

**Colour codes:**

**TEXT = proposal made by Japan**

**TEXT = proposal made by EU**

**TEXT = negotiator's notes that contain clarifications and/or follow-up items (but that do not form part of the negotiated text)**

<p><b>CHAPTER [X]</b> <b>INVESTMENT</b></p>
<p><b>SECTION X</b> <b>SCOPE</b></p>
<p><b>Article [XI]</b> <b>Scope</b></p>
<p>1. This Chapter shall apply to measures adopted or maintained by a Party, relating to:</p> <ul style="list-style-type: none"><li>(a) investors of the other Party; and</li><li>(b) covered investments; and</li><li>(c) with respect to Article [x7], all investments in the [Area] [Territory] of the Party adopting or maintaining the measure with regard to the establishment or operation of economic activities.</li></ul>
<p>2. The Section on liberalization of Investments with regard to the establishment of a covered investment, does not apply to measures relating to:</p> <p>[(a) air services, related services in support of air services and other services supplied by means of air transport other than:</p> <ul style="list-style-type: none"><li>(i) Aircraft repair and maintenance services;</li><li>(ii) The selling and marketing of air transport services;</li><li>(iii) Computer reservation system (CRS) services;</li><li>(iv) Ground handling services;</li><li>(v) Airport operation services.]</li></ul> <p>(b) [Cabotage]</p>
<p>[2. The section on Liberalisation of Investments shall not apply to audio-visual services.]</p>
<p>Note: Japan prefers not to take such reservations in the text but instead in Annex II. Japan confirmed its interest in the liberalisation of computer games.</p>

[3. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.]

[Provisional compromise 12/2016:

In the event of any inconsistency between Section X [Liberalization] of this [Chapter] and Chapter/section [cross border services], the latter shall prevail to the extent of the inconsistency]

[15th round note updated 09/2016; Paragraph 3 to be adapted depending on the final content and structure of the chapter on services, including financial services. In case no inconsistency is found this paragraph can be dropped. Both Japan and EU to reflect on the need to ensure that other chapters in the agreement are not made subject to ISDS.]

**Article [x2]  
Review**

1. The Parties shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures specified in its Schedules in Annexes [XI] and [XII] respectively.
2. With a view to introducing possible improvements to the provisions of this [Title/Chapter], and consistent with their commitments in international agreements, the Parties shall review their legal framework relating to cross-border trade in services, investment and the investment environment including any obstacles to cross-border trade in services or investment in accordance with the procedure set out in Institutional Provisions – Subcommittee in charge of investment.

Note: Move to Chapter 1 (general provisions) if needed can be further adapted to cover ISDS/ICS.

**SECTION X  
LIBERALISATION OF INVESTMENTS**

**Article [X3]  
Market Access**

Neither party shall maintain or adopt with regard to market access through establishment or operation by an investor of a Party or by an enterprise constituting a covered investment, either on the basis of its entire [Area] [Territory] or on the basis of entire territory or territorial subdivision measures that impose limitations on:

- (a) the number of enterprises, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;
- (b) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (d) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;
- (e) measures which restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity.
- (f) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test.

**Article [x4]  
National Treatment**

1. Each Party shall accord to investors of the other [Party] and to covered investments treatment no less favourable than the treatment it accords, in like situations, to its own investors and their investments with respect to establishment in its [Area] [Territory].
2. Each Party shall accord to investors of the other [Party] and to covered investments treatment no less favourable than the treatment it accords, in like situations, to its own investors and their investments with respect to operation in its [Area] [Territory].
3. For greater certainty, the provisions of paragraphs 1 and 2 shall not be construed as to prevent a Party from prescribing statistical formalities or information requirements, in connection with the covered investments in its [Area] [Territory], provided that those formalities or requirements do not constitute a means to circumvent the obligations of that Party pursuant to this Article.

**Article [x5]  
Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of [the other Party] and to covered investments treatment no less favourable than the treatment it accords, in like situations, to investors of a non-Party and to their investments with respect to establishment in its [Area] [Territory].

*Provisional Note: This paragraph will be accepted after the agreement on the offers.*

2. Each Party shall accord to investors of [the other Party] and to covered investments treatment no less favourable than the treatment it accords, in like situations, to investors of a non-Party and to their investments with respect to operation, in its [Area] [Territory].

3. For greater certainty, the treatment accorded to investors of a non-Party or to their investments in like circumstances, referred to in paragraphs 1 and 2 of this Article, covers the treatment which such investors or investments would be entitled to receive even in the absence of an existing investment at the time when the comparison is made.

