

CHAPTER TWELVE

TRADE AND SUSTAINABLE DEVELOPMENT

SECTION A

INTRODUCTORY PROVISIONS

ARTICLE 12.1

Context and Objectives

1. The Parties recall the Agenda 21 of the United Nations Conference on Environment and Development of 1992, the Preamble to the WTO Agreement, the Singapore Ministerial Declaration of the WTO of 1996, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Generating Full and Productive Employment and Decent Work for All of 2006, and the International Labour Organization (hereinafter referred to as "ILO") Declaration on Social Justice for a Fair Globalization of 2008. In view of these instruments, the Parties reaffirm their commitment to developing and promoting international trade and their bilateral trade and economic relationship in such a way as to contribute to sustainable development.

2. The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. They underline the benefit of cooperation on trade-related social and environmental issues as part of a global approach to trade and sustainable development.
3. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded by their domestic labour and environment law. At the same time, the Parties stress that environmental and labour standards should not be used for protectionist trade purposes.
4. The Parties recognise that it is their aim to strengthen their trade relations and cooperation in ways that promote sustainable development in the context of paragraphs 1 and 2. In light of the specific circumstances of each Party, it is not their intention to harmonise the labour or environment standards of the Parties.

ARTICLE 12.2

Right to Regulate and Levels of Protection

1. The Parties recognise the right of each Party to establish its own levels of environmental and labour protection, and to adopt or modify its relevant laws and policies accordingly, consistent with the principles of the internationally recognised standards or agreements to which it is party, referred to in Articles 12.3 (Multilateral Labour Standards and Agreements) and 12.6 (Multilateral Environmental Standards and Agreements).

2. The Parties shall continue to improve those laws and policies, and shall strive towards providing and encouraging high levels of environmental and labour protection.

SECTION B

TRADE AND SUSTAINABLE DEVELOPMENT – LABOUR ASPECTS¹

ARTICLE 12.3

Multilateral Labour Standards and Agreements

1. The Parties recognise the value of international cooperation and agreements on employment and labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalisation. They commit to consulting and cooperating as appropriate on trade-related labour and employment issues of mutual interest.

¹ When "labour" is referred to in this Chapter, it includes the issues relevant to the Decent Work Agenda as agreed on in the ILO and in the Ministerial Declaration of the UN Economic and Social Council on Generating Full and Productive Employment and Decent Work for All of 2006.

2. The Parties affirm their commitments, under the Ministerial Declaration of the UN Economic and Social Council on Generating Full and Productive Employment and Decent Work for All of 2006, to recognising full and productive employment and decent work for all as a key element of sustainable development for all countries and as a priority objective of international cooperation. The Parties resolve to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all.

3. In accordance with the obligations assumed under the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference at its 86th Session in Geneva, June 1998, the Parties commit to respecting, promoting and effectively implementing the principles concerning the fundamental rights at work, namely:

- (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.

The Parties affirm the commitment to effectively implementing the ILO Conventions that Singapore and the Member States of the Union have ratified respectively.

4. The Parties will make continued and sustained efforts towards ratifying and effectively implementing the fundamental ILO conventions, and they will exchange information in this regard. The Parties will also consider the ratification and effective implementation of other ILO conventions, taking into account domestic circumstances. The Parties will exchange information in this regard.

5. The Parties recognise that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage.

ARTICLE 12.4

Labour Cooperation in the Context of Trade and Sustainable Development

The Parties recognise the importance of working together on trade-related aspects of labour policies in order to achieve the objectives of this Agreement. The Parties may initiate cooperative activities of mutual benefit in areas including, but not limited to:

- (a) cooperation in international fora addressing labour aspects of trade and sustainable development, including, but not limited to, the ILO and Asia-Europe Meeting;
- (b) the exchange of information and the sharing of best practices in areas such as labour law and practices, compliance and enforcement systems, labour dispute management, labour consultation, labour-management cooperation and occupational safety and health;

