

TITLE VIII

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 284

Context and Objectives

1. The Parties recall Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002 and the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work. The Parties reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and to ensuring that this objective is integrated and reflected at every level of their trade relationship. To this end, the Parties recognise the importance of taking into account the economic, social and environmental best interests of not only their respective populations but also of future generations.

2. The Parties reaffirm their commitment to achieving sustainable development, whose pillars – economic development, social development and environmental protection – are interdependent and mutually reinforcing. The Parties underline the benefit of considering trade related social and environmental issues as part of a global approach to trade and sustainable development.

3. The Parties agree that this Title embodies a cooperative approach based on common values and interests, taking into account the differences in their levels of development and the respect of their current and future needs and aspirations.
4. The Parties shall not have recourse to dispute settlement procedures under Title X (Dispute Settlement) of Part IV of this Agreement and to the Mediation Mechanism for Non-Tariff Measures under Title XI (Mediation Mechanism for Non-Tariff Measures) of Part IV of this Agreement for matters arising under this Title.

ARTICLE 285

Right to Regulate and Levels of Protection

1. The Parties reaffirm the respect for their respective Constitutions⁴² and for their rights there under to regulate in order to set their own sustainable development priorities, to establish their own levels of domestic environmental and social protection, and to adopt or modify accordingly their relevant laws and policies.

⁴² For the EU Party, this refers to the Constitutions of the Member States of the European Union, to the Treaty on the European Union, to the Treaty on the Functioning of the European Union and to the Charter of Fundamental Rights of the European Union.

2. Each Party shall strive to ensure that its laws and policies provide for and encourage high levels of environmental and labour protection, appropriate to its social, environmental and economic conditions and consistent with the internationally recognised standards and agreements referred to in Articles 286 and 287 to which it is a party, and shall strive to improve those laws and policies, provided that they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on international trade.

ARTICLE 286

Multilateral Labour Standards and Agreements

1. Recalling the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work, the Parties recognise that full and productive employment and decent work for all, which encompass social protection, fundamental principles and rights at work and social dialogue, are key elements of sustainable development for all countries, and therefore a priority objective of international cooperation. In this context, the Parties reaffirm their will to promote the development of macroeconomic policies in a way that is conducive to full and productive employment and decent work for all, including men, women and young people, with full respect for fundamental principles and rights at work under conditions of equity, equality, security and dignity.

The Parties, in accordance with their obligations as members of the ILO, reaffirm their commitments to respect, promote, and realise in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of the fundamental ILO Conventions, 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.

2. The Parties reaffirm their commitment to effectively implement in their laws and practice the fundamental ILO Conventions contained in the ILO Declaration of Fundamental Principles and Rights at Work of 1998, which are the following:

- (a) Convention 138 concerning Minimum Age for Admission to Employment;
- (b) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- (c) Convention 105 concerning the Abolition of Forced Labour;

- (d) Convention 29 concerning Forced or Compulsory Labour;
 - (e) Convention 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value;
 - (f) Convention 111 concerning Discrimination in Respect of Employment and Occupation;
 - (g) Convention 87 concerning Freedom of Association and Protection of the Right to Organise; and
 - (h) Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.
3. The Parties will exchange information on their respective situation and advancements as regards the ratification of the other ILO Conventions.
4. The Parties stress that labour standards should never be invoked or otherwise used for protectionist trade purposes and that the comparative advantage of any Party should not be questioned.
5. The Parties commit to consult and cooperate as appropriate, on trade-related labour issues of mutual interest.

ARTICLE 287

Multilateral Environmental Standards and Agreements

1. The Parties recognise that international environmental governance and agreements are important elements to address global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment. The Parties commit to consult and cooperate as appropriate on trade-related environmental issues of mutual interest.
2. The Parties reaffirm their commitment to effectively implement in their laws and practice the multilateral environmental agreements to which they are parties including:
 - (a) the Montreal Protocol on Substances that Deplete the Ozone Layer;
 - (b) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
 - (c) the Stockholm Convention on Persistent Organic Pollutants;
 - (d) the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as "CITES");

- (e) the Convention on Biological Diversity;
 - (f) the Cartagena Protocol on Biosafety to the Convention on Biological Diversity; and
 - (g) the Kyoto Protocol to the United Nations Framework Convention on Climate Change⁴³.
3. The Parties undertake to ensure that they have ratified by the date of entry into force of this Agreement, the Amendment to Article XXI of CITES, adopted at Gaborone (Botswana), on 30 April, 1983.
4. The Parties also undertake, to the extent they have not yet done so, to ratify and effectively implement, at the latest by the date of entry into force of this Agreement, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.
5. Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures to implement the agreements referred to in this Article, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

⁴³ For greater certainty, the reference to the multilateral environmental agreements in Article 287, paragraph 2, shall encompass those protocols, amendments, annexes and adjustments ratified by the Parties.

