

CHAPTER 16

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 16.1

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 adopted by the United Nations Conference on Environment and Development on 14 June 1992, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference on 18 June 1998, the Plan of Implementation adopted by the World Summit on Sustainable Development on 4 September 2002, the Ministerial Declaration entitled 'Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development' adopted by the Economic and Social Council of the United Nations on 5 July 2006, the ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference on 10 June 2008, the outcome document of the United Nations Conference on Sustainable Development, entitled 'The future we want' adopted by the General Assembly of the United Nations on 27 July 2012, and the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, entitled 'Transforming our world: the 2030 Agenda for Sustainable Development' adopted by the General Assembly of the United Nations on 25 September 2015.

2. The Parties recognise the contribution of this Agreement to the promotion of 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 16.2

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 commitments to the internationally recognised standards and international agreements to which the Party is 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 or investment by relaxing or lowering the level of protection provided by their respective environmental or labour laws and regulations. To that effect, the Parties shall not waive or otherwise derogate from those 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 16.3

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 further 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 that context, the Parties shall exchange views and information on trade-related labour issues of mutual interest in the meetings of the Committee on Trade and Sustainable Development established pursuant to Article 22.3, and as appropriate in other fora.

2. The Parties reaffirm their obligations deriving from the International Labour Organisation (hereinafter referred to as 'ILO') membership ⁽¹⁾. The Parties further reaffirm their respective commitments with regard to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. Accordingly, the Parties shall respect, promote and realise in their laws, regulations and practices 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 situations as regards the ratification of ILO Conventions and Protocols, including the fundamental ILO Conventions.

5. Each Party reaffirms its commitments to effectively implement in its laws, regulations and practices ILO Conventions ratified by Japan and the Member States of the European Union respectively.

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

ARTICLE 16.4

Multilateral environmental agreements

1. The Parties stress the importance of multilateral environmental agreements, in particular those to which both Parties are party, as a means of multilateral environmental governance for the international community to address global or regional environmental challenges. The Parties further 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 in the meetings of the Committee on Trade and Sustainable Development, and as appropriate in other fora.

2. Each Party reaffirms its commitment to effectively implement in its laws, regulations and practices the multilateral environmental agreements to which it is 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, including their amendments, which each Party considers appropriate to be bound by, as well as implementation of such agreements.

4. The Parties recognise the importance of achieving the ultimate objective of the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as 'UNFCCC'), in order to address the urgent threat of climate change, and the role of trade to that end. The Parties reaffirm their commitments to effectively implement the UNFCCC and the Paris Agreement, done at Paris on 12 December 2015 by the Conference of the Parties to the UNFCCC at its 21st session. The Parties shall cooperate to promote the positive contribution of trade to the transition to low greenhouse gas emissions and climate-resilient development. The Parties commit to working together to take actions to address climate change towards achieving the ultimate objective of the UNFCCC and the purpose of the Paris Agreement.

⁽¹⁾ For the European Union, 'ILO membership' means the ILO membership of the Member States of the European Union.

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

ARTICLE 16.5

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, the Parties:

- (a) 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 of those principles into trade and investment policies;
- (b) shall strive to facilitate and promote trade and investment in environmental goods and services, in a manner consistent with this Agreement;
- (c) shall strive to facilitate trade and investment in goods and services of particular relevance to climate change mitigation, such as those related to sustainable renewable energy and energy efficient goods and services, in a manner consistent with this Agreement;
- (d) 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 labelling schemes, and recognise the contribution of other voluntary initiatives, including private ones, to sustainability; and
- (e) shall encourage corporate social responsibility and exchange views and information on this matter through the Committee on Trade and Sustainable Development, and as appropriate through 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 which are part of the OECD Declaration on International Investment and Multinational Enterprises adopted by the OECD on 21 June 1976 and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Office in November 1977.

ARTICLE 16.6

Biological diversity

1. Each Party recognises the importance and the role of trade and investment in ensuring the conservation and sustainable use of biological diversity in accordance with relevant international agreements to which it is party, notably the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, and its protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 (hereinafter referred to as 'CITES').

