

*This document contains the consolidated text as it stands at the end of the XXXIInd round of negotiations (21 February – 2 March 2018) on Trade and sustainable development in the Trade Part of the EU-Mercosur Association Agreement. This is without prejudice to the final outcome of negotiations. Both sides reserve the right to make subsequent modifications to their proposals.*

**Mercosur -EU**

**1<sup>st</sup> December 2017**

**CHAPTER**

**TRADE AND SUSTAINABLE DEVELOPMENT**

**ARTICLE 1**

**Objectives and Scope**

1. The objective of this Chapter is to enhance the integration of sustainable development in the Parties' trade and investment relationship, notably by establishing principles and actions concerning labour<sup>1</sup> and environmental aspects of sustainable development of specific relevance in a trade and investment context.
2. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development and the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the United Nations 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, the Declaration on Social Justice for a Fair Globalisation of 2008 of the International Labour Organisation (ILO), and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "*The Future We Want*" and the document "Transforming our World: the 2030 Agenda for Sustainable Development", adopted in 2015.
3. The Parties recognize that the economic, social and environmental dimensions are interdependent and mutually reinforcing dimensions of sustainable development, and reaffirm their commitment to promoting 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.
4. Consistent with the instruments referred to in paragraph 2, the Parties shall promote sustainable development through:
  - (a) the development of trade and economic relations in a manner that contributes to the objective of achieving the Sustainable Development Goals and supports their respective labour and environmental standards and objectives in a context of trade relations that are free, open, transparent, and respectful of multilateral agreements to which they are Party.

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<sup>1</sup> For the purposes of this chapter, the term "labour" means the strategic objectives of the ILO under the Decent Work Agenda, which is expressed in the ILO 2008 Declaration on Social Justice for a Fair Globalisation

- (b) the respect of their multilateral commitments in the fields of labour and of the environment.
  - (c) enhanced cooperation and understanding of their respective labour and environmental trade-related policies and measures, taking into account the different national realities, capacities, needs and levels of development and respecting national policies and priorities.
5. Recognizing the differences in their levels of development, the Parties agree that this Chapter embodies a cooperative approach based on common values and interests.

## ARTICLE 2

### Right to regulate and levels of protection

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection it deems appropriate and to adopt or modify its law and policies. Such levels, law and policies shall be consistent with each Party's commitment to the international agreements and labour standards referred to in Articles 4 and 5.
2. Each Party shall strive to improve its relevant laws and policies so as to ensure high and effective levels of environmental and labour protection.
3. A Party should not weaken the levels of protection afforded in domestic environmental or labour law with the intention of encouraging trade or investment.
4. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental or labour laws in order to encourage trade or investment.
5. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour laws in order to encourage trade or investment.
6. A Party shall not apply environmental and labour laws in a manner that would constitute a disguised restriction on trade or an unjustifiable or arbitrary discrimination.

## ARTICLE 3

### Transparency<sup>2</sup>

1. Each Party shall, in accordance with Chapter n°xxxxx [*Transparency*], ensure that the development, enactment and implementation of:
  - (a) measures aimed at protecting the environment and labour conditions that may affect trade or investment, or
  - (b) trade or investment measures that may affect the protection of the environment or labour conditions,

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<sup>2</sup> Depending on the discussion of the working group dealing with Transparency. To be revised if there is no general article on Transparency.

are done in a transparent manner, ensuring awareness and encouraging public participation, in accordance with its domestic rules and procedures.