4. The provisions of paragraph 1 and 2 shall not be construed to oblige a Party to extend to investors and investments of the other Party the benefit of any treatment resulting from:

- (a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation;
- (b) existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of the General Agreement on Trade in Services or its Annex on Financial Services.

*Note: EU to include REIO in the annexes on NCM.*

5. For greater certainty, the “treatment” referred to in Paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international agreements.

[6. Substantive provisions in other international agreements concluded by a Party [FN] with a non-Party do not in themselves constitute “treatment” as referred to in paragraph 2 of this Article. [For greater certainty,] actions or inactions by a Party in relation to substantive provisions in other international agreements can constitute treatment and thus give rise to establishing a breach of paragraph 2 of this Article only to the extent that the breach:

- (i) is established based on this Article and not as a breach of the said provisions in other international agreements; and
- (ii) caused loss or damage to an investor or covered investment, which is not established based on differences in the amount of compensation that may be obtained by means of the said provisions in other international agreements, in a dispute settlement case.]

Footnote: For greater certainty, the fact that such provisions are transposed into domestic legislation does not change their qualification as international law provisions and consequently their coverage under this Paragraph.

**Article [x7]**  
**Prohibition of Performance Requirements**

1. Neither Party shall impose or enforce any of the following requirements or enforce any commitment or undertaking in connection with the establishment or operation of any investments in its [Area] [Territory] [FN1]:

- (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 supplied in its [Area] [Territory], or to purchase goods or services from natural or juridical persons or any other entity in its [Area] [Territory];
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its [Area] [Territory] that such investments produce or supply by relating such sales in any way to the volume or value of its exports or foreign exchange inflows;
- (f) to restrict the exportation or sale for export;
- (g) to appoint, as executives, managers or members of boards of directors, individuals of any particular nationality;
- (h) to transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its [Area] [Territory] except when:
  - (i) the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority in order to remedy a violation of competition laws and regulations; or
  - (ii) such transfer takes place as a result of the use of the subject matter of a patent authorized by a government of a Party in accordance with Article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "the TRIPS Agreement"), or of measures requiring the disclosure of data that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.
- (i) to locate the headquarters of that investor for a specific region or the world market in its Area;

[Note 12.2016: EU shall update its schedules accordingly.]

- (j) to hire a given number or percentage of its nationals;
- (k) to achieve a given level or value of research and development in its Area; or
- (l) to supply one or more of the goods produced or services provided by the investment to a specific region or to the world market, exclusively from its own [Area] [Territory];

(m) to adopt:

- (i) a rate or amount of royalty below a certain level; or
- (ii) a given duration of the term of a license contract [FN2], in regard to any license contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future license contract freely entered into between the investor and a natural or juridical person or any other entity in its Area, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, paragraph (m) does not apply when the license contract is concluded between the investor and a Party.

Footnote 1: For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purpose of paragraph 1.

Footnote 2: A "license contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of any investments in its [Area] [Territory], on compliance with any of the following requirements:
- (a) to achieve a given level or percentage of domestic content;
  - (b) to purchase, use or accord a preference to goods produced in its [Area] [Territory], or to purchase goods from natural or juridical persons or any other entity in its [Area] [Territory];
  - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
  - (d) to restrict sales of goods or services in its [Area] [Territory] that such investments produce or supply by relating such sales in any way to the volume or value of its exports or foreign exchange inflows;
  - (e) to restrict the exportation or sale for export;
3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any investment in its [Area] [Territory], on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its [Area] [Territory].

- (b) Subparagraphs 1(a), 1(b), 1(c), 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.
- (c) Subparagraph 1(h) and (m) shall not apply when:
  - (i) the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority in order to remedy a violation of competition laws and regulations; or
  - (ii) a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or measures requiring the disclosure of data/proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.
- (d) Paragraph (m) shall not apply if the requirement is imposed or the commitment or undertaking is enforced by a tribunal as equitable remuneration under the Party's copyright laws.
- (e) Subparagraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. This article is without prejudice to the obligations of a Party under the WTO Agreement.