2. In that context, each Party shall:

- (a) encourage the use of products which were obtained through 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, such as monitoring and enforcement measures, and awareness-raising actions, to combat illegal trade in endangered species of wild fauna and flora as listed in CITES, and as appropriate in other endangered species;

- (c) implement, as appropriate, the decisions which were adopted under the international agreements referred to in paragraph 1, including through laws, regulations, strategies, plans and programmes; and
- (d) exchange information and consult with the other Party at bilateral and multilateral levels on matters of relevance to this Article, including trade in wildlife and natural resource-based products, the valuation, mapping and assessment of ecosystems and related services, and the access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

ARTICLE 16.7

Sustainable management of forests and trade in timber and timber products

1. The Parties recognise the importance and the role of trade and investment in ensuring the conservation and sustainable management of forests.
2. In that context, 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, the trade with third countries; and
 - (c) exchange information and share experiences at bilateral and multilateral 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 16.8

Trade and sustainable use of fisheries resources and sustainable aquaculture

1. The Parties recognise the importance and the role of trade and investment in ensuring the conservation and sustainable use and management of fisheries resources, safeguarding marine ecosystems, and promoting responsible and sustainable aquaculture.
2. In that context, the Parties shall:
 - (a) comply with the United Nations Convention on the Law of the Sea, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, done at Rome on 24 November 1993, and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York on 4 August 1995, take measures to achieve the objectives and principles of the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organisation on 31 October 1995, encourage the implementation of port state measures both at global and regional levels, and, as appropriate, encourage third countries to ratify, accept, approve, or accede to, relevant international agreements to which both Parties are party;
 - (b) promote conservation and sustainable use of fisheries resources through appropriate international organisations or bodies in which both Parties participate, including regional fisheries management organisations (hereinafter referred to as 'RFMOs'), by means of, where applicable, effective monitoring, control or enforcement of the RFMOs' resolutions, recommendations or measures, and implementation of their catch documentation or certification schemes;

- (c) adopt and implement their respective effective tools for combating illegal, unreported and unregulated (hereinafter referred to as 'IUU') fishing, including through legal instruments, and, where appropriate, control, monitoring and enforcement, and capacity management measures, recognising that voluntary sharing of information on IUU fishing will enhance the effectiveness of these tools in the fight against IUU fishing, and underlining the crucial role of the members of RFMOs with major fisheries markets to leverage a sustainable use of fisheries resources; and
- (d) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects.

ARTICLE 16.9

Scientific information

When preparing and implementing measures with the aim of 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 16.10

Transparency

Each Party shall ensure that any measure of general application pursuing the objectives of this Chapter is administered in a transparent manner, in accordance with its laws and regulations and Chapter 17, including by providing the public with reasonable opportunities and sufficient time to comment, and by publishing such measures.

ARTICLE 16.11

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 16.12

Cooperation

Recognising the importance of cooperation on trade-related 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 fields of environmental protection and labour, including through appropriate international organisations or bodies in which both Parties participate;
- (b) cooperate on evaluating the mutual impact between trade and environment, and trade and labour, as well as on identifying ways to enhance, prevent or mitigate such impact, taking into account the results of the monitoring and assessment carried out by the Parties, for instance, sustainability impact assessments as far as the European Union is concerned;
- (c) cooperate to facilitate and promote trade and investment in environmental goods and services, in a manner consistent with 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 ILO's Decent Work Agenda;
- (g) cooperate on trade-related aspects of multilateral environmental agreements, including through the exchange of views and information on the implementation of CITES and through technical and customs cooperation;
- (h) cooperate on trade-related aspects of the international climate change regime, including on 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; and
- (k) cooperate, bilaterally or through appropriate international organisations or bodies in which both Parties participate, to promote sustainable fishing and aquaculture practices and trade in legally obtained fisheries resources, as well as to combat IUU fishing.

