

CHAPTER 13

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 13.1

Scope

Except as otherwise provided in this Chapter, this Chapter applies to measures adopted or maintained by the State Parties affecting trade-related and investment-related aspects of labour and environmental issues.

ARTICLE 13.2

Context and Objectives

1. The State Parties recall the Declaration of the United Nations Conference on the Human Environment of 1972, the Rio Declaration on Environment and Development of 1992, Agenda 21 on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development of 2002 and the Plan of Implementation on Sustainable Development of 2002, the outcome document of the United Nations Conference on Sustainable Development, “The Future We Want” of 2012, the outcome document of the UN Summit on Sustainable Development “Transforming Our World: the 2030 Agenda for Sustainable Development” of 2015, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998, the Ministerial Declaration of the UN Economic and Social Council on 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 of 2006 and the ILO Declaration on Social Justice for a Fair Globalization of 2008.
2. The State Parties shall promote sustainable development, which encompasses the economic, social and environmental dimensions, all three being interdependent and mutually reinforcing components of sustainable development. They underline the benefit of cooperation on trade-related labour and environmental issues as part of a global approach to trade and sustainable development.
3. The State Parties reaffirm their commitment to promote the development of international trade and investment in such a way as to contribute to the objective of sustainable development and to ensure that this objective is integrated and reflected in the Parties’ trade relations.
4. The State Parties agree that this Chapter embodies a cooperative approach based on common values and interests, taking into account their national circumstances and priorities.

ARTICLE 13.3

Right to Regulate and Levels of Protection

1. Recognising the right of each State Party, subject to this Agreement, to establish its own levels of environmental and labour protection, and to adopt or modify accordingly its relevant domestic laws, policies and practices, each State Party shall seek to ensure that its domestic laws, policies and practices provide for and encourage high levels of environmental and labour protection, consistent with standards, principles and agreements referred to in Articles 13.5 (International Labour Standards and Agreements) and 13.6 (Multilateral Environmental Agreements), and shall strive to further improve the level of protection provided for in those laws policies and practices.
2. The State Parties recognise the importance of scientific and technical information, as well as relevant international standards, guidelines and recommendations when preparing and implementing measures related to the environment and labour conditions that affect trade and investment between the Parties.

ARTICLE 13.4

Upholding Levels of Protection

1. A State Party shall not fail to effectively enforce its domestic environmental and labour laws, regulations or standards in a manner affecting trade or investment between the Parties.
2. Subject to Article 13.3 (Right to Regulate and Levels of Protection), no State Party shall:
 - (a) weaken or reduce the level of environmental or labour protection provided by its domestic laws, regulations or standards with the sole intention to encourage investment from another State Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory; or
 - (b) waive or otherwise derogate from, or offer to waive or otherwise derogate from, its domestic laws, regulations or standards in order to encourage investment from another State Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory.

ARTICLE 13.5

International Labour Standards and Agreements

1. The State Parties reaffirm their commitment to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all.
2. The State Parties recall the obligations deriving from 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 86th Session in 1998, to respect, promote and realise the principles concerning the fundamental rights, namely:
 - (a) freedom of association and the effective recognition of the right to collective bargaining;
 - (b) elimination of all forms of forced or compulsory labour;
 - (c) effective abolition of child labour; and
 - (d) elimination of discrimination in respect of employment and occupation.
3. The State Parties shall ensure that their labour laws, regulations and practices embody and provide protection for the fundamental principles and rights at work which are listed in paragraph 2.
4. The State Parties recall the obligations deriving from membership of the ILO to effectively implement the ILO Conventions which they have ratified and their commitment to make continued efforts towards ratifying the fundamental ILO Conventions as well as the other conventions that are classified as “up-to-date” by the ILO.
5. The State Parties reaffirm their commitment, under the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, to recognise the importance of 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.
6. The State Parties commit to promote the strategic objectives of the ILO under the Decent Work Agenda and reaffirm in this regard the Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session.
7. The State Parties shall pay particular attention to developing and enhancing measures for:
 - (a) occupational safety and health, including compensation in case of occupational injury or illness;
 - (b) decent working conditions for all, with regard to, *inter alia*, wages and earnings, working hours and other conditions of work;
 - (c) labour inspection; and

- (d) non-discrimination with respect to working conditions, including for migrant workers.

8. Each State Party shall ensure that administrative and judicial proceedings are accessible and available in order to permit effective action to be taken against infringements of labour rights referred to in this Chapter.

