

## **TRADE AND SUSTAINABLE DEVELOPMENT**

### **Article 1 Context, objectives and scope**

1. The Parties recall the Agenda 21 on Environment and Development of 1992, 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 Decent Work Agenda, the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want", and the outcome of the UN Summit on Sustainable Development of 2015 entitled "Transforming Our World: the 2030 Agenda for Sustainable Development", and reaffirm their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations, and will encourage the integration of this objective in their trade relationship.
2. The Parties reaffirm their commitment to pursue sustainable development, whose pillars – economic development, social development and environmental protection – are inter-dependent and mutually reinforcing.
3. They underline the benefits of cooperating on trade-related labour<sup>1</sup> and environmental issues as part of the global approach to trade and sustainable development. Accordingly, the scope of this Chapter is on trade-related aspects of labour and environmental issues.
4. The Parties agree that this Chapter embodies a cooperative approach based on common values and interests, taking into account the differences in their levels of development.

### **Article 2**

#### **Right to regulate and levels of protection**

1. The Parties recognise the right of each Party to determine its sustainable development objectives, strategies, policies and priorities, to establish its own levels of domestic protection in the environmental and social areas as it deems appropriate and to adopt or modify accordingly its relevant laws and policies, consistently with the principles of internationally recognised standards or the agreements, to which it is a party, referred to in Articles 3 and 4.
2. Each Party shall strive to ensure that its laws and policies provide for and encourage high levels of domestic protection in the environmental and social areas and shall strive to continue to improve those laws and policies.

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<sup>1</sup> When labour is referred to in this chapter, it includes the issues under the Decent Work Agenda, as expressed in the ILO 2008 Declaration on Social Justice for a Fair Globalisation.

## Article 3

### **Multilateral labour standards and agreements**

1. The Parties recognise the importance of full and productive employment and decent work for all, in particular as a response to globalisation, and reaffirm their commitment to promote the development of their bilateral trade in a way that is conducive to full and productive employment and decent work for all, including for women and young people. In this context, the Parties commit to consult and co-operate as appropriate on trade-related labour issues of mutual interest.

2. Each Party reaffirms its commitments, in accordance with its obligations deriving from the membership of 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 86<sup>th</sup> Session in 1998, to respect, promote and effectively implement 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.

3. Each Party will make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions, and the Parties will regularly exchange information in this regard.

4. Each Party, will also consider the ratification of other conventions that are classified as up to date by the ILO, taking into account its domestic circumstances. The Parties will exchange information in this regard.

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

6. The Parties recognise that the violation of fundamental principles and rights at work 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 recognise the value of multilateral environmental governance and agreements as a response of the international community to environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment. In this context, they commit to consult and cooperate as appropriate with respect to trade-related environmental issues of mutual interest.
2. The Parties reaffirm their commitment to effectively implement in their laws and practices the multilateral environmental agreements (MEAs) to which they are party.
3. The Parties shall exchange at the meetings of the Specialised committee on trade and sustainable development and, as appropriate, in other occasions, information and experiences on their respective situation and advancements with regard to ratification of MEAs or amendments to such agreements.
4. Nothing in this Agreement shall prevent Parties from adopting or maintaining measures to implement the MEAs 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 5

### **Climate change**

1. The Parties reaffirm their commitment to reaching the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. They commit to cooperate on the development of the future legally-binding international climate change agreement applicable to all parties under the UNFCCC.
2. Under this framework, the Parties recognize the role that domestic policy instruments play in achieving climate change objectives. Accordingly, the Parties agree to engage in dialogue and share information and experience in areas of mutual interest or priority such as:
  - Best practices and lessons learned in designing, implementing, and operating mechanisms for pricing carbon;
  - Promotion of domestic and international carbon markets, including through mechanisms such as Emissions Trading Schemes (ETS) and Reducing Emissions from Deforestation and Forest Degradation (REDD+).
  - Promotion of energy efficiency, of low-emission technology and of renewable energy.

