

TITLE IX

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 267

Context and Objectives

1. Recalling the Rio Declaration on Environment and Development and the Agenda 21 adopted by the United Nations Conference on Environment and Development on 14 June 1992, the Millennium Development *Goals* adopted in September 2000, the Johannesburg Declaration on Sustainable Development and its Plan of Implementation adopted on 4 September 2002, and the Ministerial Declaration on Attainment of Full, Productive Employment and Decent Work adopted by the United Nations Economic and Social Council in September 2006, the Parties reaffirm their commitment to sustainable development, for the welfare of present and future generations. In this regard, the Parties agree to promote international trade in such a way as to contribute to the objective of sustainable development and to work to integrate and reflect this objective in their trade relationship. In particular, the Parties underline the benefit of considering trade-related labour¹ and environmental issues as part of a global approach to trade and sustainable development.

¹ When "labour" is referred to in this Title, it includes the issues relevant to the strategic objectives of the International Labour Organisation.

2. In view of paragraph 1 the objectives of this Title are, among others, to:
- (a) promote dialogue and cooperation between the Parties with a view to facilitating the implementation of the provisions of this Title and strengthening the relationship between trade and labour and environmental policies and practices;
 - (b) strengthen compliance with the labour and environmental legislation of each Party, as well as with the commitments deriving from the international conventions and agreements referred to in Articles 269 and 270, as an important element to enhance the contribution of trade to sustainable development;
 - (c) strengthen the role of trade and trade policy in the promotion of the conservation and sustainable use of biological diversity and of natural resources, as well as in the reduction of pollution in accordance with the objective of sustainable development;
 - (d) strengthen the commitment to labour principles and rights in accordance with the provisions of this Title, as an important element to enhance the contribution of trade to sustainable development;
 - (e) promote public participation in the matters covered under this Title.

3. The Parties reaffirm their full resolve to fulfil their commitments under this Title taking into account their own capacities, in particular technical and financial capacities.
4. The Parties reiterate their commitment to address global environmental challenges, in accordance with the principle of common but differentiated responsibilities.
5. The provisions of this Title shall not be interpreted or used as a means of arbitrary or unjustifiable discrimination between the Parties or as a disguised restriction to trade or investment.

ARTICLE 268

Right to Regulate and Levels of Protection

Recognising the sovereign right of each Party to establish its domestic policies and priorities on sustainable development, and its own levels of environmental and labour protection, consistent with the internationally recognised standards and agreements referred to in Articles 269 and 270, and to adopt or modify accordingly its relevant laws, regulations and policies; each Party shall strive to ensure that its relevant laws and policies provide for and encourage high levels of environmental and labour protection.

ARTICLE 269

Multilateral Labour Standards and Agreements

1. The Parties recognise international trade, productive employment and decent work for all as key elements for managing the process of globalisation, and reaffirm their commitments to promote the development of international trade in a way that contributes to productive employment and decent work for all.
2. The Parties will dialogue and cooperate as appropriate on trade-related labour issues of mutual interest.
3. Each Party commits to the promotion and effective implementation in its laws and practice and in its whole territory of internationally recognised core labour standards as contained in the fundamental Conventions of the International Labour Organisation (hereinafter referred to as the "ILO"):
 - (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.

4. The Parties will exchange information on their respective situation and advancements as regards the ratification of priority ILO Conventions as well as other conventions that are classified as up-to-date by the ILO.

5. The Parties stress that labour standards should not be used for protectionist trade purposes and in addition, that the comparative advantage of any Party should in no way be called into question.

ARTICLE 270

Multilateral Environmental Standards and Agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment. In this context, the Parties shall dialogue and cooperate as appropriate with respect to trade-related environmental issues of mutual interest.

2. The Parties reaffirm their commitment to effectively implement in their laws and practices the following multilateral environmental agreements: the Montreal Protocol on Substances that Deplete the Ozone Layer adopted on 16 September of 1987, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal adopted on 22 March 1989, the Stockholm Convention on Persistent Organic Pollutants adopted on 22 May 2001, the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed on 3 March 1973 (hereinafter referred to as "CITES"), the CBD, the Cartagena Protocol on Biosafety to the CBD adopted on 29 January 2000, the Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted on 11 December 1997 (hereinafter referred to as "Kyoto Protocol") and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade adopted on 10 September 1998².