## ARTICLE 4

### Multilateral Labour Standards and Agreements

1. Affirming the value of greater policy coherence in decent work, encompassing core labour standards, and high levels of labour protection, coupled with their effective enforcement, the Parties recognize the beneficial role that those areas can have on economic efficiency, innovation and productivity, including export performance. In this context, they also recognize the importance of social dialogue on labour matters among workers and employers, and their respective organizations, and governments, and commit to the promotion of such dialogue.
2. The Parties reaffirm their commitment to promote the development of international trade in a way that is conducive to decent work for all, including for women and young people.
3. In accordance with the ILO Constitution 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, each Party shall respect, promote and effectively implement the internationally recognised core labour standards, as defined in the fundamental ILO Conventions, which are:
  - (a) 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.
4. Each Party shall make continued and sustained efforts towards ratifying the fundamental ILO Conventions, Protocols and other relevant ILO Conventions to which it is not yet Party and that are classified as up-to-date by the ILO.
5. Recalling that among the objectives of the Agenda 2030 is the elimination of forced labour, the Parties underline the importance of ratification and then effective implementation of the 2014 Protocol to the Forced Labour Convention.
6. The Parties shall regularly exchange information on their respective progress with regard to ratification of the fundamental ILO Conventions and related Protocols and of other ILO Conventions or protocols to which they are not yet party and that are classified as up-to-date by the ILO.
7. Recalling paragraph 2, each Party reaffirms its commitment to promote and effectively implement the ILO Conventions and Protocols ratified by the signatory Mercosur States and by the Member States of the European Union respectively and classified as up-to-date by the ILO.
8. The Parties shall consult and cooperate, as appropriate, on trade-related labour issues of mutual interest, including in the context of the ILO.
9. Recalling the ILO Declaration of Fundamental Principles and Rights at Work of 1998 and the ILO Declaration on Social Justice for a Fair Globalisation of 2008, the Parties note 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.

10. Each Party shall promote decent work as provided by the Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session. Particular attention shall be paid by each Party to:
  - a) developing and enhancing measures for occupational safety and health, including compensation in case of occupational injury or illness, as defined in the relevant ILO Conventions and other international commitments;
  - b) decent working conditions for all, with regard to, inter alia, wages and earnings, working hours and other conditions of work;
  - c) labour inspection, in particular through effective implementation of relevant ILO standards on labour inspections.
  - (d) non-discrimination in respect of working conditions, including for migrant workers.
11. Each Party shall ensure that administrative and judicial proceedings are available and accessible in order to permit effective action to be taken against infringements of labour rights referred to in this Chapter.

## ARTICLE 5

### Multilateral Environmental Agreements

1. The Parties recognize that the environment is one of the three dimensions of sustainable development and that its three dimensions -economic, social and environmental- should be addressed in a balanced and integrated manner. Additionally, the Parties recognize the contribution that trade could make to sustainable development.
2. The Parties recognise the importance of the United Nations Environment Assembly (UNEA) of the United Nations Environment Programme (UNEP) and multilateral environment agreements 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.
3. Recalling the above paragraphs, each Party reaffirms its commitments to promote and effectively implement, multilateral environmental agreements (MEAs), protocols and their amendments to which it is a party.
4. The Parties shall regularly exchange information on their respective progress as regards the ratifications of MEAs, including their protocols and amendments.
5. The Parties shall consult and cooperate, as appropriate, on trade-related environmental matters of mutual interest in the context of multilateral environmental agreements.

6. The Parties acknowledge their right to invoke Article [*insert article number - General Exceptions*] in relation to environmental measures.<sup>3</sup>
7. 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 consistent with Article 2.6.

## ARTICLE 6

### Trade and Climate Change

1. The Parties recognise the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) in order to address the urgent threat of climate change and the role of trade to this end.
2. Pursuant to paragraph 1, each Party shall:
  - (a) effectively implement the UNFCCC and the Paris Agreement established thereunder;
  - (b) consistent with article 2 of the Paris Agreement, promote the positive contribution of trade to a pathway towards low greenhouse gas emissions and climate-resilient development and to increasing the ability to adapt to the adverse impacts of climate change in a manner that does not threaten food production.
3. The Parties shall also cooperate, as appropriate, on trade-related climate change issues bilaterally, regionally and in international fora, particularly in the UNFCCC.

## ARTICLE 7

### Trade and Biodiversity

1. The Parties recognise the importance of the conservation and sustainable use of biological diversity consistent with the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Treaty on Plant Genetic Resources for Food and Agriculture, and the decisions adopted thereunder and the role that trade can play in contributing to the objectives of these agreements.
2. Pursuant to paragraph 1, each Party shall:
  - (a) promote the use of CITES as an instrument for conservation and sustainable use of biodiversity; including through the inclusion of animal and plant species in the Appendices to the CITES where the conservation status of that species is considered at risk because of international trade.
  - (b) implement effective measures leading to a reduction of illegal trade in wildlife, consistent with international agreements to which it is Party.