**Article [x8]  
Non-Conforming Measures and Exceptions**

- 1. Articles [xx](MA), [x3](NT), [x4](MFN) and [x7](PPR) do not apply to:
  - (a) any existing non-conforming measure that is maintained by [a Party] at a level of:
    - (i) with respect to the European Union [or an EU Member State]:
      - (A) the European Union, as set out in its Schedule in Annex [XI];
      - (B) the national government of an EU Member State, as set out in its Schedule in Annex [XI];
      - (C) a provincial, territorial or regional government of an EU Member State, as set out in its Schedule in Annex [XI]; or
      - (D) a local government, other than government referred to in (i)(C); and
    - (ii) with respect to Japan:
      - (A) the central government, as set out in its Schedule in Annex [XI];
      - (B) a prefecture, as set out in its Schedule in Annex [XI];

(C) a local government other than a prefecture.

- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a); or
  - (c) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification, with Articles [xx](MA), [x3](NT), [x4](MFN) and [x7](PPR).
2. Articles [xx](MA), [x3](NT), [x4](MFN) and [x7](PPR) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex [XII].
3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex [XII], require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.
4. Articles [x3](NT), [x4](MFN) shall not apply to any measure that constitutes an exception to, or a derogation from, Articles 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.
5. Articles [xx](MA), [x3](NT), [x4](MFN) and [x7](PPR) shall not apply to any measure that a Party adopts or maintains with respect to government procurement.
6. Articles [X3], [X4] and [X5] do not apply to subsidies granted by the Parties.

**SECTION 2**  
**INVESTMENT PROTECTION**

**Article 13**  
**Investment and regulatory measures**

[1. For the purpose of this Title, the Parties reaffirm their right to adopt within their territories regulatory measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.]

Drafters' note: This paragraph shall be moved in Chapter general provisions Article 1 as Paragraph 2. In that case, Paragraph 1 of this Article will read as follows:



In case Japan accepts Paragraph 1 at the beginning of this Title,

1. Article 1 Paragraph 2 of Chapter 1 of this Title applies to this Section in accordance with the following:

2. For greater certainty, the mere fact that a Party takes or fails to take action including through a modification to its laws that may negatively affect an investment or an investor's expectations, including expectations of profits, does not amount to a breach of an obligation under this Section as applicable. This includes a Party's decision not to issue or renew a subsidy or to modify or withdraw it.

[3. For greater certainty, the provisions of this Section as applicable shall not be construed to require a Party to act inconsistently with the decision to discontinue a subsidy [FN1] or to request its reimbursement, ordered by a competent court, administrative tribunal or other competent authority [FN2] based on regulations existing at the time when the subsidy was granted [FN3].

[FN1]: In the case of the EU, "subsidy" includes "state aid" as defined in the EU law.

[FN2]: In the case of the EU, "other competent authority" is the European Commission, in accordance with Article 108 of the Treaty of the Functioning of the European Union.

[FN3]: In the case of EU, Article 107 to 109 of the Treaty on the Functioning of the European Union].

Drafters' note: Paragraph 3 does not prohibit investors from ISDS claims when a Party in addition to discontinuing a subsidy or requesting its reimbursement for instance denies access to justice or harasses the investors or adopts other behaviour which is a breach of FET.

### **Article [X14] General Treatment of Investment**

1. In accordance with international law, Each Party shall accord to covered investment and to investors of the other Party, with respect to their covered investments, fair and equitable treatment and full protection and security in its [Area] [Territory].

2. A Party breaches the obligation to grant fair and equitable treatment if a measure or series of measures constitute:

- (a) denial of justice in criminal, civil or administrative proceedings;
- (b) disregard of the fundamental principles of due process including through lack of transparency, in any administrative or judicial proceedings;

- (c) manifest arbitrariness;
- (d) discrimination on manifestly wrongful grounds, such as gender, race or religious belief;
- (e) abusive treatment, including coercion, duress and harassment;

3. For greater certainty, full protection and security refers to the physical security of covered investments and of investors with respect to their covered investments.

4. When applying the above fair and equitable treatment obligation, a tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.

5. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not in itself establish that there has been a breach of this Article.

#### **Article [x14] Compensation for losses**

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the [Area] [Territory] of the former Party due to armed conflict or a state of emergency such as revolution, insurrection or civil disturbance in the [Area] [Territory] of that former Party, treatment no less favourable than the treatment it accords to its own investors or to investors of a non-Party, whichever is more favourable to the investor, with respect to restitution, indemnification, compensation or any other form of settlement.

2. Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the [Territory] [Area] of the other Party resulting from:

- (a) requisitioning of their investment or a part thereof by the latter's armed forces or authorities; or
- (b) destruction of their investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation;

shall be accorded adequate and effective restitution or compensation by the other Party without undue delay.

