

CHAPTER SIXTEEN

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 16.1: CONTEXT AND OBJECTIVES

1. The Parties reaffirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.
2. The Parties recognize that economic development, social development, and environmental protection are interdependent and mutually reinforcing components of sustainable development. They underline the benefits of cooperation on trade-related social and environmental issues as part of a global approach to trade and sustainable development.
3. The Parties recognize that it is not their intention in this Chapter to harmonize the environmental or labor standards of the Parties, but to strengthen their trade relations and cooperation in a way that promotes sustainable development in the context of paragraphs 1 and 2.
4. In this regard, the Parties:
 - (a) recognize their commitments to promote compliance and effective implementation of each Party's environmental and labor legislation;
 - (b) will strive to promote the conservation and sustainable use of biodiversity, and the preservation of traditional knowledge relevant to the conservation of biological diversity and the sustainable use of its components; and
 - (c) recognize their commitments towards labor principles and rights included in Article 16.6.

ARTICLE 16.2: SCOPE

Except as otherwise provided in this Chapter, this Chapter applies to measures adopted or maintained by the Parties affecting trade-related aspects of environmental and labor¹ issues in the context of Articles 16.1.1 and 16.1.2.

SECTION A: ENVIRONMENT

ARTICLE 16.3: GENERAL PRINCIPLES

¹ When labor is referred to in this Chapter, it includes the issues relevant to the *Decent Work Agenda* as agreed on in the International Labor Organization (hereinafter referred to as the "ILO") and in the *2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work*.

1. The Parties shall endeavor to ensure that environmental and commercial policies mutually support each other towards the conservation and sustainable use of biodiversity and all natural resources in general.
2. The Parties reaffirm each other's sovereign right over its natural resources, reiterate its sovereign right to establish its own levels of environmental protection and its own environmental development priorities, and to adopt or modify accordingly its environmental laws and policies.
3. The Parties reaffirm their willingness to comply with their commitments under this Chapter, bearing in mind their own capabilities.

ARTICLE 16.4: SPECIFIC COMMITMENTS

1. Each Party shall endeavor to ensure that its laws and policies provide for and encourage high levels of environmental protection and of sustainable use and conservation of its natural resources. Each Party shall also strive to continue improving its protection levels on those matters.
2. Each Party shall endeavor to maintain its laws, regulations, and policies consistent and in compliance with multilateral environmental agreements (hereinafter referred to as "MEAs") to which it is a party, as well as with international efforts towards achieving sustainable development.
3. The Parties recognize that it is inappropriate to promote trade or investments by weakening or reducing the protections afforded in their environmental laws. Accordingly, neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an incentive to promote trade or investment between the Parties. The Parties recognize that it is inappropriate to use their own laws, regulations and policies in a manner that constitutes a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade or investment.
4. The Parties recognize the importance that their environmental legislations provide for a fair and transparent public participation mechanism, and therefore the Parties will promote public participation during the whole process of designing, implementing, and evaluating, environmental projects, policies, and programs, in accordance with their national legislations towards that end.

ARTICLE 16.5: BIOLOGICAL DIVERSITY

1. The Parties acknowledge paragraph 19 of the Ministerial Declaration (WT/MIN/(01)DEC/1), adopted on November 14, 2001 by the WTO Ministerial Conference, on the relationship between the TRIPS Agreement and the *Convention on Biological*

Diversity (hereinafter referred to as “CBD”) and the protection of genetic resources, traditional knowledge², and folklore.

2. The Parties recognize the value and importance of biological diversity, traditional knowledge as well as the contribution of knowledge, innovations, and practices of indigenous and local communities to the conservation and sustainable use of biological diversity. Recognizing the sovereign rights of States over their natural resources, each Party shall have the authority to determine access to genetic resources in accordance with its legislation and endeavor to create conditions to facilitate transparent access to genetic resources for environmentally sound uses.

3. Subject to their legislations and the CBD, the Parties respect knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations, and practices.

4. Each Party shall endeavor to seek ways to share information on patent applications based on genetic resources or traditional knowledge by providing:

- (a) publicly accessible database that contains relevant information; and
- (b) opportunities to file prior art to the appropriate examining authority in writing.

5. The Parties agree to share views and information on discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, the WTO TRIPS Council, and any other relevant fora in addressing matters related to genetic resources and traditional knowledge.

6. The Parties acknowledge the adoption of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* and agree to further discuss relevant issues on genetic resources subject to future developments of multilateral agreements or their respective legislations.

SECTION B: LABOR

ARTICLE 16.6: GENERAL PRINCIPLES

The Parties reaffirm their obligations as members of the ILO and their commitments in regards with the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* (hereinafter referred to as “ILO Declaration”). Each Party shall strive to adopt and maintain in its laws and regulations, and practices thereunder, the following rights as stated in the ILO Declaration:

² For greater certainty, “traditional knowledge” in this Chapter refers to traditional knowledge associated with genetic resources.

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labor;
- (c) the effective abolition of child labor; and
- (d) the elimination of discrimination in respect of employment and occupation.

ARTICLE 16.7: SPECIFIC COMMITMENTS

1. The Parties reaffirm each other's sovereign right to establish their own labor legislation, and to adopt and modify accordingly their labor laws and policies. Each Party shall strive to assure that its labor legislation complies with internationally recognized labor rights.
2. Despite each Party's sovereign right to establish its own labor legislation and national priorities, and to establish, manage, and enforce its own labor laws and regulations, each Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.
3. The Parties recognize that it is inappropriate to promote trade or investment by weakening or reducing the level of protection afforded in their labor legislation.