9. The State Parties reaffirm 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 shall not be used for protectionist trade purposes, as stated in the ILO Declaration on Fundamental Principles and Rights at Work 1998, and the ILO Declaration on Social Justice for a Fair Globalisation, 2008.

ARTICLE 13.6

Multilateral Environmental Agreements

1. The State Parties recognise the importance of multilateral environmental agreements and other environmental instruments as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies.

2. Each State Party reaffirms its commitment to the effective implementation in its laws, regulations and practices of the multilateral environmental agreements to which it is a party, as well as its adherence to environmental principles reflected in the international instruments referred to in Article 13.2 (Context and Objectives).

ARTICLE 13.7

Promotion of Trade and Investment Favouring Sustainable Development

1. The State Parties shall strive to facilitate and promote investment, trade in and dissemination of goods and services that contribute to sustainable development and support the objectives of the Decent Work Agenda, including environmentally sound technologies, renewable energy and goods and services that are energy efficient or subject to voluntary sustainability certification schemes.

2. For the purposes of paragraph 1, the State Parties agree to exchange views and may consider, jointly or bilaterally, cooperation in this area.

3. The State Parties shall encourage cooperation between enterprises in relation to goods, services and technologies that contribute to sustainable development and are beneficial to the environment.

ARTICLE 13.8

Trade and Climate Change

1. The State Parties recognise the importance of pursuing the objectives of the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement in order to address the urgent threat of climate change and the role of trade in pursuing these objectives.
2. Pursuant to paragraph 1, the State Parties commit to:
 - (a) effectively implement the commitments established by the UNFCCC and the Paris Agreement;
 - (b) promote the contribution of trade to the transition to a low-carbon-economy and to climate-resilient development, in a manner that does not threaten food production; and
 - (c) cooperate bilaterally, regionally and in international fora, as appropriate, on trade-related climate change issues, including exchange of information on adaptation practices and processes.

ARTICLE 13.9

Trade and Biological Diversity

1. The State Parties recognise the importance of the conservation and sustainable use of biological diversity, and the role of trade in pursuing these objectives.
2. Pursuant to paragraph 1, the State Parties commit to:
 - (a) promote the inclusion of animal and plant species in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) where a species is threatened or may be threatened with extinction in relation to international trade;
 - (b) implement effective measures to combat transnational organised wildlife crime and address both demand for and the supply chains of illegal wildlife products;
 - (c) enhance efforts to prevent, eradicate or control the introduction and spread of alien species which threaten ecosystems, habitats or species, in connection with trade activities;
 - (d) cooperate, where applicable, on issues concerning trade and the conservation and sustainable use of biological diversity, including initiatives to reduce demand for illegal wildlife products; and
 - (e) promote, in accordance with the rights and obligations under the international agreements to which they are a party, including the Convention on Biological Diversity (CDB), the fair and equitable sharing of benefits arising from the commercial use of genetic resources,

and, where appropriate, measures for access to genetic resources and obtention of prior informed consent.

ARTICLE 13.10

Sustainable Forest Management and Associated Trade

1. The State Parties recognise the importance of ensuring conservation and sustainable management of forests and related ecosystems with the objective to, *inter alia*, preserve biological diversity and reduce greenhouse gas emissions resulting from deforestation and degradation of forests and related ecosystems, including from land use and land-use change, in line with their international commitments.

2. With the aim of contributing to the conservation and sustainable management of forests and related ecosystems, the State Parties, undertake to, *inter alia*:

- (a) promote trade in products that derive from sustainably managed forests;
- (b) promote the effective use of CITES with regard to endangered timber species;
- (c) combat illegal logging by improving forest law enforcement and governance and by promoting the effective implementation and use of instruments to ensure that only legally sourced timber is traded among the State Parties;
- (d) promote the development and use of certification schemes for products from sustainably managed forests;
- (e) cooperate on issues relating to sustainable forest management through existing bilateral arrangements, if applicable, and in the relevant multilateral fora in which they participate, such as through the United Nations initiative to Reducing Emissions from Deforestation and Forest Degradation (REDD+) as encouraged by the Paris Agreement;
- (f) promote, as appropriate and with their free, prior and informed consent, the inclusion of indigenous peoples and other forest dependent communities in sustainable supply chains for responsible business of timber and non-timber forest products, as a means of enhancing their livelihoods and of promoting the conservation and sustainable use of forests; and
- (g) implement measures to promote forest restoration for its conservation or sustainable use.