- (c) the exchange of views on the positive and negative impacts of this Agreement on labour aspects of sustainable development and on ways to enhance, prevent or mitigate those impacts, taking into account sustainability impact assessments carried out by either or both Parties;
- (d) the exchange of views on the promotion of the ratification of fundamental ILO Conventions and other conventions of mutual interest, as well as on the effective implementation of ratified conventions;
- (e) cooperation on trade-related aspects of the ILO Decent Work Agenda, including on the interlinkages between trade and full and productive employment, labour market adjustment, core labour standards, labour statistics, human resources development and lifelong learning, social protection and social inclusion, social dialogue and gender equality; and
- (f) the exchange of views on the trade impact of labour regulations, norms and standards.

ARTICLE 12.5

Scientific Information

Each Party, when preparing and implementing measures aimed at health and safety at work which may affect trade or investment between the Parties, shall take account of relevant scientific and technical information and related international standards, guidelines or recommendations, if available, including the precautionary principle as enshrined in such international standards, guidelines or recommendations.

SECTION C

TRADE AND SUSTAINABLE DEVELOPMENT – ENVIRONMENTAL ASPECTS

ARTICLE 12.6

Multilateral Environmental Standards and Agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems, and they stress the need to enhance the mutual supportiveness between trade and environment policies, rules and measures. In this context, they will consult and cooperate as appropriate with respect to negotiations on trade-related environmental issues of mutual interest.
2. The Parties shall effectively implement, in their respective laws, regulations or other measures and practices in their territories, the multilateral environmental agreements to which they are party.¹

¹ The multilateral environmental agreements referred to shall encompass those protocols, amendments, annexes and adjustments binding on the Parties.

3. The Parties affirm their commitment to reaching the ultimate objective of the UN Framework Convention on Climate Change (hereinafter referred to as "UNFCCC"), and to effectively implementing the UNFCCC, its Kyoto Protocol, and the Paris Agreement of 12 December 2015 in a manner consistent with the principles and provisions of the UNFCCC. They commit to work together to strengthen the multilateral, rules-based regime under the UNFCCC building on the UNFCCC's agreed decisions, and to support efforts to develop a post-2020 international climate change agreement under the UNFCCC applicable to all parties.

4. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures to implement the multilateral environmental agreements to which they are 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 12.7

Trade in Timber and Timber Products

The Parties recognise the importance of the global conservation and sustainable management of forests. To that end, the Parties undertake to:

- (a) exchange information on approaches to promote the trade in, and the consumption of, timber and timber products from legally and sustainably managed forests, and to promote the awareness of such approaches;

- (b) promote global forest law enforcement and governance and to address trade in illegally harvested timber and timber products through, for example, promoting the use of timber and timber products from legally and sustainably managed forests, including through verification and certification schemes;
- (c) cooperate to promote the effectiveness of measures or policies aimed at addressing the trade in illegally harvested timber and timber products; and
- (d) promote the effective use of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) with regard to timber species whose conservation status is considered at risk.

ARTICLE 12.8

Trade in Fish Products

The Parties recognise the importance of ensuring the conservation and management of fish stocks in a sustainable manner. To that end, the Parties undertake to:

- (a) comply with long-term conservation measures and sustainable exploitation of fish stocks as defined in the international instruments ratified by the respective Parties and to uphold the principles of the Food and Agriculture Organization of the UN (hereinafter referred to as "FAO") and relevant UN instruments relating to these issues;

- (b) introduce and implement effective measures to combat illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing, including by cooperating with Regional Fisheries Managements Organisations and implementing their Catch Documentation or Certification Schemes for the export of fish and fish products, when required, and the Parties shall also facilitate the elimination of IUU products from trade flows and the exchange of information on IUU activities;
- (c) adopt effective monitoring and control measures to ensure compliance with conservation measures, such as appropriate Port State Measures; and
- (d) uphold the principles of the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and respect the relevant provisions of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing.

ARTICLE 12.9

Scientific Information

Each Party, when preparing and implementing measures aimed at environmental protection which may affect trade or investment between the Parties, shall take account of scientific evidence and relevant international standards, guidelines or recommendations, where available, and of the precautionary principle.