ARTICLE 288

Trade Favouring Sustainable Development

1. The Parties reconfirm that trade should promote sustainable development in all its dimensions. In this context, they recognise the value of international cooperation in support of efforts to develop trade schemes and trade practices favouring sustainable development, and they agree to work together in the framework of Articles 288, 289 and 290 with the aim of developing collaborative approaches, as appropriate.
2. The Parties shall endeavour to:
 - (a) consider those situations in which the elimination or the reduction of obstacles to trade would benefit trade and sustainable development, taking into account, in particular, the interactions between environmental measures and market access;
 - (b) facilitate and promote trade and foreign direct investment in environmental technologies and services, renewable-energy and energy-efficient products and services, including through addressing related non-tariff barriers;

- (c) facilitate and promote trade in products that respond to sustainability considerations, including products that are the subject of schemes such as fair and ethical trade schemes, eco-labelling, organic production, and including those schemes involving corporate social responsibility and accountability; and
- (d) facilitate and promote the development of practices and programmes aiming at fostering appropriate economic returns from the conservation and sustainable use of the environment, such as ecotourism.

ARTICLE 289

Trade in Forest Products

In order to promote the sustainable management of forest resources, the Parties commit to work together to improve forest law enforcement and governance and to promote trade in legal and sustainable forest products through instruments that may include, *inter alia*: effective use of CITES with regard to endangered timber species; certification schemes for sustainably harvested forest products; regional or bilateral Forest Law Enforcement Governance and Trade ("FLEGT") Voluntary Partnership Agreements.

ARTICLE 290

Trade in Fish Products

1. The Parties recognise the need to promote sustainable fisheries so as to contribute to the conservation of fish stocks and to the sustainable trade of fishery resources.
2. To this end, the Parties undertake to:
 - (a) adhere to and effectively implement the principles of 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, in relation to: sustainable use, conservation and management of straddling fish stocks and highly migratory fish species; international cooperation between States; support of scientific advice and research; implementation of effective monitoring, control and inspection measures; and the duties of the flag and port States, including compliance and enforcement;
 - (b) cooperate, including with and within the relevant Regional Fisheries Management Organisations, in order to prevent Illegal, Unreported and Unregulated ("IUU") fishing, including by adopting effective tools to implement control and inspection schemes to ensure full compliance with conservation measures;

- (c) exchange scientific and non-confidential trade data, to exchange experiences and best practices in the field of sustainable fisheries and, more generally, to promote a sustainable approach to fisheries.

3. The Parties, to the extent they have not yet done so, agree to adopt port State measures in line with the United Nations Food and Agriculture Organisation Agreement on Port State Measures to Prevent, Deter And Eliminate Illegal, Unreported And Unregulated Fishing, to implement control and inspection schemes, as well as incentives and obligations for a sound, sustainable management of fisheries and coastal environments in the long term.

ARTICLE 291

Upholding Levels of Protection

1. The Parties recognise that it is inappropriate to encourage trade or investment by lowering the levels of protection afforded in domestic environmental and labour laws.
2. A Party shall not waive or derogate from, or offer to waive or offer to derogate from, its labour or environmental legislation in a manner affecting trade or as an encouragement for the establishment, acquisition, expansion or retention of an investment or an investor in its territory.

3. A Party shall not fail to effectively enforce its labour and environmental legislation in a manner affecting trade or investment between the Parties.
4. Nothing in this Title shall be construed to empower a Party's authorities to undertake law enforcement activities in the territory of the other Party.

ARTICLE 292

Scientific Information

The Parties recognise the importance, when preparing and implementing measures aimed at protecting the environment or health and safety at work, of taking account of scientific and technical information, and relevant international standards, guidelines or recommendations, while acknowledging that when there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as reason for postponing protective measures.

ARTICLE 293

Sustainability Review

The Parties commit to jointly reviewing, monitoring and assessing the contribution of Part IV of this Agreement, including cooperation activities under Article 302, to sustainable development.

ARTICLE 294

Institutional and Monitoring Mechanism

1. Each Party shall designate an office within its administration to serve as Contact Point for the purpose of implementing trade-related aspects of sustainable development. At the entry into force of this Agreement, the Parties shall submit to the Association Committee full contact information for their Contact Points.
2. The Parties hereby establish a Board on Trade and Sustainable Development⁴⁴, which shall comprise high level authorities from within the administrations of each Party. Prior to each meeting of the Board the Parties will inform each other of the identity and contact information of their respective representatives.