ARTICLE 13.11

Trade and Sustainable Management of Fisheries and Aquaculture

1. The State Parties recognise the importance of ensuring the conservation and sustainable management of living marine resources and marine ecosystems and the role of trade in pursuing these objectives.
2. Pursuant to paragraph 1, the State Parties commit to:
 - (a) implement, consistent with their international obligations, comprehensive, effective and transparent policies and measures to combat illegal, unreported and unregulated (IUU) fishing and to exclude from international trade products that do not comply with such policies and measures;
 - (b) promote the use of FAO's voluntary guidelines for Catch Documentation Schemes;
 - (c) cooperate bilaterally and in relevant international fora in the fight against IUU fishing with the aim of achieving sustainable fisheries management by, *inter alia*, facilitating the exchange of information on IUU fishing activities;
 - (d) promote the development of sustainable and responsible aquaculture; and
 - (e) contribute to the fulfilment of the objectives set out in the 2030 Agenda for Sustainable Development regarding fisheries subsidies.

ARTICLE 13.12

Trade and Sustainable Agriculture and Food Systems

1. The State Parties recognise the importance of sustainable agriculture and food systems and the role of trade in achieving these objectives. The State Parties reiterate their shared commitment to achieve the 2030 Agenda for Sustainable Development and its Sustainable Development Goals.
2. Pursuant to paragraph 1, the State Parties shall:
 - (a) promote sustainable agriculture and associated trade;
 - (b) promote sustainable food systems so as to contribute to, *inter alia*, food security;
 - (c) exchange information, experience and good practices concerning sustainable agriculture and food systems and relevant trade-related initiatives;
 - (d) conduct a dialogue on issues addressed in this Article; and

- (e) report on progress made in attaining sustainable agriculture and food systems through the use and development of agricultural practices and technologies.

ARTICLE 13.13

Cooperation

The State Parties recognise the importance of working together, in order to achieve the objectives of this Chapter. To this end, they may work together on, *inter alia*:

- (a) trade and investment related labour and environmental issues of mutual interest in relevant bilateral, regional and multilateral fora;
- (b) voluntary sustainability certification schemes such as fair and ethical trade schemes and eco-labels; or
- (c) trade-related aspects of the implementation of multilateral environmental agreements and the fundamental and other up-to-date ILO Conventions.

ARTICLE 13.14

Implementation, Consultations and Panel of Experts

1. The State Parties shall designate contact points for the purpose of implementing this Chapter.
2. The State Parties shall make every effort through dialogue, consultations, exchange of information and cooperation to address any matter arising under this Chapter and shall try to reach a mutually satisfactory solution of such matter.
3. Any time period mentioned in Articles 13.15 (Consultation Procedures) and 13.16 (Panel of Experts) may be extended by mutual agreement of the State Parties concerned. All time periods established under this Chapter shall be counted from the day following the act or fact to which they refer.
4. The State Parties shall not have recourse to Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

ARTICLE 13.15

Consultations Procedures

1. A State Party may request consultations with another State Party regarding the interpretation or application of this Chapter by delivering a written request to that State Party. The State Party requesting consultations shall at the same time notify the other State Parties in writing of the request. The request shall provide a brief summary of the matter at issue, including an indication of the relevant provisions of this Chapter and an

explanation on how it affects the commitments thereunder, as well as any other information the requesting State Party deems relevant. Consultations shall start promptly after the request for consultations has been delivered, and in any event no later than 30 days from the date of receipt of the request.

2. Consultations shall be held in person or, if agreed by the State Parties concerned, by videoconference or other virtual means. If the consultations are held in person, they shall be held in the State Party to whom the request is directed, unless the State Parties concerned agree otherwise.

3. The State Parties concerned shall enter into consultations with the aim of reaching a mutually satisfactory solution of the matter. With regard to matters related to the multilateral agreements referred to in this Chapter, the State Parties concerned shall take into account information from relevant organisations or bodies responsible for the multilateral agreements to which they are parties, in order to promote coherence between the work of the State Parties and these organisations. Where relevant, the State Parties concerned may agree to seek advice from such organisations or bodies, or any other relevant expert, international organisation or body they deem appropriate.