**Article 16**  
**Expropriation and Compensation**

1. Neither Party shall expropriate or nationalise, either directly or indirectly through a measure having an effect equivalent to expropriation or nationalisation (hereinafter referred to as “expropriation”), the investments of investors of the other Party in its [Area] [Territory] except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) upon payment of prompt, adequate and effective compensation in accordance with paragraph 2 through 4 of this article; and
- (d) in accordance with due process of law.

For greater certainty, this paragraph shall be interpreted in accordance with Annex X on Expropriation.

2. Such compensation shall be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation took place, whichever is earlier. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

3. Such compensation shall be paid without delay and shall include interest at a normal commercial rate, accrued from the date of expropriation until the date of payment. It shall be effectively realisable and freely transferable in accordance with Article 17 (Transfers) and shall be paid in a freely convertible currency accepted by the investor, at the market exchange rate prevailing on the date of expropriation.

Footnote: For greater certainty, a Party may not impose on an investor to accept compensation in a given currency.

4. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the Agreement on the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such revocation, limitation, or creation is consistent with Chapter XX (Chapter on the Intellectual Property) and the TRIPS Agreement.

Footnote: For greater certainty, the term “revocation” of intellectual property rights includes the cancellation or nullification of those rights, and the term “limitation” of intellectual property rights includes exceptions to those rights.

**Article [x15]  
Transfers**

1. Each Party shall allow all transfers relating to a covered investment made in its [Area] [Territory] by an investor of the other Party to be made in a freely convertible currency without restriction or delay into and out of its Area. Such transfers shall include:

- (a) contributions to capital such as principal and additional funds to maintain, develop or increase the investment;
- (b) profits, capital gains, dividends, and other returns, interest, royalty payments, fees including management fees and technical assistance fees, and other incomes accruing from the investment;
- (c) payments made under a contract entered into by the investor, or the covered investment, including loan payments in connection with the investment;
- (d) proceeds of the sale or liquidation of all or any part of the investment;
- (e) earnings and other remuneration of personnel engaged from abroad and working in connection with the investment;
- (f) payments made in accordance with Articles [x14](Compensation for losses) and [x16] (Expropriation and Compensation); and
- (g) payments arising out of the settlement of a dispute including payments arising under Article [X](final award in ISDS provisions).

2. Transfers shall be made at the market rate of exchange prevailing on the date of transfer.

**Article 18  
Subrogation**

If a Party, or its designated agency thereof, makes a payment to any investor of that Party under an indemnity, guarantee or insurance contract pertaining to an investment of such investor in the [Area] [Territory] of the other Party, the other Party shall recognise the assignment to the former Party or its designated agency of any right or claim of such investor under this Chapter but for the subrogation on account of which such payment is made and shall recognise 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. The investor may not pursue these rights to the extent of the subrogation

**Article [x21]  
Denial of Benefits**

A Party may deny the benefits of this Chapter to an investor of the other Party that is an

enterprise of the other Party and to its investments if the enterprise is owned or controlled by

a natural or juridical person of a non-Party and the denying Party adopts or maintains measures with respect to the non-Party that: (i) are related to maintenance of international peace and security, including the protection of human rights; and (ii) prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments

[Drafters' Note: The article is intended to cover sanctions against e.g. DPRK while at the same time not excluding territories with special status e.g. Taiwan.]

### **Annex [ ]: Expropriation**

The Parties confirm their shared understanding that:

1. Expropriation may be either direct or indirect:
  - (a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
  - (b) indirect expropriation occurs where a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.
2. The determination of whether a measure or series of measures by a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
  - (a) the economic impact of the measure or series of measures and its duration, although the fact that a measure or a series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
  - (b) whether the expectations of the investor arising out of the investment were distinct and reasonable;
  - (c) the character of the measure or series of measures, including its object and context.
3. For greater certainty, except in rare circumstances where they are manifestly excessive in the light of their purpose, non-discriminatory measures [FN1] that are designed and applied by a Party to protect legitimate public policy objectives such as health, safety and the environment do not constitute indirect expropriation.

Footnote: For the purposes of this Annex, it is understood that non-discriminatory measures that are designed and applied by a Party to protect legitimate public policy objectives do not

include, for instance, measures that are arbitrary or based on bad faith.

## **Capital movements, payments and transfers and temporary safeguard measures**

### Article x.1

#### **Current Account**

Without prejudice to other provisions of this Agreement, the Parties shall allow, in freely convertible currency, and in accordance with the provisions of the Articles of the 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 between the Parties.