ARTICLE 12.10

Cooperation on Environmental Aspects in the Context of Trade and Sustainable Development

The Parties recognise the importance of working together on trade-related aspects of environmental policies in order to achieve the objectives of this Agreement. The Parties may initiate cooperative activities of mutual benefit in areas including, but not limited to:

- (a) the exchange of views on the positive and negative impacts of this Agreement on environmental aspects of sustainable development and ways to enhance, prevent or mitigate those impacts, taking into account sustainability impact assessments carried out by either or both Parties;
- (b) cooperation in international fora addressing environmental aspects of trade and sustainable development, including in particular in the WTO, under the United Nations Environment Programme and under multilateral environmental agreements;
- (c) cooperation with a view to promoting the ratification and effective implementation of multilateral environmental agreements with relevance to trade;
- (d) the exchange of information and cooperation on private and public certification and labelling schemes, including eco-labelling, and on green public procurement;
- (e) the exchange of views on the trade impact of environmental regulations, norms and standards;

- (f) cooperation on trade-related aspects of the current and future international climate change regime, including ways to address adverse effects of trade on climate, as well as means to promote low-carbon technologies and energy efficiency;
- (g) cooperation on trade related aspects of multilateral environmental agreements, including customs cooperation;
- (h) cooperation on sustainable forest management to encourage effective measures for certification of sustainably produced timber;
- (i) the exchange of views on the relationship between multilateral environmental agreements and international trade rules;
- (j) the exchange of views on the liberalisation of environmental goods and services; and
- (k) the exchange of views regarding conservation and management of the living marine resources.

SECTION D

GENERAL PROVISIONS

ARTICLE 12.11

Trade and Investment Promoting Sustainable Development

1. The Parties resolve to make continuing special efforts to facilitate and promote trade and investment in environmental goods and services, including through addressing related non-tariff barriers. The Parties also recognise the usefulness of efforts to promote trade in goods that are the subject of voluntary or private sustainable development assurance schemes, such as eco-labelling, or fair and ethical trade.
2. The Parties shall pay special attention to facilitating the removal of obstacles to trade or investment concerning climate-friendly goods and services, such as sustainable renewable energy goods and related services and energy efficient products and services, including through the adoption of policy frameworks conducive to the deployment of best available technologies and through the promotion of standards that respond to environmental and economic needs and minimise technical obstacles to trade.

3. The Parties recognise the need to ensure that, when developing public support systems for fossil fuels, proper account is taken of the need to reduce greenhouse gas emissions and of the need to limit distortions of trade as much as possible. While subparagraph 2(b) of Article 11.7 (Prohibited Subsidies) does not apply to subsidies to the coal industry, the Parties share the goal of progressively reducing subsidies for fossil fuels. Such reductions may be accompanied by measures to alleviate the social consequences associated with the transition to low carbon fuels. In addition, both Parties will actively promote the development of a sustainable and safe low-carbon economy, such as through investment in renewable energies and energy efficient solutions.

4. When promoting trade and investment, the Parties should make special efforts to promote corporate social responsibility practices which are adopted on a voluntary basis. In this regard, each Party shall refer to relevant internationally accepted principles, standards or guidelines to which it has agreed or acceded, such as the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, the UN Global Compact, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Parties commit to exchanging information and cooperating on promoting corporate social responsibility.

ARTICLE 12.12

Upholding Levels of Protection

1. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental and labour laws, in a manner affecting trade or investment between the Parties.

2. A Party shall not fail to effectively enforce its environmental and labour laws, through a sustained or recurring course of action or inaction, where such failure to effectively enforce would affect trade or investment between the Parties.

ARTICLE 12.13

Transparency

Each Party shall ensure that where any measure of general application aimed at protecting the environment or labour conditions may affect trade and investment between the Parties, such measure is developed, introduced and administered in a transparent manner and with due notice and opportunities for interested persons to submit their views, in accordance with that Party's domestic law and with Chapter Thirteen (Transparency).