⁴⁴ The Board on Trade and Sustainable Development shall report on its activities to the Association Committee.

3. The Board on Trade and Sustainable Development shall meet within the first year after the date this Agreement enters into force, and thereafter as necessary, to oversee the implementation of this Title, including cooperative activities undertaken under Title VI (Economic and Trade Development) of Part III of this Agreement. The decisions and recommendations of the Board shall be adopted by mutual agreement between the Parties and shall be provided to the public, unless the Board decides otherwise.

4. Each Party shall convene new or consult existing Advisory Groups on trade and sustainable development⁴⁵. These groups shall be tasked with expressing views and making recommendations on trade-related aspects of sustainable development and advising the Parties on how to better achieve the objectives of this Title.

5. The Advisory Groups of the Parties shall comprise independent representative organisations, in a balanced representation of economic, social and environmental stakeholders including, among others, employers and workers organisations, business associations, non-governmental organisations and local public authorities.

⁴⁵ In the exercise of the right of the Parties to use existing advisory groups for the implementation of the provisions of this Title, the Parties shall offer existing bodies the opportunity to reinforce and develop their activities with the new perspectives and areas of work provided by this Title. To this end, the Parties may use existing national advisory groups.

ARTICLE 295

Civil Society Dialogue Forum

1. The Parties agree to organise and facilitate a bi-regional Civil Society Dialogue Forum for open dialogue, with a balanced representation of environmental, economic and social stakeholders. The Civil Society Dialogue Forum shall conduct dialogue encompassing sustainable development aspects of trade relations between the Parties, as well as how cooperation may contribute to achieve the objectives of this Title. The Civil Society Dialogue Forum will meet once a year, unless otherwise agreed by the Parties⁴⁶.
2. Unless the Parties agree otherwise, each meeting of the Board will include a session in which its members shall report on the implementation of this Title to the Civil Society Dialogue Forum. In turn, the Civil Society Dialogue Forum may express its views and opinions in order to promote dialogue on how to better achieve the objectives of this Title.

⁴⁶ For greater certainty, policy making and other such typical government functions shall not be delegated to the Civil Society Dialogue Forum.

ARTICLE 296

Government Consultations

1. A Party may request consultations with another Party regarding any matter of mutual interest arising under this Title, by delivering a written request to the Contact Point of the other Party. In order to enable the Party receiving the request to respond, the request shall contain information that is specific enough to present the matter clearly and factually, by identifying the problem at issue and by providing a brief summary of the claims under this Title. Consultations shall commence promptly after a Party delivers a request for consultations.
2. The consulting Parties shall make every attempt to arrive at a mutually satisfactory solution of the matter, taking into account the information exchanged by the consulting Parties and opportunities for cooperation on the matter. During consultations, special attention shall be given to the particular problems and interests of developing country Parties. The consulting Parties shall take into account the activities of the ILO or relevant multilateral environmental organisations or bodies to which they are parties. Where relevant, the consulting Parties may, by mutual agreement, seek advice or assistance from those organisations and bodies, or from any person or body they deem appropriate in order to fully examine the matter at issue.

3. If ninety days after the request of consultations, a consulting Party deems that the matter needs further discussion, and unless the consulting Parties agree otherwise, the matter shall be referred for consideration to the Board on Trade and Sustainable Development by delivering a written request to the Contact Points of the other Parties. The Board on Trade and Sustainable Development shall convene promptly in order to assist in reaching a mutually satisfactory solution. If it deems necessary, the Board on Trade and Sustainable Development may seek expert assistance in the matter of interest, with the objective of facilitating its analysis.
4. Any solution reached by the consulting Parties on the matter shall be made public unless the Board on Trade and Sustainable Development otherwise decides.

ARTICLE 297

Panel of Experts

1. Unless the consulting Parties agree otherwise, a consulting Party may, after sixty days of the referral of a matter to the Board on Trade and Sustainable Development or, if the matter is not referred to the Board, after ninety days of the delivery of a request for consultation under Article 296, paragraphs 1 and 3 respectively, request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations. The Parties to the procedure can make submissions to the Panel of Experts.

2. At the entry into force of this Agreement, the Parties shall submit to the Association Committee for endorsement by the Council at its first meeting, a list of seventeen persons with at least five individuals who are not nationals of any Party, with expertise in environmental law, international trade or the resolution of disputes arising under international agreements; and a list of seventeen persons, with at least five individuals who are not nationals of any Party, with expertise in labour law, international trade or the resolution of disputes arising under international agreements. The experts who are not nationals of any Party would be available to serve as Chair of the Panel of Experts. The experts shall be (i) independent of, and not affiliated with or take instructions from, either Party or organisations represented in the Advisory Group(s); and (ii) chosen on the basis of objectivity, reliability and sound judgment.
3. The Parties shall agree on replacements of experts who are no longer available to serve in panels, and they may otherwise agree to modify the list as and when they consider it necessary.

