

TRADE AND SUSTAINABLE DEVELOPMENT

Article [1]

Context and objectives

1. The Parties recognise the importance of promoting the development of international trade in a way that contributes to sustainable development, for the welfare of present and future generations, taking into consideration the Agenda 21 on Environment and Development of 1992, the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work of 1998, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008, the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" and the 2030 Agenda for Sustainable Development.

2. The Parties recognise the contribution of this Agreement to promoting sustainable development of which economic development, social development and environmental protection are mutually reinforcing components. The Parties further recognise that the purpose of this Chapter is to strengthen the trade relations and cooperation between the Parties in ways that promote sustainable development, and is not to harmonise the environment or labour standards of the Parties.

Article [2]

Right to regulate and levels of protection

1. Recognising the right of each Party to determine its sustainable development policies and priorities, to establish its own levels of domestic environmental and labour protection, and to adopt or modify accordingly its relevant laws and regulations, consistently with its commitment to the internationally recognised standards and agreements to which the Party is a party, each Party shall strive to ensure that its laws, regulations and related policies provide high levels of environmental and labour protection and shall strive to continue to improve those laws and regulations and their underlying levels of protection.

2. The Parties shall not encourage trade and investment by relaxing or lowering the level of protection provided by their respective domestic environmental or labour laws and regulations. To this effect, the Parties shall not waive or otherwise derogate from such laws and regulations or fail to effectively enforce them through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

3. The Parties shall not use their respective environmental or labour laws and regulations in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on international trade.

Article [3]

International labour standards and conventions

1. The Parties recognise full and productive employment and decent work for all as key elements to respond to economic, labour and social challenges. The Parties also recognise the importance of promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all. In this context, the Parties shall have exchanges of views and information on trade-related labour issues of mutual interest through the mechanism of Article 13 of this Chapter, and as appropriate in other fora.

2. The Parties reaffirm their obligations [deriving from ILO membership¹/as members of the ILO]. The Parties reaffirm their respective commitments with regard to the ILO Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Conference at its 86th Session in 1998 and its follow-up. Accordingly, the Parties shall respect, promote and realise in their laws and practices and in their whole [territories/areas] the internationally recognised principles concerning the fundamental rights at work, which are:

- a) The freedom of association and the effective recognition of the right to collective bargaining;
- b) The elimination of all forms of forced or compulsory labour;
- c) The effective abolition of child labour; and
- d) The elimination of discrimination in respect of employment and occupation.

3. Each Party shall make continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions and other ILO Conventions which each Party considers appropriate to ratify.

4. The Parties shall exchange information on their respective situation as regards the ratification of ILO Conventions and Protocols, including the fundamental ILO Conventions.

5. Each Party reaffirms its commitment to effectively implement in its laws and practices in its whole [territory/area] ILO Conventions ratified by Japan and the Member States of the European Union respectively.

¹ In the case of the EU, ILO membership of EU Member States

6. The Parties recognise that the violation of the fundamental principles and rights at work referred to in paragraph 2 of this Article cannot be invoked or otherwise used as a legitimate comparative advantage, and that labour standards should not be used for protectionist trade purposes.

Article [4]

Multilateral environmental agreements

1. The Parties stress the importance of multilateral environmental agreements, in particular those to which the Parties are parties, as a means of multilateral environmental governance for the international community to address global or regional environmental challenges. The Parties also stress the importance of achieving mutual supportiveness between trade and environment. In this context, the Parties shall exchange views and information on trade-related environmental matters of mutual interest through the mechanism of Article 13 (Specialised Committee) of this Chapter, and as appropriate in other fora.

2. Each Party reaffirms its commitment to effectively implement in its laws and related practices the multilateral environmental agreements to which the Party is a party.

3. Each Party shall exchange information with the other Party on its respective situation and advancements regarding ratification, acceptance or approval of, or accession to, multilateral environmental agreements, which each Party considers appropriate to be bound by, as well as regarding amendments to, and implementation of, such agreements.

4. The Parties reaffirm their commitment to achieving the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC). The Parties commit to work together to take actions to address climate change towards achieving the purpose of the Paris Agreement adopted by the Conference of the Parties to the UNFCCC at its 21st session.

5. Nothing in this Agreement prevents a Party from adopting or maintaining measures to implement the multilateral environmental agreements to which it is a party provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

Article [5]

Trade and investment favouring sustainable development

The Parties recognise the importance of enhancing the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.

