

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 currency¹, 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.

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.

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 9.3

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. A Party may adopt or maintain restrictive measures with regard to capital movements, payments or transfers:

(a) in the event of serious balance of payments or external financial difficulties, or threat thereof;¹
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.

2. The measures referred to in paragraph 1 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 1;

(c) be temporary and be phased out progressively as the situation described in paragraph 1 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.

3. In the case of trade in goods, each Party may adopt restrictive measures pursuant to Article 2.20 for balance-of-payments purposes.

4. 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.

¹ The Parties acknowledge that serious balance of payments or external financial difficulties, or threat thereof, as referred to in subparagraph (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 (b).

5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify the other Party of them.

6. 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 23.3, 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.

7. The consultations pursuant to paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 and 2. Those consultations shall be based on all available relevant findings of statistical or factual nature 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.