### Article x.2

#### **Capital Movements**

1. Without prejudice to other provisions of this Agreement, the Parties shall not impose, with regard to transactions on the capital and financial account of balance of payments, any restrictions on the free movement of capital for the purpose of liberalisation of investments and other transactions consistent with Chapter X Section 1 [Liberalisation of investments] of Title XX [Trade in Services, Investment and E-Commerce].
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.

### Article x.3

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

The provisions of Article [12] [Transfers] of Chapter X [Investment Protection], Articles X.1 and X.2 of this Chapter shall not preclude 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 offenses, deceptive or fraudulent practices.

*Drafters' Note: The reasons for referring to deceptive or fraudulent practices are the following: (i) some practices such as tax evasion may qualify as civil law offenses depending on the legal system, (ii) consistency with GATS and general exceptions article in this agreement and (iii) in line with the meaning of "fake exceptions" to transfers in case law.*

- (a) ensuring compliance with orders or judgments in adjudicatory proceedings; or
- (b) social security, public retirement or compulsory savings schemes.

Such laws and regulations shall not, however, be applied in an inequitable, arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

Article x.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 take safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months. Such measures shall be strictly necessary and shall not constitute a means of arbitrary or unjustified discrimination between a Party and a non-Party in like situations.

2. A Party may adopt or maintain restrictive measures with regard to capital movements, payments or transfers<sup>1</sup>:

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

3. The measures referred to in paragraph 2:

- (a) shall be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;
- (b) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
- (c) shall be temporary and shall be phased out progressively as the situation specified in paragraph 2 improves;
- (d) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (e) shall be non-discriminatory compared to third parties in like situations.

*Drafters' Note: The requirements in paragraph 3 are not meant to be stricter than those in paragraph 1.*

4. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. These measures shall be in accordance with the General Agreement on Trade and Tariffs (GATT) and the Understanding on the Balance of Payments provisions of the GATT 1994.

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<sup>1</sup> In the case of EU, such measures may be taken by the EU's member states in situations other than those referred to in paragraph 1.



5. 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. These measures shall be in accordance with Article XII of the General Agreement on Trade in Services (GATS).

6. A Party maintaining or having adopted measures referred to in paragraphs 1 to 3 shall promptly notify the other Party of them.

7. Where the restrictions are adopted or maintained under this Article, consultations shall be held promptly in the [Committee on Trade in Services and Investment – to be adapted] unless consultations are held in other fora. The consultations shall assess the balance-of-payments or external financial difficulty 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; or
- (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 1 to 3. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and 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.

### **Annex [X]: Public debt**

1. No claim that a restructuring of debt issued by a Party breaches an obligation under this [Chapter] may be submitted to, or if already submitted, continue in, arbitration under Section [Investor-State Dispute Settlement] if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article X (National Treatment) or Article X (Most-Favoured-Nation Treatment)<sup>2</sup> [bookmark40](#) .
2. Notwithstanding Article X [Submission of a Claim, Section on Investor-State Dispute Settlement], and subject to paragraph 1 of this Annex, an investor of a Party may not submit a claim under Section [Investor-State Dispute Settlement] that a restructuring of debt issued by the other Party breaches an obligation under this [Chapter], other than Articles X [National Treatment] or X [Most-Favoured Nation], unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article X [Consultations].
3. For the purposes of this Annex:
  - “Negotiated restructuring” means the restructuring or rescheduling of debt issued by a Party that has been effected through (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or (ii) a debt exchange or other similar process in which the holders of no less than 75 % of the aggregate principal amount of the outstanding debt under the debt instruments that are subject to restructuring -> have consented to that debt exchange or other process.
  - "Governing law" of a debt instrument means a jurisdiction's legal and regulatory framework applicable to that debt instrument.
4. For greater certainty, debt issued by a Party includes all forms of debt of Japan or of the European Union, or of a Member State of the European Union, at the central, regional or local level.

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<sup>2</sup> For the purpose of this Annex, the mere fact that the relevant treatment distinguishes between investors or investments on the basis of legitimate public policy objectives in the context of a debt crisis or threat thereof does not amount to a breach of Article X [National Treatment] or Article X [Most-Favoured Nation]

Drafters' Note: The Parties agree that legitimate public policy objectives include compliance with debt restructuring terms, principles and rules agreed by London club or Paris club or other international fora.