Accordingly:

- (a) The parties recognise the importance of the principles concerning fundamental rights at work, decent work for all, and fundamental values of freedom, human dignity, social justice, security and non-discrimination for sustainable economic and social development and efficiency, as well as the importance of seeking better integration thereof into trade and investment policies.
- (b) The Parties shall strive to facilitate and promote trade and investment in environmental goods and services, in a manner consistent with other provisions of this agreement.
- (c) The Parties shall strive to facilitate trade and investment in goods and services of particular relevance for climate change mitigation, such as sustainable renewable energy and energy efficient goods and services, in a manner consistent with other provisions of this agreement.
- (d) The Parties shall strive to promote trade and investment in goods that contribute to enhanced social conditions and environmentally sound practices, including goods that are the subject of public labelling schemes. The Parties recognise the contribution to sustainability of other voluntary initiatives, including private ones.
- (e) The Parties shall encourage corporate social responsibility and exchange views and information thereon through the mechanism of Article 13 of this Chapter, and as appropriate in other fora. In this regard, the Parties recognise the importance of the relevant internationally recognised principles and guidelines, including the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

Article [6]

Biological diversity

1. Each Party recognises the importance of ensuring the conservation and sustainable use of biological diversity in accordance with relevant international agreements to which the Party is a party, notably the Convention on Biological Diversity (CBD) and its protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
2. To this end, each Party shall:
 - (a) encourage the use of products which were obtained through a sustainable use of

natural resources and which contribute to the conservation and sustainable use of biodiversity, including through labelling schemes, taking into account the importance of trade in such products.

(b) implement effective measures to combat illegal trade in endangered species of wild fauna and flora as covered by CITES, and as appropriate in other endangered species, such as monitoring and enforcement measures, and awareness-raising actions.

(c) implement, as appropriate, the decisions which were adopted under the international agreements referred to in paragraph 1, including through laws, strategies, plans and programmes.

(d) exchange information and consult with the other Party at bilateral and global level on the matters of this Article, including trade in wildlife and natural resource-based products, the valuation, mapping and assessment of ecosystems and their services, and the access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

Article [7]

Sustainable management of forests and trade in timber and timber products

1. The Parties recognise the importance of ensuring the conservation and sustainable management of forests.
2. To this end, the Parties shall:
 - (a) encourage conservation and sustainable management of forests, and trade in timber and timber products harvested in accordance with the laws and regulations of the country of harvest.
 - (b) contribute to combating illegal logging and related trade, including as appropriate with respect to the trade with third countries.
 - (c) exchange information and share experiences at bilateral and global levels with a view to promoting the conservation and sustainable management of forests and trade in legally harvested timber and timber products, as well as to combating illegal logging.

Article [8]

Trade and sustainable use of fisheries resources and sustainable aquaculture

1. The Parties recognise the importance of ensuring the conservation and sustainable use and management of fisheries resources and of safeguarding marine ecosystems as well as the promotion of responsible and sustainable aquaculture.

2. To this end, the Parties shall:
- (a) comply with the UN Convention on the Law of the Sea of 1982, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and the UN Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, take measures to achieve the objectives and principles of the FAO Code of Conduct for Responsible Fisheries of 1995, encourage the implementation of port state measures both at global and regional levels, and, as appropriate, encourage third parties to ratify, accept, approve, or accede to, relevant international instruments to which the Parties are parties;
 - (b) promote conservation and sustainable use of fisheries resources through appropriate international organisations, agencies and bodies, including Regional Fisheries Management Organisations (RFMOs) in which both Parties are participating. This shall include, where applicable, effective monitoring, control and enforcement of the RFMOs' resolutions, recommendations or measures, and implementation of their Catch Documentation or Certification Schemes;
 - (c) adopt and implement effective tools for combating illegal, unreported and unregulated (IUU) fishing, including through legal instruments, control, monitoring and enforcement, and capacity management measures, where appropriate. The Parties recognise that voluntary sharing of information on IUU fishing will enhance the effectiveness of these tools in the fight against IUU fishing. The Parties also underline the crucial role of members with major fisheries markets at RFMO level to leverage a sustainable use of fisheries resources.
 - (d) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects.

Article [9]

Scientific information

When preparing and implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, the Parties shall take account of available scientific and technical information, and where appropriate, relevant international standards, guidelines or recommendations, and the precautionary approach.

Article [10]

Transparency

[Language to be confirmed once the relevant horizontal provisions are finalised]

Article [11]

Review of sustainability impacts

The Parties recognise the importance of reviewing, monitoring and assessing, jointly or individually, the impact of the implementation of this Agreement on sustainable development through their respective processes and institutions, as well as those set up under this Agreement.