## Article 6

### **Biological diversity**

1. The Parties recognise the importance of ensuring the conservation and sustainable use of biological diversity in accordance with the Convention on Biological Diversity (CBD) and its Strategic Plan for Biodiversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and other relevant international instruments to which they are party, as well as the decisions adopted hereunder.

2. Recalling Article 15 of the CBD, the Parties recognise the sovereign rights of States over their natural resources and that the authority to determine access to their genetic resources rests with their respective governments and is subject to their domestic laws. Furthermore, the Parties shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses and not to impose restrictions that run counter to the objectives of the CBD, and recognise that access to genetic resources shall be subject to the prior informed consent of the Party providing genetic resources, unless otherwise determined by that Party.

3. To this end, each Party commits to:

- (a) encourage trade in products which contribute to the sustainable use and conservation of biological diversity, in accordance with domestic laws.
- (b) promote and encourage the conservation and sustainable use of biological diversity including access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.
- (c) Exchange information with the other Party on actions such as strategies, policy initiatives, programmes, action plans, consumers' awareness campaigns of relevance in a trade context aimed at halting the loss of biological diversity and reducing pressures on biological diversity and, where relevant, cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies.
- (d) Adopt and implement appropriate effective measures, which are consistent with its commitments under international treaties to which it is a Party, leading to a reduction of illegal trade in wildlife, such as awareness raising campaigns, monitoring and enforcement measures.
- (e) Enhance cooperation, as appropriate, to propose new animal and plant species for amendment of appendices I and II to the CITES.
- (f) Cooperate at the regional and global levels, as appropriate, with the aim of promoting the conservation and sustainable use of biological diversity in natural or agricultural ecosystems, including endangered species, their habitat, specially protected natural areas and genetic diversity; the restoration of ecosystems; the elimination or reduction of negative environmental impacts resulting from the use of living and non-living natural resources, including ecosystems; the access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

## Article 7

### **Sustainable forest management and trade in forest products**

1. The Parties recognise the importance of ensuring the conservation and sustainable management of forests resources in contributing to the Parties' economic, environmental and social objectives.

2. To this end, each Party commits to:

(a) Encourage the promotion of trade in forest products from sustainably managed forests and harvested in accordance with the domestic legislation of the country of harvest; this may include the conclusion of a Forest Law Enforcement Governance and Trade ("FLEGT")Voluntary Partnership Agreement.

(b) Exchange information on measures to promote consumption of timber and timber products from sustainably managed forests and, where relevant, cooperate to develop such measures.

(c) Adopt measures which are consistent with domestic laws and international treaties to which it is a Party, to promote the conservation of forest resources and combat illegal logging and related trade.

(d) Exchange information on actions, as appropriate, to improve forest law enforcement and where relevant cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies aiming at excluding illegally harvested timber and timber products from trade flows.

(e) Cooperate at the regional and global levels as appropriate with the aim of promoting the conservation and sustainable management of all types of forests.

## Article 8

### **Trade and sustainable management of living marine resources and aquaculture products**

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

2. To this end, the Parties commit to:

(a) Comply with long-term conservation and management measures and sustainable exploitation of marine living resources as defined in the UN Convention on the Law of the Sea of 1982 (UNCLOS), encourage compliance with the objectives of the United Nations Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks

and Highly Migratory Fish Stocks, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU, and adhere to the principles of the FAO Code of Conduct for Responsible Fisheries of 1995.

- (b) Cooperate, as appropriate, with and within Regional Fisheries Management Organisations to which they are members, observers, or cooperating non-contracting parties, including through effective application of their Monitoring, Control and Surveillance and enforcement of management measures and, where applicable, implement their Catch Documentation or Certification Schemes.
- (c) Cooperate in and actively engage in the fight against illegal, unreported and unregulated (IUU) fishing and fishing related activities with comprehensive, effective and transparent measures to combat IUU. The Parties shall also facilitate the exchange of information on IUU activities and implement policies and measures to exclude IUU products from trade flows.
- (d) Promote the development of sustainable aquaculture, taking into account its economic, social and environmental aspects.
- (e) Exchange at the meetings of the Specialised committee on trade and sustainable development and, as appropriate, in other occasions, information on all new measures of management of living marine resources and fishery products that may impact on trade between the Parties.