SECTION C: GENERAL PROVISIONS

ARTICLE 16.8: ENFORCEMENT OF LAWS

Nothing in this Chapter shall be construed to empower a Party's competent authorities to carry out activities oriented towards the enforcement of environmental and/or labor legislation in the territory of the other Party.

ARTICLE 16.9: PROCEDURAL GUARANTEE

1. Each Party shall ensure that persons with a recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's environmental and labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or other relevant tribunals.
2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its environmental and labor laws are fair, equitable, and transparent. Each Party shall provide that parties to such proceedings may seek remedies to ensure the enforcement of their rights under its laws.

ARTICLE 16.10: TRANSPARENCY

The Parties, in accordance with their respective laws, agree to develop, introduce, and implement, any measures aimed at protecting the environmental and labor conditions that affect trade or investment between the Parties in a transparent manner, with due notice and public consultation, and with appropriate and timely communication to and consultation of non-state actors including the private sector.

ARTICLE 16.11: COUNCIL ON SUSTAINABLE DEVELOPMENT

1. The Parties hereby establish a Council on Sustainable Development.
2. The Council on Sustainable Development shall comprise senior officials responsible for environmental and labor matters. If the Council so agrees, the senior officials responsible for environmental and labor matters may meet on separate council meetings taking into consideration the issues to be consulted.
3. The Council shall meet within the first year of the date of entry into force of this Agreement, and thereafter as necessary to discuss matters of common interest.
4. The Council may consider any other issues within the scope of this Chapter, and may also identify possible new areas of cooperation, and take any other action under its duties whenever the Parties so agree.
5. The Council shall review the implementation and effectiveness of this Chapter, including any progress achieved in the implementation of this Agreement within the appropriate period of time to be determined at the first Council meeting after the date of entry into force of this Agreement. Thereafter, the Council will establish a new period of time for such review.
6. The Parties shall strive to resolve any issue that may affect the implementation of this Chapter, until the dialogue and consultations procedures among them are exhausted.

ARTICLE 16.12: CONTACT POINT

1. Each Party shall designate the contact points³ in the relevant ministries through whom all matters arising from this Chapter will be channeled.
2. The contact point's duties will include:
 - (a) coordinating cooperation programs and other activities;
 - (b) acting as liaison between the Parties;

³ The contact points shall be the relevant Ministries of the Parties, in charge of environmental and labor matters.

- (c) providing information to the other Party and to the general public where appropriate; and
- (d) any other duty agreed by the Parties or by the Council on Sustainable Development.

ARTICLE 16.13: CONSULTATIONS

1. Any matter arising related to the interpretation or implementation of this Chapter shall be resolved amicably and *bona fide* by the Parties through direct dialogue, consultations, and cooperation.
2. A Party may request consultations with the other Party by delivering a written request to the contact point designated under Article 16.12.1.
3. If the Parties fail to resolve the issue through their contact points, such issue may be discussed by the Council on Sustainable Development.

SECTION D: COOPERATION

ARTICLE 16.14: COOPERATION

1. Recognizing that cooperation is essential to increase the levels of compliance on environmental and labor matters, the Parties hereby agree to promote cooperation activities on mutual interest, as set out in Annex 16-A.
2. The Parties shall endeavor to assure that cooperation activities:
 - (a) are consistent with the programs, strategies of development, and national priorities of each Party;
 - (b) would create opportunities for the public to take part in the development and implementation of such activities; and
 - (c) would take into consideration the economy, the culture, and the legal system of each Party.

ANNEX 16-A COOPERATION

1. Areas of cooperation between the Parties in respect of this Chapter may include, but shall not be limited to:

ENVIRONMENT

- (a) impact of environmental regulations on trade;
- (b) trade-related aspects of the international climate change regime;
- (c) trade-related environmental issues; and
- (d) trade-related aspects of biodiversity.

LABOR

- (a) labor-management relations;
- (b) working conditions;
- (c) occupational safety and health;
- (d) vocational training and human resources development; and
- (e) labor market statistics.

2. Cooperative activities may include, but shall not be limited to:

ENVIRONMENT

- (a) cooperation in international fora responsible for social or environmental aspects of trade and sustainable development, including in particular WTO, United Nation Environment Programme, and MEAs;
- (b) information exchange and joint work on corporate social responsibility and accountability, including on the effective implementation and follow-up of internationally agreed guidelines, fair and ethical trade, private and public certification and labeling schemes, including eco-labeling, and green public procurement;
- (c) exchange of views on the impact on trade by environmental regulations, norms, and standards;

- (d) joint work on trade-related aspects of MEAs, including customs cooperation; and
- (e) exchange of views on the relationship between MEAs and international trade rules, and on the liberalization of environmental goods and services.

LABOR

- (a) exchange of information, particularly on labor law and policy, labor market statistics and best working practices of the other Party;
- (b) exchange of missions composed of officials, professionals, technicians and/or experts, through public institutions, universities, private companies and organizations devoted to labor issues;
- (c) organization and participation in conferences, seminars, workshops, meetings, and outreach programs, as well as training sessions;
- (d) joint research and publications;
- (e) activities related to promoting fundamental principles and rights at work as stated in the ILO Declaration;
- (f) studies related to levels and standards of labor protection and mechanisms to monitor those levels; and
- (g) all other activities that contribute to the proper implementation of this Chapter.