ARTICLE 12.14

Review of Impact on Sustainable Development

1. The Parties undertake to jointly or independently monitor, assess and review the impact of the implementation of this Agreement on sustainable development through their relevant participative processes and institutions, in accordance with their existing practices.

2. The Parties will exchange views on methodologies and indicators for trade sustainability impact assessments.

ARTICLE 12.15

Institutional Set up and Monitoring Mechanism

1. Each Party shall designate an office within its administration that shall serve as contact point with the other Party for the purpose of implementing this Chapter.
2. The Parties shall establish a Board on Trade and Sustainable Development (hereinafter referred to as the "Board"). The Board shall comprise senior officials from within the administration of each Party.
3. The Board shall meet within the first two years after the date this Agreement enters into force and thereafter as necessary, to oversee the implementation of this Chapter.
4. Each meeting of the Board shall include a public session with stakeholders to exchange views on issues related to the implementation of this Chapter. The Parties shall promote a balanced representation of relevant interests, including independent representative organisations of employers, workers, environmental interests and business groups, as well as other relevant stakeholders as appropriate.

5. Each Party shall establish new consultative mechanisms or make use of existing consultative mechanisms to seek advice from relevant domestic stakeholders on the implementation of this Chapter, such as domestic advisory groups. Such mechanisms shall include balanced representation of independent economic, social and environmental stakeholders. These stakeholders include employers' and workers' organisations, and non-governmental organisations. These stakeholders may, on their own initiative, submit views or recommendations to their respective Parties on the implementation of this Chapter.

ARTICLE 12.16

Government Consultations

1. In case of disagreement on any matter arising under this Chapter, the Parties shall only have recourse to the procedures provided for in Article 12.16 (Government Consultations) and Article 12.17 (Panel of Experts). Chapter Fourteen (Dispute Settlement) and Chapter Fifteen (Mediation Mechanism) do not apply to this Chapter.

2. In case of any disagreement referred to in paragraph 1, a Party may request consultations with the other Party by delivering a written request to the contact point of the other Party. Consultations shall commence promptly after a Party has delivered a request for consultations.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter. The Parties shall take into account the activities of the ILO or relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations. Where relevant, the Parties, subject to mutual agreement, may seek the views of these organisations or bodies, or of any person or body the Parties deem appropriate, in order to fully examine the matter.
4. If a Party considers that the matter needs further discussion that Party may request that the Board be convened to consider the matter by delivering a written request to the contact point of the other Party. The Board shall convene promptly and endeavour to agree on a resolution of the matter.
5. Where appropriate, the Board may consult relevant stakeholders.
6. Any resolution reached by the Board on the matter shall be made public unless it otherwise decides.

ARTICLE 12.17

Panel of Experts

1. For any matter that has not been satisfactorily addressed by the Board within 120 days from the delivery of a request for the Board to convene to consider that matter pursuant to paragraph 4 of Article 12.16 (Government Consultations), or within a longer period as agreed by both Parties, a Party may request, by delivering a written request to the contact point of the other Party, that a Panel of Experts be established to examine that matter.

2. At its first meeting after the entry into force of this Agreement, the Board shall establish the rules of procedure of the Panel of Experts, taking reference from the relevant Rules of Procedure in Annex 14-A. The principles in Annex 14-B shall apply to this Article.

3. At its first meeting after the entry into force of this Agreement, the Board shall establish a list of at least twelve individuals who are willing and able to serve on the Panel of Experts. This list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party and who shall act as Chairpersons of the Panel of Experts. Each Party shall propose at least four individuals to serve as experts on its own sub-list. Each Party shall also propose at least two individuals to serve on the sub-list of Chairpersons with the agreement of both Parties. At its meetings, the Board will review the list and ensure that it is maintained at least at the level of twelve individuals.

4. The list referred to in paragraph 3 shall comprise individuals with specialised knowledge or expertise regarding the issues addressed in this Chapter, regarding labour or environmental law, or regarding the resolution of disputes arising under international agreements. Those individuals shall be independent, shall serve in their individual capacities, and shall neither take instructions from any organisation or government with regard to issues related to the matter at stake nor be affiliated with the government of Singapore, the government of any Member State of the Union, or the Union.