## Article 9

### **Trade and investment favouring sustainable development**

The Parties confirm their commitment to enhance 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 beneficial role that decent work may have for economic efficiency, innovation and productivity, and they shall encourage greater policy coherence between trade policies, on the one hand, and labour policies on the other.
- (b) Each Party shall strive to facilitate and promote trade and investment in environmental goods and services, in a manner consistent with this Agreement.
- (c) The Parties shall strive to facilitate trade and investment in goods and services of particular relevance for climate change mitigation, including through the development of policy frameworks conducive to the deployment of best available technologies.

- (d) The Parties recognize that voluntary initiatives can contribute to the achievement and maintenance of high levels of environmental and labour protection and complement domestic regulatory measures. Therefore, each Party, in accordance with its laws or policies, shall encourage the development of and participation in such initiatives, including voluntary sustainable assurance schemes such as fair and ethical trade schemes and eco-labels.
- (e) The Parties, in accordance with their domestic policies, agree to promote corporate social responsibility (CSR), provided that CSR-related 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. Promotion of CSR includes among others exchange of information and best practices, education and training activities and technical advice. In this regard, each Party takes into account relevant internationally accepted and agreed instruments, that have been endorsed or are supported by the Party, such as the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

## Article 10

### **Upholding levels of protection**

1. The Parties stress that weakening the levels of protection in the environmental or labour areas is detrimental to the objectives of this Chapter. Accordingly, they recognize that it is inappropriate to encourage trade or investment by weakening the levels of protection afforded in domestic environmental or labour laws.
2. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour laws, in a manner affecting trade or investment between the Parties.
3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental and labour laws, as an encouragement for trade or investment.
4. A Party shall not apply labour or environmental laws in a manner that would constitute a disguised restriction on trade or unjustifiable discrimination between the Parties.

## Article 11

### **Scientific information**

When preparing and implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall take reasonable account of relevant available scientific, technical and innovation-related information, and relevant international standards, guidelines or recommendations if they exist, including the precautionary principle.

## Article 12

### **Transparency**

Each Party, in accordance with its domestic laws and Chapter [...] [Transparency], shall ensure that any measures aimed at protecting the environment and labour conditions that may affect trade or investment are developed, introduced and implemented in a transparent manner, with due notice and giving the opportunity to interested persons to provide their views.

## Article 13

### **Review of sustainability impacts**

The Parties will, jointly or independently, review, monitor and assess the impact of the implementation of this Agreement on sustainable development through their respective policies, practices, participative processes and institutions.

## Article 14

### **Working together on trade and sustainable development**

1. In accordance with the cooperative approach of this Chapter, the Parties recognise the importance of working together on trade-related aspects of sustainable development in order to achieve the objectives of this Chapter. Accordingly, they may cooperate in, inter alia, the following areas:

- (a) Trade and sustainable development in international fora, including the ILO, ASEM, UNEP, and MEAs.
- (b) Exchange information and experience with regard to methodologies and indicators for trade sustainability impact assessments.
- (c) The trade impact of labour and environment regulations, norms and standards, as well as the labour and environmental impacts of trade and investment rules including on the development of strategies and policies on sustainable development.
- (d) Sharing experience on promoting the ratification and implementation of fundamental, priority and other up-to-date ILO Conventions and MEAs of relevance in a trade context.
- (e) Trade related aspects of the ILO Decent Work Agenda, in particular on the interlinkages between trade and full and productive employment for all, including youth, women and people with disabilities, labour market adjustment, core labour standards and other international labour standards, labour statistics, human resources development and lifelong learning, social protection for all (including for vulnerable and disadvantaged groups, such as migrant workers, women, youth and people with disabilities) and social inclusion, social dialogue and gender equality.