Article [12]

Cooperation

Recognising the importance of cooperation on trade and investment related aspects of environmental and labour policies in order to achieve the objectives of this Agreement, the Parties may, inter alia:

- (a) cooperate at bilateral or multilateral level in the field of environmental protection and labour, including through appropriate international organisations, agencies or bodies in which the Parties participate.
- (b) cooperate on evaluating the mutual impact between trade and environment and labour as well as on ways to enhance, prevent or mitigate such impacts taking into account the monitoring and assessment carried out by the parties, for instance sustainability impact assessments as far as the EU is concerned.
- (c) cooperate to facilitate and promote trade and investment in environmental goods and services, in a manner consistent with other provisions of this Agreement, including through the exchange of information.
- (d) cooperate on labelling schemes, including through the exchange of information on eco-labels, as well as other measures and initiatives that contribute to sustainability, including as appropriate fair and ethical trade schemes.
- (e) cooperate to promote corporate social responsibility, notably through the exchange of information and best practices, including on adherence, implementation, follow-up, and dissemination of internationally agreed guidelines and principles.
- (f) cooperate on trade-related aspects of the International Labour Organisation's agenda of decent work for all.
- (g) cooperate on trade-related aspects of multilateral environmental agreements, including through the exchange of views and information on the implementation of CITES and technical and customs cooperation.
- (h) cooperate on trade-related aspects of the international climate change regime, including means to promote low-carbon technologies, other climate-friendly technologies and energy efficiency.
- (i) cooperate to promote the conservation and sustainable use of biological diversity,

including combatting illegal trade in endangered species of wild fauna and flora.

(j) cooperate to promote the conservation and sustainable management of forests and trade in legally harvested timber and timber products, as well as to combat illegal logging.

(k) cooperate, bilaterally or through appropriate international organisations, agencies or bodies in which both Parties are participating, to promote sustainable fishing and aquaculture practices and trade in legally obtained fisheries resources, as well as to combat IUU fishing.

Article [13]

Specialised Committee on Trade and Sustainable Development

1. Each Party shall designate an office within its administration that shall serve as Contact Point with the other Party for purposes of implementing this chapter.
2. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Specialised Committee on Trade and Sustainable Development (hereafter referred to in this Article as “the Specialised Committee”).
3. The functions of the Specialised Committee shall be:
 - (a) reviewing and monitoring the implementation and operation of this Chapter;
 - (b) considering any other matter related to this Chapter as the Parties may agree;
 - (c) interacting with civil society² on the implementation of this chapter;
 - (d) reporting the findings of the Specialised Committee to the Joint Committee;
 - (e) carrying out other tasks assigned by the Joint Committee;
 - (f) seeking solutions to resolve differences between the Parties as to the interpretation or application of this Chapter, including through the procedures pursuant to Article 16.³

4./5./6. [Drafting on chairing, frequency and other modalities for meetings of the Specialised Committee and its interaction with relevant international organisations to be confirmed].

² For the purpose of this Chapter, the Parties agree that “civil society” means independent economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups.

³ [Language on interaction with Article 16 to be confirmed]

Article [14]

Domestic advisory group

1. Each Party shall convene meetings of its own new or existing domestic advisory group or groups on economic, social and environmental issues related to this Chapter and consult with the group or groups which work(s) in accordance with the Party's laws, regulations and practices.
2. Each Party is responsible for ensuring a balanced representation of independent economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups, in such advisory group or groups.
3. Such group or groups of each Party may meet on its/their own initiative and express its/their opinions on the implementation of this Chapter independently of the Party and submit such opinions to the Party.

Article [15]

Joint Dialogue with civil society

1. The Parties shall convene a Joint Dialogue with civil society organisations in their [territories/areas], including members of their domestic advisory groups, as referred to in Article 14, to conduct a dialogue on this Chapter.
2. The Parties shall promote a balanced representation of relevant interests, including independent representative organisations of economic, environmental and social interests, as well as other relevant stakeholders as appropriate.
3. *[Language on modalities for meetings of the Joint dialogue to be confirmed]*
4. The Parties will provide the Joint Dialogue with information on the implementation of this Chapter. The views and opinions of the Joint Dialogue may be submitted to the Specialised Committee on Trade and Sustainable Development and be made publicly available.

Article [16]
Government Consultations

[Structure/numbering of the article to be confirmed]

1. In the event of disagreement between the Parties on any matter regarding the interpretation or application of this Chapter, the Parties shall only have recourse to the procedures established under this Article and Article 17. Chapter [XX] (Dispute Settlement) shall not apply to this Chapter.
2. A Party may request in writing for consultations with the other Party concerning any matter on interpretation and application of this Chapter. The Party requesting consultations shall set out the reasons for the request, including identification of the matter and an indication of its factual [basis] and [its] legal basis, specifying the relevant provisions of this Chapter.
3. When a Party requests consultation pursuant to paragraph 1, the other Party shall reply promptly and enter into consultations with a view to reaching a mutually satisfactory resolution of the matter.
- 4./5. *[Language on interaction with relevant international organisations and on the role of the Specialised Committee on Trade and Sustainable Development to be confirmed]*
6. The Parties shall ensure that the solutions reached through the consultations under this Article will be [jointly made] publicly available, unless otherwise agreed by the Parties.

