

CHAPTER EIGHT

INVESTMENT

Section A – Investment

Article 8.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) covered investments; and
 - (c) with respect to Articles 8.8, 8.10, and 8.16, all investments in its territory.
2. For greater certainty, this Chapter does not apply to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.
3. For the purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:
 - (a) a national, sub-national, or local government and authority; or
 - (b) a non-governmental body of a Party in the exercise of powers delegated by a national, sub-national, or local government and authority of the Party.

Article 8.2

2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Ten (Financial Services).

Article 8.3: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
3. The treatment accorded by a Party un to t

(b)

- (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 territory, or to purchase goods or services from persons in its territory;
- (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 that investment;
- (e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process, or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety, or environmental requirements is not to be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 8.3 and 8.4 apply to the measure.

3. A Party shall not make the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, or operation of an investment in its territory of an investor of a Party or of a non-party, conditional 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 territory, or to purchase goods from persons in its territory;
- (c) 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 that investment; or
- (d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales to the volume or value of its exports or foreign exchange earnings.

4. Paragraph 3 is not to be construed to prevent a Party from making the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-party, conditional 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 territory.⁵
5. Paragraph 1(f) does not apply:
 - (a) if a Party authorises use of an intellectual property right pursuant to Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
 - (b) if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws.⁶
6. The provisions of:
 - (a) paragraphs 1(b), (c), (f) and (g), and 3(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
 - (b) paragraphs 1(b), (c), (f) and (g), and 3(a) and (b) do not apply to procurement by a Party or a state enterprise; and
 - (c) paragraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

⁵ For greater certainty, paragraph 1 is not to be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, or operation of an investment of an investor of a Party or of a non-party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, train or employ workers, or construct or expand particular facilities, in its territory, provided that such activity is consistent with paragraph 1(f).

⁶ The Parties recognise that a patent does not necessarily confer market power.

7. Paragraphs 1 and 3 do not apply to a commitment, undertaking, or requirement other than those set out in those paragraphs.

8. This Article does not preclude enforcement of a commitment, undertaking, or requirement between private parties, if a Party did not impose or require the commitment, undertaking, or requirement. For the purposes of this Article, private parties include designated monopolies or state enterprises, if such entities are not exercising delegated governmental authority.

Article 8.9: Non-Conforming Measures

1. Articles 8.3, 8.4, 8.7, and 8.8 do not apply to:
 - (a) an existing non-conforming measure that is mflf)

- (d) on payment of prompt, adequate, and effective compensation.
2. The compensation referred to in paragraph 1(d) shall:
- (a) be paid without delay;
 - (b) be equivalent to the fair market value of the expropriated investment
;
 - (c) include interest at a commercially reasonable rate accrued from the date of expropriation until the date of payment;
 - (d) not reflect any change in value that occurs as a result of prior knowledge of the intended expropriation;
 - (e) be fully realisable and freely transferable; and
 - (f) be payable in a freely usable or freely convertible currency.
3. The affected investor shall have the right under the law of the expropriating Party to a prompt review, by a judicial or other independent authority of that Party, of its case and of the valuation of its investment in accordance with the principles set out in this Article.
4. This Article does not apply to compulsory licenses granted in relation to intellectual property rights under the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, provided that the issuance, revocation, limitation, or creation is consistent with the WTO Agreement.

Article 8.12: Transfers

1. Each Party shall permit transfers relating to a covered investment to be made freely, and without delay, into and out of its territory. Those transfers include:
- (a) contributions to capital, including the initial contribution;
 - (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance, and other fees;

- (c) proceeds from the sale of all or part of the covered investment or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract entered into by the investor, or the covered

7. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict those transfers under this Agreement and as set out in paragraph 4.

Article 8.13: Subrogation

1. If a Party or an agency of a Party makes a payment to one of its investors under a

Section B – Investor-State Dispute Settlement

Article 8.17: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty-One (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

Article 8.18: Claim by an Investor of a Party on Its Own Behalf

An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section A, other than Articles 8.10, 8.15, and 8.16 and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

Article 8.19: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section A, other than Articles 8.10, 8.15, and 8.16 and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.
2. If an investor makes a claim pursuant to this Article and the investor or a non-controlling investor in the enterprise makes a claim pursuant to Article 8.18 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration pursuant to Article 8.23, the claims should be heard together by a Tribunal established under Article 8.28, unless the Tribunal finds that the interests of a disputing party would be prejudiced as a result.
3. An investment shall not make a claim under this Section.