- (f) Trade-related aspects of MEAs, including customs cooperation.
  - (g) Trade-related aspects of the current and future international climate change regime, including means to promote low-carbon technologies and energy efficiency.
  - (h) Sharing information and experience about certification and labelling schemes, including eco-labelling.
  - (i) Promoting corporate social responsibility and accountability, including concerning the internationally agreed instruments that have been endorsed or are supported by each Party.
  - (j) Trade-related measures to promote the conservation and sustainable use of biological diversity, including the mapping, assessment and valuation of ecosystems and their services, and combating illegal international trade in wildlife.
  - (k) Trade-related measures to promote the conservation and sustainable management of forests with a view to reducing deforestation and illegal logging.
  - (l) Trade-related measures to promote sustainable fishing practices and trade in sustainably managed fish products.
- (m) Sharing information and experience about trade-related aspects concerning the definition and implementation of green growth strategies and policies, including but not limited to sustainable production and consumption, climate change mitigation and adaptation, and environmentally sound technology.
2. The Parties shall share information and experience for the purposes of developing and implementing cooperation and capacity building activities on trade and sustainable development.
  3. In accordance with Chapter [...Cooperation and Capacity Building], the Parties may undertake activities in the above areas of cooperation through:
    - (a) Workshops, seminars, training and dialogues to share knowledge, experiences and best practices;
    - (b) Studies;
    - (c) Technical assistance and capacity building as appropriate.The Parties may agree other forms of cooperation.

## Article 15

### **Institutional set-up and overseeing mechanism**

1. Each Party shall designate a Contact Point within its administration for the purposes of implementing this chapter.
2. The Parties shall establish a Specialised committee on Trade and Sustainable Development. The Specialised committee on trade and sustainable development on Trade and Sustainable Development shall comprise senior officials from the relevant administrations of each Party or officials they designate.
3. The Specialised committee on trade and sustainable development on Trade and Sustainable Development shall meet within the first year after the date this Agreement enters into force, and thereafter as necessary, to review the implementation of this chapter, including co-operative activities undertaken under Article 14. This Specialised committee on trade and sustainable development shall establish its own rules of procedure, and adopt its decisions by mutual agreement.
4. Each Party shall convene new or consult existing domestic advisory group(s) on sustainable development with the task of advising on the implementation of this Chapter. Each Party shall decide on its domestic procedures for the establishment of its domestic advisory group(s) and appoint its(their) members. Such domestic advisory group(s) shall comprise independent representative organisations, ensuring a balanced representation of economic, social and environmental stakeholders, including among others employers' and workers' organizations, business groups, and environmental organizations. Each domestic advisory group may, on its own initiative, submit views or recommendations to its respective Party on the implementation of this Chapter.
5. Members of the domestic advisory group(s) of each Party shall meet in a joint forum to conduct a dialogue on sustainable development aspects of trade relations between the Parties. By joint agreement, domestic advisory groups of both Parties may involve other stakeholders in meetings of the joint forum. The forum is based on a balanced representation of economic, social and environmental stakeholders. The report of each meeting of the joint forum shall be submitted to the Specialised committee on trade and sustainable development and thereafter be publicly available.
6. Unless the Parties agree otherwise, the joint forum shall meet once a year and in conjunction with the meetings of the Specialised committee on trade and sustainable development. In such occasions, the Parties shall present to the joint forum an update on the implementation of the chapter. The Parties shall agree on the operation of the joint forum no later than one year after the entry into force of this Agreement.

## Article 16

### **Government Consultations**

1. For any matter arising under this chapter where there is disagreement, the Parties shall only have recourse to the procedures established under Article 16 and Article 17. Except as otherwise provided in this Chapter, the Chapter XXX [Dispute Settlement] and its Annex III (Mediation) shall not apply to this Chapter; its Annex I applies in accordance with Article 17.2.

2. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The request shall present the matter clearly, identifying the problem at issue and providing a brief summary of the claims under this Chapter, including the indication of the relevant provisions thereof and explaining how it affects the objectives of this Chapter, as well as any other information the Party deems relevant. Consultations shall start promptly after a Party delivers a request for consultations.