ARTICLE 16.13

Committee on Trade and Sustainable Development

1. The Committee on Trade and Sustainable Development established pursuant to Article 22.3 (hereinafter referred to in this Chapter as 'the Committee') shall be responsible for the effective implementation and operation of this Chapter.
2. The Committee shall have the following functions:
 - (a) reviewing and monitoring the implementation and operation of this Chapter and, when necessary, making appropriate recommendations to the Joint Committee for its consideration related to subparagraph 5(d) of Article 22.1;
 - (b) considering any other matter related to this Chapter as the Parties may agree;
 - (c) interacting with civil society ⁽¹⁾ on the implementation of this Chapter;
 - (d) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1; and
 - (e) seeking solutions to resolve differences between the Parties as to the interpretation or application of this Chapter, including through the procedures pursuant to paragraph 5 of Article 16.17. ⁽²⁾
3. The Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Committee shall meet in accordance with subparagraph 3(a) of Article 22.3 without prejudice to procedures pursuant to paragraph 5 of Article 16.17.
4. The Committee will pursue coherence and cooperation between its work and the activities of the ILO and of relevant multilateral environmental organisations or bodies.

⁽¹⁾ For the purposes of this Chapter, 'civil society' means independent economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups.

⁽²⁾ For greater certainty, the advice provided under paragraph 4 of Article 16.17 is taken into account in the work carried out by the Committee pursuant to this subparagraph.

ARTICLE 16.14

Contact points

Each Party shall, upon the entry into force of this Agreement, designate a contact point to facilitate communications between the Parties on any matter relating to this Chapter and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

ARTICLE 16.15

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 in accordance with its 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 the advisory group or groups.
3. The advisory group or groups of each Party may meet on its or their own initiative and express its or their opinions on the implementation of this Chapter independently of the Party and submit those opinions to that Party.

ARTICLE 16.16

Joint Dialogue with civil society

1. The Parties shall convene the Joint Dialogue with civil society organisations situated in their territories (hereinafter referred to in this Chapter as 'Joint Dialogue'), including members of their domestic advisory groups referred to in Article 16.15, to conduct a dialogue on this Chapter.
2. The Parties shall promote in the Joint Dialogue a balanced representation of relevant stakeholders, including independent organisations which are representative of economic, environmental and social interests as well as other relevant organisations as appropriate.
3. The Joint Dialogue shall be convened no later than one year after the date of entry into force of this Agreement. Thereafter, the Joint Dialogue shall be convened regularly, unless the Parties agree otherwise. The Parties shall agree on the operation of the Joint Dialogue before the first meeting of the Joint Dialogue. Participation in the Joint Dialogue may take place by any appropriate means of communication as agreed by the Parties.
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 Committee and may be made publicly available.

ARTICLE 16.17

Government consultations

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 set out in this Article and Article 16.18. The provisions of this Chapter shall not be subject to dispute settlement under Chapter 21.
2. A Party may request in writing consultations with the other Party on any matter concerning the 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 and legal basis, specifying the relevant provisions of this Chapter.

3. When a Party requests consultation pursuant to paragraph 2, the other Party shall reply promptly and enter into consultations with a view to reaching a mutually satisfactory resolution of the matter.
4. During consultations, each Party shall provide sufficient information to enable a full examination of the matter in question. The Parties shall take into account the activities of the ILO and other relevant international organisations or bodies in which both Parties participate and, as may be required by the Parties on an *ad hoc* basis, may seek advice from those international organisations or bodies, or other experts. The Parties shall discuss appropriate measures to be implemented, taking into account that advice.
5. If no solution is reached through the consultations held in accordance with paragraphs 2 to 4, the Committee shall be convened promptly on request of a Party to consider the matter in question.
6. The Parties shall ensure that the solutions reached through the consultations under this Article will be jointly made publicly available, unless the Parties agree otherwise.

