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## CHAPTER 10

### CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS

#### ARTICLE 10.1

##### Current account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency and in accordance with the relevant provisions of the Articles of Agreement of the International Monetary Fund, adopted at New Hampshire on 22 July 1944, any payments or transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

#### ARTICLE 10.2

##### 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 investment liberalisation and other transactions as provided for in Chapter 9 (Investment liberalisation and trade in services).
2. The Parties shall consult each other to facilitate the movement of capital between them in order to promote trade and investment.

## ARTICLE 10.3

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

1. Nothing in Articles 10.1 and 10.2 shall be construed to prevent 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, futures, options or other financial instruments;
- (c) financial reporting or record keeping of capital movements, payments or transfers if necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences;
- (e) deceptive or fraudulent practices;
- (f) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (g) social security, public retirement or compulsory savings schemes.

2. A Party shall not apply its laws and regulations referred to in paragraph 1 in an arbitrary or discriminatory manner, or in a manner that would otherwise constitute a disguised restriction on capital movements, payments or transfers.

## ARTICLE 10.4

Temporary safeguard measures

1. In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union or threat thereof, the Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months.

2. A measure adopted or maintained pursuant to paragraph 1 shall not exceed what is necessary to deal with the circumstances described in paragraph 1 and shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination in respect of Australia as compared to a third country.

## ARTICLE 10.5

### Restrictions in case of balance of payments or external financial difficulties

1. Where a Party experiences serious balance of payments or external financial difficulties or the threat thereof,<sup>1</sup> it may adopt or maintain restrictions with regard to capital movements, payments or transfers.

2. A measure adopted or maintained pursuant to paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) not exceed what is necessary to deal with the circumstances described in paragraph 1;
- (c) be temporary and phased out progressively as the situation specified in paragraph 1 improves;
- (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

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<sup>1</sup> For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused by, among other factors, serious difficulties related to monetary or exchange rate policies, or threat thereof.

(e) be non-discriminatory so that the other Party is treated no less favourably than any third country.

3. With respect to trade in goods, each Party may adopt or maintain restrictive import measures in order to safeguard its balance of payments or external financial position in accordance with GATT 1994 and the Understanding on the Balance-of-Payments provisions of the GATT 1994.

4. With respect to trade in services, each Party may adopt or maintain restrictions in order to safeguard its balance of payments or external financial position in accordance with GATS.

5. A Party that adopts or maintains measures referred to in paragraph 1 shall promptly notify the other Party of these measures and present either a schedule, or the conditions necessary, for their removal.

6. If restrictions are adopted or maintained pursuant to this Article, the Parties shall promptly hold consultations involving relevant technical experts. The consultations shall assess the balance of payments or external financial difficulty that led to the respective measures, taking into account such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; or

(c) alternative corrective measures which may be available.

7. The consultations pursuant to paragraph 6 shall address the compliance of any restrictive measure with paragraphs 1 and 2. All relevant findings of statistical or factual nature presented by the International Monetary Fund, where available, shall be accepted in those consultations. Conclusions of the consultations shall take into account the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party concerned.