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<sup>3</sup> To see in light of the relevant General Exceptions text.

- (c) encourage trade in natural resource-based products obtained through a sustainable use of biological resources or which contribute to the conservation of biodiversity, in accordance with domestic laws.
  - (d) promote the fair and equitable sharing of benefits arising from the use of genetic resources and, where appropriate, measures for access to such resources and prior informed consent.
3. The Parties shall also exchange information on initiatives and good practices on trade in natural resource-based products with the aim of conserving biological diversity and cooperate, as appropriate, bilaterally, regionally and in international fora on issues covered by this article.

## ARTICLE 8

### Trade and Sustainable Management of Forests

1. The Parties recognise the importance of sustainable forest management and the role of trade in pursuing this objective and of forest restoration for conservation and sustainable use.
2. Pursuant to paragraph 1, each Party shall:
  - (a) encourage trade in products from sustainably managed forests harvested in accordance with the law of the country of harvest;
  - (b) promote, as appropriate and with their prior informed consent, the inclusion of forest-based local communities and indigenous peoples in sustainable supply chains of timber and non-timber forest products, as a means of enhancing their livelihoods and of promoting the conservation and sustainable use of forests.
  - (c) implement measures to combat illegal logging and related trade;
3. The Parties shall also:
  - (a) exchange information on trade-related initiatives on sustainable forest management, forest governance and on the conservation of forest cover and cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies of mutual interest;
  - (b) Cooperate, as appropriate, bilaterally, regionally and in international fora on issues concerning trade and the conservation of forest cover as well as sustainable forest management, consistent with the 2030 Agenda for Sustainable Development.

## ARTICLE 9

### Trade and Sustainable Management of Fisheries and Aquaculture

1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of promoting responsible and sustainable aquaculture, and the role of trade in pursuing these objectives and their shared commitment to achieving Sustainable Development Goal 14 of the 2030 Agenda for Sustainable Development, particularly SDGs 14.4 and 14.6.

2. Pursuant to paragraph 1, and in a manner consistent with its international commitments, each Party shall:
  - (a) implement long-term conservation and management measures and sustainable exploitation of marine living resources in accordance with international law as enshrined in the UN Convention on the Law of the Sea of 1982 and other relevant UN and FAO instruments to which it is party.
  - (b) act consistent with the principles of the FAO Code of Conduct for Responsible Fisheries.
  - (c) participate and cooperate actively within the Regional Fisheries Management Organisations (RFMOs) and other relevant international fora to which it is a member, observer, or cooperating non-contracting party, with the aim of achieving good fisheries governance and sustainable fisheries; including through the adoption of effective control, monitoring and enforcement of management measures and, where applicable, the implementation of Catch Documentation or Certification Schemes;
  - (d) implement, consistent with its international commitments, comprehensive, effective and transparent measures to combat IUU fishing, and exclude from international trade products that do not comply with such measures, and cooperate to this end, including by facilitating the exchange of information.
  - (e) work with a view to coordinating the measures necessary for the conservation and sustainable use of straddling fish stocks in areas of common interest;
  - (f) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects, including with regard to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

## ARTICLE 10

### Scientific and Technical Information

1. When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall ensure that the scientific and technical information on which they are based are from recognized technical and scientific bodies and take into account relevant international standards, guidelines or recommendations [MS: adopted by bodies open for membership to the Parties].

2. In cases when scientific knowledge is insufficient or inconclusive, and there is a risk of serious environmental degradation or to occupational safety and health in its territory, a Party may adopt [MS: provisional] measures [EU: based on the precautionary principle]. Such measures shall be based upon available pertinent information and subject to periodic review, in the light of new or additional scientific information.

[MS: 3. When a measure adopted in accordance with the above paragraph has an impact on trade or investment, a Party may request to the Party adopting the measure to provide information indicating that scientific knowledge is insufficient or inconclusive in relation to the matter at stake and that the

measure adopted is consistent with its own level of protection, and may request discussion of the matter in the TSD Sub-Committee.]