3. The Trade Committee may recommend the extension of the application of paragraph 2 to other multilateral environmental agreements following a proposal by the Sub-committee on Trade and Sustainable Development.

4. Nothing in this Agreement shall limit the right of a Party to adopt or maintain measures to implement the agreements referred to in paragraph 2. Such measures shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

² For the purposes of this paragraph, multilateral environmental agreements referred to shall encompass those protocols, amendments, annexes and adjustments ratified by the Parties.

ARTICLE 271

Trade Favouring Sustainable Development

1. The Parties reaffirm that trade should promote sustainable development. The Parties also recognise the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity, as well as the value of greater coherence between trade policies, on the one hand, and labour policies on the other.
2. The Parties shall strive to facilitate and promote trade and foreign direct investment in environmental goods and services.
3. The Parties agree to promote best business practices related to corporate social responsibility.
4. The Parties recognise that flexible, voluntary, and incentive-based mechanisms can contribute to coherence between trade practices and the objectives of sustainable development. In this regard, and in accordance with its respective laws and policies, each Party will encourage the development and use of such mechanisms.

ARTICLE 272

Biological Diversity

1. The Parties recognise the importance of the conservation and sustainable use of biological diversity and all of its components as a key element for the achievement of sustainable development. The Parties confirm their commitment to conserve and sustainably use biological diversity in accordance with the CBD and other relevant international agreements to which the Parties are party.
2. The Parties will continue to work towards meeting their international targets of establishing and maintaining a comprehensive, effectively managed, and ecologically representative national and regional system of terrestrial and marine protected areas by 2010 and 2012, respectively, as fundamental tools for the conservation and sustainable use of biological diversity. The Parties also recognise the importance of protected areas for the welfare of populations settled in those areas and their buffer zones.
3. The Parties will endeavour to jointly promote the development of practices and programmes aiming at fostering appropriate economic returns from the conservation and sustainable use of biological diversity.

4. The Parties recognise their obligation in accordance with the CBD to, subject to their domestic legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application conditioned to the prior informed consent of the holders of such knowledge, innovations and practices, and encourage the fair and equitable sharing of the benefits arising from the utilisation of such knowledge, innovation and practices.

5. Recalling Article 15 of the CBD, the Parties recognise the sovereign rights of States over their natural resources, and that the authority to determine access to genetic resources rests with the national governments and is subject to their domestic legislation. Furthermore, the Parties recognise that they shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses and not to impose restrictions that run counter to the objectives of the CBD, and that access to genetic resources shall be subject to the prior informed consent of any Party providing such resources, unless otherwise determined by that Party. The Parties will take appropriate measures, in accordance with the CBD, with the aim of sharing in a fair and equitable way and upon mutually agreed terms, the results of research and development and the benefits arising from the commercial and other utilisation of genetic resources with the Party providing such resources.

6. The Parties shall strive to strengthen and to enlarge the capacity of national institutions responsible for the conservation and sustainable use of biological diversity, through instruments such as the strengthening of capacities and technical assistance.

ARTICLE 273

Trade in Forest Products

In order to promote the sustainable management of forest resources, the Parties recognise the importance of having practices that, in accordance with domestic legislation and procedures, improve forest law enforcement and governance and promote trade in legal and sustainable forest products, which may include the following practices:

- (a) the effective implementation and use of CITES with regard to timber species that may be identified as endangered, in accordance with the criteria of and in the framework of such Convention;
- (b) the development of systems and mechanisms that allow verification of the legal origin of timber products throughout the marketing chain;

- (c) the promotion of voluntary mechanisms for forest certification that are recognised in international markets;
- (d) transparency and the promotion of public participation in the management of forest resources for timber production; and
- (e) the strengthening of control mechanisms for timber production, including through independent supervision institutions, in accordance with the legal framework of each Party.

ARTICLE 274

Trade in Fish Products

1. The Parties recognise the need to conserve and manage fish resources in a rational and responsible manner, in order to ensure their sustainability.
2. The Parties recognise the need to cooperate in the context of Regional Fisheries Management Organisations (hereinafter referred to as "RFMO"), of which they are part, in order to:
 - (a) revise and adjust the fishing capacity for fishery resources, including those affected by overfishing, to ensure that the fishing practices are commensurate to the fishing possibilities available;

- (b) adopt effective tools for the monitoring and control, such as observer schemes, vessel monitoring schemes, transshipment control and port state control, in order to ensure full compliance with applicable conservation measures;
- (c) adopt actions to combat illegal, unreported and unregulated (IUU) fishing; to this end, the Parties agree to ensure that vessels flying their flags conduct fishing activities in accordance with rules adopted within the RFMO, and to sanction vessels under their domestic legislation, in case of any violation of the said rules.