4. If a State Party concerned considers that the matter needs further discussion, that State Party may request in writing the other State Party concerned that a Joint Committee meeting shall take place. The State Party requesting consultations in the Joint Committee shall at the same time notify the other State Parties in writing of the request. Such a request shall be made no earlier than 60 days from the date of the receipt of the request under paragraph 1. The Joint Committee shall meet promptly and endeavour to reach a mutually satisfactory solution of the matter.

5. Consultations under this Article, and the positions taken by the State Parties during such consultations, shall be confidential. Notwithstanding the preceding sentence, the outcome of these consultations shall be made public unless the consulting parties agree otherwise. Where the outcome of consultations is made public, this shall be through a jointly agreed report.

6. Each State Party shall treat as confidential any information exchanged in the consultations which another State Party has designated as confidential.

ARTICLE 13.16

Panel of Experts

1. If within 120 days from the date of receipt of a request for consultation under paragraph 1 of Article 13.15 (Consultation Procedures) the State Parties concerned fail to reach a mutually satisfactory solution of a matter arising under this Chapter, a State Party may request the establishment of a panel of experts to examine the matter. Such request shall be made in writing to the other State Party concerned and shall identify the reasons for requesting the establishment of a panel of experts, including a description of the matter at issue and indicating the relevant provisions of this Chapter that it considers applicable.

2. A State Party requesting the establishment of a panel of experts shall at the same time notify the other State Parties in writing of the request.

3. The Joint Committee shall agree on the establishment, composition, terms of reference and rules of procedure of the panel of experts at its first meeting.

Should a matter arise before the Joint Committee has reached an agreement, Articles 15.6 (Establishment of the Arbitration Panel), 15.7 (Composition of the Arbitration Panel), 15.8 (Rules of Procedure), 15.10 (Hearings), 15.16 (Costs) and 15.17 (Confidentiality) as well as Annex XIX (Rules of Procedure) shall apply, *mutatis mutandis*. In such a case, the terms of reference shall be: “To examine, in the light of the relevant provisions of Chapter 13 (Trade and Sustainable Development) and the Record of Understanding Relating to Chapter 13 (Trade and Sustainable Development) of the Free Trade Agreement Between the EFTA States the MERCOSUR State Parties (Record of Understanding), the matter referred to in the request for the establishment of the panel of experts, and to issue a report, in accordance with Article 13.16 (Panel of Experts), making recommendations for the resolution of the matter.”

4. The panellists should have specialised knowledge of, or expertise in, issues addressed in this Chapter or the Record of Understanding including in international trade law and international labour law or environmental law. They shall be independent, serve in their individual capacities and shall not take instructions from any organisation or government with regard to issues related to the matter arising under this Chapter or the Record of Understanding, or be affiliated with the government of a State Party.

5. The panel of experts may seek information or advice from relevant international organisations or bodies. Any information obtained shall be submitted to the State Parties concerned for their comments.

6. Where the matter arising under this Chapter or the Record of Understanding regards compliance with obligations under a multilateral environmental agreement to which the consulting State Parties are parties, the requesting State Party should, where appropriate, address the matter through the consultative procedure or other procedures under that multilateral environmental agreement.

7. The panel of experts shall interpret this Chapter and the Record of Understanding in accordance with the customary rules of interpretation of public international law.

8. The panel of experts shall submit an interim report containing its findings and recommendations to the State Parties concerned within 90 days from the date of establishment of the panel of experts. A State Party concerned may submit written comments to the panel of experts on its initial report within 45 days from the date of receipt of the report. After considering such written comments, the panel of experts may modify the interim report and make any further examination it considers appropriate. The panel of experts shall issue a final report to the State Parties concerned no later than 60 days from the date of receipt of the interim report. The final report shall be made publicly available within 15 days from its issuance by the panel of experts.

9. If the panel of experts considers that it cannot comply with a timeframe provided for under this Article, it shall inform the State Parties concerned in writing and provide an estimate of the additional time required. Any additional time should not exceed 30 days.

10. The State Parties concerned shall discuss appropriate measures to be implemented taking into account the final report and recommendations of the panel of experts. Such measures shall be communicated to the other State Parties no later than 90 days from the date of issuance of the final report and shall be monitored by the Joint Committee.

ARTICLE 13.17

Review

The Joint Committee shall periodically review progress achieved in pursuing the objectives set out in this Chapter and consider relevant international developments in order to identify areas where further action could promote these objectives.