Article [17]
Panel of Experts

[Tentative text:

1. If, within 75 days of the request by a Party to convene the Specialised Committee on Trade and Sustainable Development under paragraph ... of Article [16], the Parties do not reach a mutually satisfactory resolution of the matter on interpretation or application of the relevant Articles of this Chapter, a Party may request that a panel of experts be convened to

examine the matter [in accordance with the terms of reference referred to in paragraph 2]. Any such request shall be made in writing to the Contact Point of the other Party designated pursuant to paragraph 1 of Article 13 and shall identify the reasons for the request, including the identification of the issue to be resolved and an indication of its factual and legal basis.

2. The Specialised-Committee shall, within 1 year after the date of entry into force of this Agreement, [establish/adopt/agree on] the terms of reference and the rules of procedure for the panel of experts. These terms of reference and rules of procedures shall identify the procedures for the findings of facts. The panel shall interpret the covered provisions under this Chapter in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. *[Additional language on interpretation of other international agreements to be confirmed]*

Pending the establishment of such rules of procedure and terms of reference, the Rules of Procedure referred to in Article ... (Rules of Procedure and Code of Conduct) of chapter ... (Dispute Settlement) apply and the terms of reference are, unless the Parties agree otherwise within five days after the date of establishment of the panel, as follows:

"to examine, in the light of the relevant provisions of Chapter [XX] (Trade and Sustainable Development), the matter referred to in the request for the establishment of a panel of experts, and to issue a report, in accordance with paragraph ... of Article ... [Panel of Experts], making recommendations for the resolution of the matter".

2bis. The panel of experts may obtain information from any source it deems appropriate. For matters related to ILO instruments or to multilateral environmental agreements, it should seek information and advice from their relevant international organisations, agencies and bodies. Any information obtained under this paragraph shall be submitted to both Parties for their comments.

3. The panel shall be composed of three experts. They shall be selected as follows:
- (a) The experts shall have relevant technical or legal expertise on issues addressed in this Chapter. They shall be independent of, and not be affiliated with or take instructions from, either Party. They shall serve in their individual capacity and not take instructions from any organisation or government, nor have been involved in the matter in question in any capacity;
 - (b) Each Party shall, within 45 days after the date of receipt of the request to convene the panel, appoint one expert who may be its national and propose up to three candidates to serve as the chairperson of the panel. The chairperson shall not be a national of either Party. The Parties shall agree on and appoint the chairperson from the proposed candidates within 15 days from the expiry of the 45 day period;
 - (c) If a Party has not appointed an expert or if the Parties have not agreed on and appointed the chairperson pursuant to sub-paragraph (b) of this paragraph, the expert

or experts not yet appointed shall be chosen within 15 days from the expiry of the 15 day period specified in sub-paragraph (b) of this paragraph by lot from the candidates proposed pursuant to sub-paragraph (d) of this paragraph;

(d) The Specialised Committee on Trade and Sustainable Development shall, within one year after the entry into force of this Agreement, establish a list of at least ten individuals who are willing and able to serve as experts pursuant to this Article, and who meet the qualifications in sub-paragraph (a) of this paragraph. The list shall be composed of three sub-lists: one for each Party and one for individuals who are not nationals of either Party and who shall act as the chairperson of the panel. Each Party shall select at least three individuals to serve as experts for its sub-list. The Parties shall jointly agree on four, unless the Parties agree otherwise, individuals for the sub-list of chairpersons. The Specialised Committee on Trade and Sustainable Development will ensure that the list is always maintained at least at the level established pursuant to this sub-paragraph;

(e) The date of the establishment of a panel shall be the date on which the chairperson is appointed.

4. The panel of experts shall issue an interim and a final report to the Parties setting out the findings of facts, the interpretation or the applicability of the relevant Articles and the basic rationale behind any findings and suggestions. Within 45 days after receipt of the interim report, which shall be issued no later than 90 days from the date of establishment of the panel, the Parties may submit written comments on this report. After considering any such written comments, the panel of experts may modify the report and make any further examination it considers appropriate. The final report shall be issued no later than [180] days from the date of establishment of the panel, unless the chairperson of the panel notifies the Parties in writing that the deadline cannot be met. In that case, the final report shall be issued no later than [200] days after the date of establishment of the panel, unless the Parties agree otherwise. The final report shall be made publicly available. *[Language on protection of confidential information to be confirmed]*

5. The Parties shall discuss actions or measures to resolve the matter in question, taking into account the panel's final report and suggestions. Each Party shall inform the other Party and its own domestic advisory group or groups of any follow-up actions or measures within three months after the date of issuance of the final report. The follow-up actions or measures shall be monitored by the Specialised Committee on Trade and Sustainable Development. The domestic advisory groups and the Joint Dialogue with civil society may submit their observations to the Specialised Committee on Trade and Sustainable Development in this regard.]