ARTICLE 275

Climate Change

1. Bearing in mind the United Nations Framework Convention on Climate Change (hereinafter referred to as "UNFCCC") and the Kyoto Protocol, the Parties recognise that climate change is an issue of common and global concern that calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, for the benefit of present and future generations of mankind.

2. The Parties are resolved to enhance their efforts regarding climate change, which are led by developed countries, including through the promotion of domestic policies and suitable international initiatives to mitigate and to adapt to climate change, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions, and taking particularly into account the needs, circumstances, and high vulnerability to the adverse effects of climate change of those Parties which are developing countries.
3. The Parties also recognise that the effect of climate change can affect their current and further development, and therefore highlight the importance of increasing and supporting adaptation efforts, especially in those Parties which are developing countries.
4. Considering the global objective of a rapid transition to low-carbon economies, the Parties will promote the sustainable use of natural resources and will promote trade and investment measures that promote and facilitate access, dissemination and use of best available technologies for clean energy production and use, and for mitigation of and adaptation to climate change.
5. The Parties agree to consider actions to contribute to achieving climate change mitigation and adaptation objectives through their trade and investment policies, *inter alia* by:
 - (a) facilitating the removal of trade and investment barriers to access to, innovation, development, and deployment of goods, services and technologies that can contribute to mitigation or adaptation, taking into account the circumstances of developing countries;

- (b) promoting measures for energy efficiency and renewable energy that respond to environmental and economic needs and minimise technical obstacles to trade.

ARTICLE 276

Migrant Workers

The Parties recognise the importance of promoting equality of treatment in respect of working conditions, with a view to eliminating any discrimination in respect thereof to any worker, including migrant workers legally employed in their territories.

ARTICLE 277

Upholding Levels of Protection

1. No Party shall encourage trade or investment by reducing the levels of protection afforded in its environmental and labour laws. Accordingly, no Party shall waive or otherwise derogate from its environmental and labour laws in a manner that reduces the protection afforded in those laws, to encourage trade or investment.

2. A Party shall not fail to effectively enforce its environmental and labour laws through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.

3. The Parties recognise the right of each Party to a reasonable exercise of discretion with regard to decisions on resource allocation relating to investigation, control and enforcement of domestic environmental and labour regulations and standards, while not undermining the fulfilment of the obligations undertaken under this Title.

4. Nothing in this Title shall be construed to empower the authorities of a Party to undertake labour and environmental law enforcement activities in the territory of another Party.

ARTICLE 278

Scientific Information

The Parties recognise the importance, when preparing and implementing measures aimed at protecting health and safety at work or the environment which affect trade between the Parties, of taking into account scientific and technical information and relevant international standards, guidelines or recommendations, while acknowledging that, where there are threats of serious or irreversible damage, the lack of full scientific certainty should not be used as a reason for postponing protective measures³.

³ Peru interprets this Article against the background of Principle 15 of the Rio Declaration on Environment and Development.

ARTICLE 279

Review of Sustainability Impacts

Each Party commits to review, monitor and assess the impact of the implementation of this Agreement on labour and environment, as it deems appropriate, through its respective domestic and participative processes.

ARTICLE 280

Institutional and Monitoring Mechanism

1. Each Party shall designate an office within its administration that shall serve as contact point to the other Parties for the purposes of implementing trade-related aspects of sustainable development and channelling all matters and communications that may arise in relation to this Title.
2. The Parties hereby establish a Sub-committee on Trade and Sustainable Development. The Sub-committee on Trade and Sustainable Development shall comprise high level representatives from the administrations of each Party, responsible for labour, environmental and trade matters.

3. Notwithstanding paragraph 2, the Sub-committee on Trade and Sustainable Development shall meet in sessions in which only the EU Party and one of the signatory Andean Countries participate when the subject relates exclusively to the bilateral relationship between the EU Party and such signatory Andean Country, including those matters addressed within the framework of Governmental Consultations provided for under Article 283 and the Group of Experts established under Article 284.