5. A Panel of Experts shall be composed of three members, unless the Parties agree otherwise. Within 30 days of the date of receipt by the responding Party of the request for the establishment of a Panel of Experts, the Parties shall consult each other in order to reach an agreement on its composition. In the event that the Parties are unable to agree on the composition of the Panel of Experts within this time-frame, they shall select the chairperson from the relevant sub-list referred to in paragraph 3 by mutual agreement or, in case they cannot agree within another seven days, by lot. Each Party shall select one expert who satisfies the requirements of paragraph 4 within 44 days of the date of receipt by the responding Party of the request for the establishment of a Panel of Experts. The Parties may agree on the selection of any other expert who satisfies the requirements of paragraph 4 to sit on the Panel of Experts. In the event that the composition of the Panel of Experts has not been completed within 44 days from the date of receipt by the responding Party of the request for the establishment of a Panel of Experts, the remaining expert(s) shall be selected within seven days by lot from among the individuals on the sub-list(s) referred to in paragraph 3 that was proposed by the Party or Parties that had not completed the procedure. In the event that such list has not yet been established, the experts shall be selected by lot from the individuals who have been formally proposed by one or both of the Parties. The date of establishment of the Panel of Experts shall be the date on which the last of the three experts is selected.

6. Unless the Parties agree otherwise within seven days from the date of establishment of the Panel of Experts, the terms of reference of the Panel of Experts shall be:

"To examine, in the light of the relevant provisions of the Trade and Sustainable Development Chapter, the matter referred to in the request for the establishment of the Panel of Experts, and to issue a report, in accordance with paragraph 8 of Article 12.17 (Panel of Experts), making recommendations for the solution of the matter".

7. The Panel of Experts may obtain information from any source it deems appropriate. In matters related to the respect of multilateral agreements as set out in Articles 12.3 (Multilateral Labour Standards and Agreements) and 12.6 (Multilateral Environmental Standards and Agreements), the Panel of Experts should seek information and advice from the ILO or Multilateral Environmental Agreement bodies. Any information obtained under this paragraph shall be disclosed to both Parties and submitted to them for their comments.

8. The Panel of Experts shall issue an interim and a final report to the Parties. These reports shall set out the findings of facts, the applicability of the relevant provisions, and the basic rationale behind any findings and recommendations. The Panel of Experts shall issue the interim report to the Parties not later than 90 days from its date of establishment. Any Party may submit written comments on the interim report to the Panel of Experts. After considering any such written comments, the Panel of Experts may modify the report and make any further examination it considers appropriate. The Panel of Experts shall issue the final report to the Parties no later than 150 days from its date of establishment. Where it considers that the deadlines set in this paragraph cannot be met, the chairperson of the Panel of Experts shall notify the Parties in writing, stating the reasons for the delay and the date on which the Panel of Experts plans to issue its interim or final report. The Panel of Experts shall issue the final report no later than 180 days after the date of its establishment, unless the Parties agree otherwise. This final report shall be made publicly available unless the Parties decide otherwise.

9. The Parties shall discuss the appropriate measures to be implemented, taking into account the report and recommendations of the Panel of Experts. The Party concerned shall inform its stakeholders, through the consultative mechanisms referred to in paragraph 5 of Article 12.15 (Institutional Set Up and Monitoring Mechanism), and the other Party, of its decisions on any actions or measures to be implemented, no later than three months after the report has been submitted to the Parties. The follow-up to the report and the recommendations of the Panel of Experts shall be monitored by the Board. Stakeholders may submit observations to the Board in this regard.

CHAPTER THIRTEEN

TRANSPARENCY

ARTICLE 13.1

Definitions

For the purposes of this Chapter:

- (a) "measure of general application" means laws, regulations, judicial decisions, procedures and administrative rulings that may have an impact on any matter covered by this Agreement but does not include a ruling that applies to a particular person; and