ARTICLE 298

Composition of the Panel of Experts

1. The Panel of Experts shall comprise three experts.
2. The Chairperson shall not be a national of any Party.

3. Each Party to the procedure shall select one expert from the list of experts within thirty days of the receipt of the request for the establishment of a Panel of Experts. If one Party fails to select its expert within such period, the other Party to the procedure shall select from the list of experts a national of the Party to the procedure that has failed to select an expert. The two selected experts shall select the Chairperson by agreement or by lot, from among the experts who are not nationals of any Party.
4. Individuals may not serve as experts with respect to a matter in which they, or an organisation to which they are affiliated, has a direct or indirect conflict of interests. Upon selection to serve as experts on a given matter, each expert is expected to disclose the existence or development of any interest, relationship or matter that that expert could reasonably be expected to know and that is likely to affect, or give rise to justifiable doubts as to that expert's independence or impartiality.
5. If either Party to the procedure believes that an expert is in violation of the requirements set forth in paragraph 4, the Parties to the procedure shall promptly consult and, if they agree, the expert shall be removed and a new expert shall be selected in accordance with the procedures set out in paragraph 3 that were used to select the expert who was removed.
6. Unless otherwise agreed by the Parties to the procedure in accordance with paragraph 2 of Article 301, the Panel of Experts shall be established no later than sixty days of a Party's request.

ARTICLE 299

Rules of Procedure

1. The Panel of Experts shall elaborate a time table which shall ensure an opportunity for the Parties to the procedure to provide written submissions and relevant information.
2. The Panel of Experts and the Parties shall ensure the protection of confidential information in accordance with the principles in Title X (Dispute Settlement) of Part IV of this Agreement.
3. The terms of reference of the Panel of Experts shall be:

"to examine whether there is a failure by a Party to comply with the obligations set out under Articles 286, paragraph 2, 287, paragraphs 2, 3 and 4 and 291 of this Title, and to make non-binding recommendations for solution of the matter. In case of matters concerning the enforcement of legislation, the terms of reference of the Panel of Experts shall be to determine if there is a sustained or recurring failure by a Party to effectively implement its obligations."

ARTICLE 300

Initial Report

1. The Panel of Experts shall use the submissions and arguments presented by the Parties to the procedure as a basis for its report. In the course of the procedure, the Parties shall have the opportunity to comment on documents or information that the Panel may consider relevant to its work.
2. Within one hundred and twenty days as of the date of establishment of the Panel of Experts, the Panel shall present to the Parties to the procedure an initial report including its recommendations. When the Panel considers that it cannot provide its report within one hundred and twenty days, it shall inform the Parties to the procedure in writing of the reasons for the delay and it shall give an estimate of the period within which it will provide its report.
3. The Panel's recommendations shall take into account the particular socio-economic situation of the Parties.
4. The Parties to the procedure may submit written comments to the Panel on its initial report within thirty days of its presentation.

5. After receiving any written comments, the Panel, on its own initiative or on the request of either Party to the procedure, may:

- (a) where relevant, request the views of the Parties to the procedure on the written comments;
- (b) reconsider its report; or
- (c) make any further consideration that it considers appropriate.

The Panel's final report shall include a discussion of any arguments included in the Parties' written comments.

ARTICLE 301

Final Report

1. The Panel shall present to the Parties to the procedure and to the Board on Trade and Sustainable Development a final report no later than one hundred and eighty days of the date the Panel was established. The Parties shall release the final report to the public within fifteen days of its presentation.

2. The Parties to the procedure may, by mutual agreement, decide to extend the timeframes established in paragraph 1, as well as those in Articles 298, paragraph 6, and 300, paragraph 4.
3. The Parties to the procedure shall, taking into account the report and recommendations of the Panel of Experts, endeavour to discuss appropriate measures to be implemented including, where appropriate, possible cooperation to support implementation of such measures. The Party to which the recommendations are addressed shall inform the Board on Trade and Sustainable Development as regards its intentions concerning the report and recommendations of the Panel of Experts including, where appropriate, by presenting an action plan. The Board on Trade and Sustainable Development shall monitor the implementation of the actions that the Party has determined.

ARTICLE 302

Cooperation and Technical Assistance on Trade and Sustainable Development

The cooperation and technical assistance measures related to this Title are established in Title VI (Economic and Trade Development) of Part III of this Agreement.