discussing any issues related to this Chapter, including issues related to taxation measures as expropriation;
- (d) reporting the findings of the Sub-Committee to the Joint Committee; and
- (e) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

Article 107
Further Negotiation

1. The Parties shall enter into negotiations after the date of entry into force of this Agreement to establish a mechanism for the settlement of an investment dispute between a Party and an investor of the other Party.

2. In the absence of the mechanism for the settlement of an investment dispute between a Party and an investor of the other Party, the resort to international conciliation or arbitration tribunal is subject to mutual consent of the parties to the dispute. This means that the disputing Party may, at its option or discretion, grant or deny its consent in respect of each particular investment dispute and that, in the absence of the express written consent of the disputing Party, an international conciliation or arbitration tribunal shall have no jurisdiction over the investment dispute involved.