[MS: 4. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.]

## ARTICLE 11

### Trade and Responsible Management of Supply Chains

1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct and corporate social responsibility practices based on internationally agreed guidance.
2. Pursuant to paragraph 1, each Party shall:
  - (a) support the dissemination and use of relevant international instruments that it has endorsed or supported, such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.
  - (b) promote the voluntary uptake by companies of corporate social responsibility or responsible business practices, consistent with the above-mentioned guidelines and principles.
  - (c) provide a supportive policy framework for the effective implementation of the above-mentioned guidelines and principles.
3. The Parties recognise the utility of international sector-specific guidelines in the area of corporate social responsibility or responsible business conduct and shall promote joint work in this regard. In respect of the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas and its supplements, the Parties adhering to or supporting such Guidance shall also promote the uptake of this Guidance.
4. The Parties shall exchange information as well as best practices<sup>4</sup> and, as appropriate, cooperate on issues covered by this article, including in relevant regional and international fora.

## ARTICLE 12

### Other Trade and Investment-related Initiatives Favouring Sustainable Development

1. The Parties confirm their commitment to enhance the contribution of trade and investment to the objective of sustainable development in its economic, social and environmental dimensions.

Accordingly, the Parties shall:

- (a) promote the objectives of the Decent Work Agenda, consistent with the 2008 ILO Declaration on Social Justice for a Fair Globalisation, including the minimum living wage,

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<sup>4</sup> "buenas practicas" in Spanish version



inclusive social protection, health and safety at work, and other aspects related to working conditions;

- (b) encourage trade and investment in goods and services as well as the voluntary exchange of practices and technologies that contribute to enhanced social and environmental conditions, including those of particular relevance for climate change mitigation and adaptation, in a manner consistent with other provisions of this agreement.
- (c) cooperate, as appropriate, bilaterally, regionally and in international fora on issues in this article.

## ARTICLE 13

### Working together on trade and sustainable development

The Parties recognise the importance of working together in order to achieve the objectives of this Chapter. They may work together on *inter alia*:

- (a) labour and environmental aspects of trade and sustainable development in international fora, including in particular the WTO, the ILO, UNEP, UNCTAD, High-level Political Forum for Sustainable Development and multilateral environmental agreements (MEAs)
- (b) the impact of labour and environmental law and standards on trade and investment;
- (c) the impact of trade and investment law on labour and the environment;
- (d) voluntary sustainability assurance schemes such as fair and ethical trade schemes and eco-labels through the sharing of experience and information on such schemes;

as well as trade-related aspects of:

- (e) the implementation of fundamental, priority and other up-to-date ILO Conventions;
- (f) the ILO Decent Work Agenda, including on the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue, skills development and gender equality;
- (g) the implementation of MEAs and support for each other's participation in such MEAs;
- (h) the dynamic international climate change regime under the UNFCCC, in particular the implementation of the Paris Agreement;
- (i) the Montreal Protocol and any amendments to it ratified by the Parties, in particular measures to control the production and consumption of and trade in Ozone Depleting Substances (ODS) and Hydrofluorocarbons (HFCs), and the promotion of environmentally friendly alternatives to them, and measures to address illegal trade of substances regulated by the Protocol;

- (j) corporate social responsibility, responsible business conduct, responsible management of global supply chains and accountability, including with regard to implementation, follow-up, and dissemination of relevant international instruments;
- (k) the sound management of chemicals and waste;
- (l) the conservation and sustainable use of biological diversity, and the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to such resources, as referred to in Article 7;
- (m) combatting wildlife trafficking, as referred to in Article 7;
- (n) the promotion of the conservation and sustainable management of forests with a view to reducing deforestation and illegal logging, as referred to in Article 8;
- (o) private and public initiatives contributing to the objective of halting deforestation, including those linking production and consumption through supply chains, consistent with SDGs 12 and 15;
- (p) the promotion of sustainable fishing practices and trade in sustainably managed fish products, as referred to in Article 9;
- (q) sustainable consumption and production initiatives consistent with SDG 12, [EU: including, [when appropriate] those related to circular economy.] [including those aimed at reducing waste generation through prevention, reduction, recycling and reuse.]