Article 8.20: Notice of Intent to Submit a Claim to Arbitration

1. The disputing investor shall deliver to the disputing Party written notice of its intent to submit a claim to arbitration (hereinafter referred to as the Notice of Intent) at least 90 days before submitting the claim. The Notice of Intent must specify:

- (a) the name and address of the disputing investor and, if a claim is made under Article 8.19, the name and address of the enterprise;
- (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
- (c) the legal and the factual basis for the claim, including the measures at issue; and
- (d) the relief sought and the approximate amount of damages claimed.

2. The disputing investor shall also deliver, with its Notice of Intent, evidence establishing that it is an investor of the other Party. Examples of evidence that might be relevant include a copy of a title to property, a deed of incorporation of the enterprise, share certificates, and a joint venture agreement.

Article 8.21: Consultation and Negotiation

In the event of an investment dispute, the disputing investor and the disputing Party shall initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding third-party procedures.

Article 8.22: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim to arbitration pursuant to Article

(c)

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9. On the application of a disputing party, a Tribunal established pursuant to this Article, pending its decision pursuant to paragraph 2, may order that the proceedings of a Tribunal established pursuant to Article 8.23 be stayed, unless the latter Tribunal has already adjourned its proceedings.

Article 8.29: Notice to the Non-Disputing Party

A disputing Party shall deliver to the non-disputing Party a copy of the Notice of Intent and other documents, such as the Notice of Arbitration and the Statement of Claim, within 30 days of the date that those documents are delivered to the disputing Party.

Article 8.30: Documents

1. The non-disputing Party is entitled, at its cost, to receive from the disputing Party:
 - (a) a copy of the evidence that has been tendered to the Tribunal;
 - (b) copies of all pleadings filed in the arbitration; and
 - (c) copies of the written arguments of the disputing parties.
2. The non-disputing Party receiving information pursuant to paragraph 1 shall treat the information on the same basis as the Party providing the information treats them.

Article 8.31: Participation by the Non-Disputing Party

1. On written notice to the disputing parties, the non-disputing Party may make oral or written submissions to a Tribunal on a question of interpretation of this Agreement. Upon the request of a disputing party, the non-disputing Party shall submit its oral submission in writing.
2. The non-disputing Party shall treat the information it receives at hearings on the same basis as the Party providing the information treats them.

Article 8.32: Place of Arbitration

1. Unless otherwise agreed by the disputing parties, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

- (a) the ICSID Additional Facility Rules, if the arbitration is under those Rules or the ICSID Convention; or
- (b) the UNCITRAL Arbitration Rules, if the arbitration is under those Rules.

2. Unless otherwise agreed by the disputing parties, the Tribunal may determine a place for meetings and hearings, other than the legal place of arbitration. In doing so, the Tribunal shall take into consideration, its convenience for the parties and the arbitrators, the location of the subject matter, and the proximity of the evidence.

Article 8.33: Language of Proceedings

1. Unless otherwise agreed by the disputing parties, the language of the arbitration proceedings, including hearings, decisions, and awards, shall be:

- (a) French and English if Canada is a disputing Party; and
- (b) Korean and English if Korea is a disputing Party.

2. Communications, submissions, witness statements and documentary evidence can be submitted in either one of the language of the arbitration without a translation.

Article 8.34: Preliminary Objections to Jurisdiction or Admissibility

If issues relating to jurisdiction or admissibility are raised as preliminary objections, the Tribunal shall, whenever possible, decide the matter before proceeding to the merits.

Article 8.35: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2, 3, and 4, the disputing Party shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

- (a) the Notice of Intent;
- (b) the Notice of A

- (c) a disputing party shall, at the time it submits a document containing information claimed to be protected information, also submit a redacted version of the document that does not contain such protected information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1;
- (d) the Tribunal shall decide an objection by a disputing party regarding the designation of information claimed to be protected information. If the Tribunal determines that such information was not properly designated, the disputing party that submitted the information may:
 - (i) withdraw all or part of its submission containing such information; or
 - (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the Tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, if necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information; and

- (e) at the request of a disputing Party, the Commission shall consider issuing a decision in writing regarding a determination by the Tribunal that information claimed to be protected was not properly designated. If the Commission

6. Each Party may share with officials of its respective national, sub-national, and local governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but it shall ensure that those persons protect any confidential information in those documents.