ARTICLE 16.18

Panel of experts

1. If, no later than 75 days of the date of the request by a Party to convene the Committee pursuant to paragraph 5 of Article 16.17, the Parties do not reach a mutually satisfactory resolution of the matter concerning the 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. Such request shall be made in writing through the contact point of the other Party referred to in Article 16.14 and shall identify the reasons for the request, including the identification of the matter to be resolved and an indication of its factual and legal basis.
2. The Committee shall, within one year of the date of entry into force of this Agreement, adopt the rules of procedure and the terms of reference for the panel of experts. The rules of procedure shall identify the procedures for finding the relevant information. The panel shall interpret the relevant Articles of 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, done at Vienna on 23 May 1969. Pending the establishment of those rules of procedure and terms of reference, the Rules of Procedure referred to in Article 21.30 shall apply *mutatis mutandis*, and the terms of reference shall be, unless the Parties agree otherwise no later than five days after the date of establishment of the panel, as follows:

‘to examine, in the light of the relevant Articles of Chapter 16, the matter referred to in the request for the establishment of the panel of experts, and to issue a report in accordance with paragraph 5 of Article 16.18, making recommendations for the resolution of the matter’.
3. The panel of experts may obtain information from any source it deems appropriate. For matters related to ILO instruments or multilateral environmental agreements, it should seek information and advice from the relevant international organisations or bodies. Any information obtained pursuant to this paragraph shall be submitted to the Parties for their comments.
4. The panel shall be composed of three experts. They shall be selected in accordance with subparagraphs (a) to (e).
 - (a) The experts shall have relevant technical or legal expertise in the 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 capacities 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, no later than 45 days after the date of receipt of the request to convene the panel, appoint one expert who may be a national of that Party 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 no later than 15 days after the expiry of the 45-day period.

- (c) If a Party has not appointed an expert or if the Parties have not agreed on nor appointed the chairperson pursuant to subparagraph (b), the experts or the chairperson not yet appointed shall be chosen no later than 15 days after the expiry of the 15-day period provided for in subparagraph (b) by lot from the candidates proposed pursuant to subparagraph (d).
- (d) The Committee shall, within one year of the date of entry into force of this Agreement, establish a list of at least 10 individuals who are willing and able to serve as experts pursuant to this Article, and who meet the qualifications set out in subparagraph (a). 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. Unless the Parties agree otherwise, they shall jointly select four individuals for the sub-list of chairpersons. The Committee will ensure that the number of individuals on the list is always maintained at the level required by this subparagraph.
- (e) The date of establishment of a panel shall be the date on which the chairperson is appointed.

5. 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. No later than 45 days after the date of receipt of the interim report, which shall be issued no later than 90 days after the date of establishment of the panel, the Parties may submit written comments on that 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 after 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. The Parties shall ensure the protection of confidential information.

6. The Parties shall discuss actions or measures to resolve the matter in question, taking into account the panel's final report and its suggestions. Each Party shall inform the other Party and its own domestic advisory group or groups of any follow-up actions or measures no later than three months after the date of issuance of the final report. The follow-up actions or measures shall be monitored by the Committee. The domestic advisory group or groups and the Joint Dialogue may submit their observations in this regard to the Committee.

ARTICLE 16.19

Review

1. The Committee shall discuss, as necessary, the implementation and operation of the institutional and consultation provisions contained in Articles 16.13, 16.17 and 16.18, taking into account, *inter alia*, the experience gained through the implementation and operation of this Chapter and the developments of the relevant policies of each Party. Such discussions may concern possible amendments to these Articles.

2. Taking into account the outcome of the discussions referred to in paragraph 1, the Committee may recommend to the Joint Committee in accordance with subparagraph 2(a) of Article 16.13 amendments to the Articles referred to in paragraph 1.

CHAPTER 17

TRANSPARENCY

ARTICLE 17.1

Definitions

For the purposes of this Chapter, 'measure of general application' means any law, regulation, rule, administrative or judicial decision, or administrative or judicial procedure, of general application with respect to any matter covered by this Agreement.