## ARTICLE 14<sup>5</sup>

### **Sub-Committee on Trade and Sustainable Development and Contact Points**

1. The Parties hereby establish a Sub-Committee on Trade and Sustainable Development (hereafter "TSD Sub-Committee"). It shall comprise senior officials, or their delegates, from each Party.
2. The TSD Sub-Committee shall meet within a year of the date of entry into force of this Agreement, unless otherwise agreed by the Parties, and thereafter as necessary in accordance with Article ... of Chapter ... [*Institutional provisions on meetings of Sub-Committees of the Trade Committee*]. [This TSD Sub-Committee shall establish its own rules of procedures and adopt its decisions by consensus.]<sup>6</sup>
3. The functions of the TSD Sub-Committee are to:
  - (a) facilitate and monitor the effective implementation of this Chapter, including cooperation activities undertaken under this Chapter,

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<sup>5</sup> Articles 14 onwards subject to legal revision.

<sup>6</sup> This provision would be necessary if the outcome of the Institutional Working Group regarding the Association Committee does not include provisions regarding rules of procedures for sub-committees.

(b) carry out the tasks referred to in Article[s] 16 [EU: and 17],

(c) make recommendations to the Trade Committee, including with regard to topics for discussion with the *[civil society mechanism]*, referred to in Article ... of Chapter ... *[general institutional provisions]*,

(d) consider any other matter related to this Chapter as the Parties may agree.

4. The TSD Sub-Committee shall publish a report after each of its meetings.

5. Each Party shall designate a Contact Point within its administration to facilitate communication and coordination between the Parties on any matter relating to the implementation of this Chapter.

## ARTICLE 15

**[EU: Dispute resolution] [MS: Consultations][General Provisions]**

1. The Parties shall make all efforts through dialogue, consultation, exchange of information and cooperation to address any disagreement on the interpretation or application of this Chapter.

2. Any time period mentioned in Article[EU: s] 16 [EU: and 17] may be extended by mutual agreement of the Parties.

3. All time periods established under this Chapter shall be counted in calendar days from the day following the act or fact to which they refer.

4. For the purpose of this Chapter... *definition of parties participating in government consultations or dispute settlement to be aligned with agreed text in Dispute Settlement Title on the definition of parties to a dispute.*

5. No Party shall have recourse to dispute settlement under Title VIII (Dispute Settlement) for any matter arising under this Chapter.

[MS: ARTICLE 16]

### Consultations

1. A Party may request consultations with the other Party regarding the interpretation or application of this Chapter by delivering a written request to the contact point of the other Party established in accordance with Article 14.5. The request shall present the matter at issue clearly, and provide a brief summary of the claims under this Chapter, including an 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, and in any event not later than 30 days of the date of receipt of the request.

2. Consultations shall be held in person or, if so agreed by the Parties, by videoconference or other virtual means. If the consultations are held in person they shall be held in the territory of the Party to whom the request is made, unless the Parties agree otherwise.
3. The Parties shall enter into consultations with the aim of reaching a mutually satisfactory resolution of the matter. In matters related to the multilateral agreements referred to in this Chapter, the Parties shall take into account information from the ILO or from relevant organisations or bodies responsible for multilateral environmental agreements ratified by both Parties, in order to promote coherence between the work of the Parties and these organisations. Where relevant, the Parties may agree to seek advice from such organisations or bodies, or any other expert or body they deem appropriate.
5. If, a Party considers that the matter needs further discussion, that Party may request in writing that the TSD Sub-Committee be convened and notify the request to the contact point established pursuant to Article 14.5. Such a request shall be made no earlier than [60] days from the date of the receipt of the request under paragraph 1. The TSD Sub-Committee shall meet promptly and endeavour to reach a mutually satisfactory resolution of the matter.
6. The TSD Sub-Committee shall take into account any views on the matter provided by the [*civil society mechanisms*] referred to in Article... of Chapter.. as well as any expert advice
7. Any resolution reached by the Parties shall be made publicly available.