3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter. During consultations, special attention shall be given to the particular problems and interests of the developing country Party. Where relevant, the Parties shall give due consideration to the works of the ILO or relevant multilateral environmental organisations or bodies and may, by mutual agreement, seek advice from these organisations or bodies, or any other body or person they 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 Specialised committee on trade and sustainable development on Trade and Sustainable Development be convened to consider the matter by delivering a written request to the contact point of the other Party. The Specialised committee on trade and sustainable development shall convene promptly and endeavour to agree on a resolution of the matter.

5. Where appropriate, the Specialised committee on Trade and Sustainable Development may seek the advice of the domestic advisory group(s) of either or both Party(es) or other expert assistance, with the objective of facilitating its analysis.

6. Any resolution reached by the Parties on the matter shall be made publicly available, unless they otherwise mutually decide.

## Article 17

### **Panel of experts**

1. If any matter has not been satisfactorily resolved by the Specialised committee on trade and sustainable development within 120 days, or a longer period agreed by both Parties, after the delivery of a request for consultations under Article 16.4, a Party may request, by delivering a written request to the contact point of the other Party, that a Panel of Experts be convened to examine that matter.

2. For any procedural matter that is not covered under this Article, the Rules of

Procedure for the Panel of Experts are to be established by the Specialised committee on trade and sustainable development after the entry into force of this Agreement. Unless the Specialised committee on trade and sustainable development agrees otherwise, pending the establishment of such Rules of Procedure, the Rules of Procedure set out in Annex I of the Chapter [... Dispute settlement] are to be applied, taking into account the nature of the work of the Panel of Experts.

3. The Specialised committee on trade and sustainable development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve on the Panel of experts. This list shall be composed of 3 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 chairperson to the Panel of experts. Each Party shall propose at least five individuals to serve as experts on its own sub-list. The Parties shall also select at least five individuals to serve on the sub-list of chairpersons. At its meetings, the Specialised committee on trade and sustainable development will review the list and ensure that it is maintained at least at the level of 15 individuals.

4. The list referred to in paragraph 3 shall comprise individuals with specialised knowledge of or expertise in labour or environmental law, issues addressed in this Chapter, or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party. The principles in the Code of Conduct [Annex II of the Chapter ... Dispute settlement] shall apply to experts under this article, taking into account the nature of their work.

5. A Panel of Experts shall be composed of three members, unless otherwise agreed by the Parties. Within thirty (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 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 complying with the requirements under paragraph 4 within fourteen (14) days after the end of the 30 days. The Parties may agree on any other expert complying with the requirements under 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 this time-frame of forty-four (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 (7) days by lot from the sub-list(s) referred to in paragraph 3 among the individuals proposed by the Party or Parties who has or have not completed the procedure. In case the list referred to in paragraph 3 has not yet been established, the experts shall be selected by lot from the individuals which have been formally proposed by both of the Parties or, by one of the Parties, in case only one Party has made its proposal. 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 reports, in accordance with paragraph 8 of this Article, making recommendations for the solution of the matter".

7. In matters related to the respect of multilateral agreements as set out in Article 3 and 4 of this Chapter, the Panel should seek information and advice from the ILO or MEA bodies. Any information obtained under this paragraph shall be provided to both Parties 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 ninety (90) days from its date of establishment. Any Party may submit written comments to the Panel of Experts on the interim report within 45 days of its issuing. 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 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 mutually decide otherwise.

9. The Parties shall discuss appropriate actions or measures to be implemented taking into account the Panel's final report and the recommendations therein. The Party concerned shall inform its domestic advisory group(s) and the other Party of its decisions on any actions or measures to be implemented no later than ninety (90) days, or a longer period of time mutually agreed by the Parties, after the final report has been submitted to the Parties. The follow-up to the implementation of such actions or measures shall be monitored by the Specialised committee on trade and sustainable development. The domestic advisory groups and the joint forum may submit observations to the Specialised committee on trade and sustainable development in this regard.