Article 8.36: Submissions by a Non-Disputing Party

1. Any person of a Party, or a person with a significant presence in the territory of a Party, that wishes to file a written submission with a Tribunal (hereinafter referred to as
shall apply for leave from the Tribunal to file a non-disputing party submission, in accordance with Annex 8-D. The applicant shall attach the submission to the application.
2. The applicant shall serve the application for leave to file a non-disputing party submission and its written submission on all disputing parties and the Tribunal.
3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave to file a non-disputing party submission.
4. In determining whether to grant leave to file a non-disputing party submission, the Tribunal shall consider, among other things, the extent to which:
 - (a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
 - (b) the non-disputing party submission would address a matter within the scope of the dispute; and
 - (c) the non-disputing party has a significant interest in the arbitration.
5. The Tribunal shall ensure that:
 - (a) the non-disputing party submission does not disrupt the proceedings;
 - (b) the non-disputing party submission does not unduly burden or unfairly prejudice a disputing party; and

(c) disputing parties are given an opportunity to present their observations on the non-disputing party submission.

6. After consulting the disputing parties, the Tribunal shall decide whether to grant leave to file a non-disputing party submission. If leave to file a non-disputing party submission is granted, the Tribunal shall set an appropriate date for the disputing parties to respond in writing to the non-disputing party submission. By that date, the non-disputing Party may, pursuant to Article 8.31, address any issues of interpretation of this Agreement presented in the non-disputing party submission.

7. The Tribunal that grants leave to file a non-disputing party submission is not required to address the submission at any point in the arbitration, and the non-disputing party that files the submission is not entitled to make further submissions in the arbitration.

8. The provisions pertaining to public access to hearings and documents pursuant to Article 8.35 govern access to hearings and documents by non-disputing parties that file applications pursuant to this Article.

Article 8.37

- (b) an award of restitution of property shall provide that restitution be made to the enterprise; and
 - (c) the award shall provide that it is made without prejudice to a right that a person may have in the relief under applicable domestic law.
- 3. The Tribunal shall not order a disputing Party to pay punitive damages.

Article 8.42: Finality and Enforcement of an Award

- 1. An award made by the Tribunal does not have binding force except between the disputing parties and in respect of that particular case.
- 2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
- 3. A disputing party shall not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; or
 - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or
 - (ii) a court has dismissed or allowed an application to revise, set aside, or annul the award, and there is no further appeal.

4.

Section C

investment means any asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, and a certain duration. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans¹⁰;
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights; and
- (g) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges¹¹.

For the purposes of this Agreement, a claim to payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment.

- (b) a natural person who is a citizen of a Party and a permanent resident of the other Party is deemed to be exclusively a national of the Party of which that natural person is a citizen;

investor of a non-party means an investor other than an investor of a Party, that seeks to make, is making, or has made an investment;

New York Convention means the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;

non-disputing Party means the Party that is not a party to an investment dispute under Section B;

Secretary-General means the Secretary-General of ICSID;

transfers include international payments;

Tribunal means an arbitration tribunal established pursuant to Article 8.23 or Article 8.28;

Annex 8-A

Customary International Law

generally and as specifically referenced in Article 8.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 8.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

Annex 8-B

- (d) except in rare circumstances, such as, for example, when an action or a series of actions are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory regulatory actions of a Party that are designed and applied to protect legitimate public welfare objectives, such as, public health, safety, environment, and real estate price stabilisation through, for

Annex 8-C

Submission of a Claim to Arbitration

1. An investor of Canada shall not submit to arbitration under Section B a claim that Korea has breached an obligation under Section A:

(a) on the investor's own behalf pursuant to Article 8.18; or

(b)

Annex 8-D

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Annex 8-E

Possibility of a Bilateral Appellate Mechanism

Within three years after the date this Agreement enters into force, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered pursuant to Article 8.42 in arbitrations commenced after they establish the appellate body or similar mechanism.

Annex 8-F

Exclusions from Dispute Settlement

A decision by Canada following a review under the *Investment Canada Act*, with respect to whether or not to permit an investment that is subject to review, is not subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).