4. The Sub-committee 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 cooperation activities referred to in Article 286, and to discuss matters of common interest related to this Title. This Sub-committee shall establish its own rules of procedure and adopt decisions by consensus.

5. The work of the Sub-committee on Trade and Sustainable Development shall be based on dialogue, effective cooperation, furthering of commitments and initiatives under this Title and seeking mutually satisfactory solutions to any difficulties that may arise.

6. The following are functions of the Sub-committee of Trade and Sustainable Development:

(a) to carry out the follow-up of this Title and identify actions for the achievement of the objectives of sustainable development;

- (b) to submit to the Trade Committee, when it deems it appropriate, recommendations for the proper implementation and make the best use of this Title;
- (c) to identify areas of cooperation and verify the effective implementation of cooperation, without prejudice to Article 326;
- (d) to assess, when it deems it appropriate, the impact of the implementation of this Agreement on labour and environment; and
- (e) to resolve any other matter within the scope of application of this Title, without prejudice to the mechanisms set out in Articles 283, 284 and 285.

7. The Sub-committee on Trade and Sustainable Development shall promote transparency and public participation in its work. Accordingly, decisions of this Sub-committee, as well as any report on matters related to the implementation of this Title that it may prepare, shall be made public, unless the Sub-committee decides otherwise. Furthermore, the Sub-committee shall be open to receive and consider inputs, comments or views from the public on matters related to this Title.

ARTICLE 281

Domestic Mechanisms

Each Party shall consult domestic labour and environment or sustainable development committees or groups, or create such committees or groups when they do not exist. Such committees or groups may submit opinions and make recommendations on the implementation of this Title, including on their own initiative, through the respective internal channels of the Parties. The procedures for the constitution and consultation of such committees or groups, which shall have a balanced representation of representative organisations in the areas mentioned above, shall be in accordance with domestic law.

ARTICLE 282

Dialogue with Civil Society

1. Subject to Article 280 paragraph 3, the Sub-committee on Trade and Sustainable Development shall convene once a year, unless otherwise agreed by the Parties, a session with civil society organisations and the public at large, in order to carry out a dialogue on matters related to the implementation of this Title. The Parties shall agree on the procedure for such sessions with civil society no later than one year following the entry into force of this Agreement.

2. In order to promote a balanced representation of relevant interests, the Parties shall allow all stakeholders in the areas set out in Article 281 the opportunity to participate in the sessions. The summaries of these sessions shall be publicly available.

ARTICLE 283

Governmental Consultations⁴

1. A Party may request consultations to another Party regarding any matter of mutual interest arising under this Title, by delivering a written request to the contact point of that Party. The requested Party shall reply expeditiously.

2. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through dialogue and consultations. Where relevant, subject to the agreement of both consulting Parties, they shall seek information or views of any person, organisation or body that may contribute to the examination of the matter at issue, including the international organisations or bodies of the agreements referred to in Articles 269 and 270.

⁴ The Parties participating in governmental consultations foreseen in this Title (hereinafter referred to as a "consulting Party" or "consulting Parties") shall be, on the one hand, the European Union, and on the other hand one signatory Andean Country. A signatory Andean Country may not request consultations to another signatory Andean Country.

3. If a consulting Party deems that the matter needs further discussion, that Party may request that the Sub-committee on Trade and Sustainable Development be convened to consider the matter by delivering a written request to the contact point of the other consulting Party. The Sub-committee on Trade and Sustainable Development shall convene promptly and endeavour to agree on a resolution of the matter. Unless the Sub-committee decides otherwise, its conclusions shall be made public.

4. The Sub-committee on Trade and Sustainable Development shall periodically publish reports describing the outcome of completed consultation procedures, and when it deems it appropriate, reports about ongoing consultations.

ARTICLE 284

Group of Experts

1. Unless the consulting Parties agree otherwise, a consulting Party may, after 90 days of the delivery of a request for consultations, request that a Group of Experts be convened to examine the matter that has not been satisfactorily addressed through governmental consultations under Article 283.

2. The Group of Experts selected according to the procedures set out in paragraphs 3 and 4 shall determine whether a Party has fulfilled its obligations under this Title.

3. At the entry into force of this Agreement, the Parties shall submit to the Trade Committee a list of at least 15 persons with expertise on the issues covered by this Title, of which at least five shall not be nationals of any Party and who shall be available to serve as chairperson of the Group of Experts. Such list shall be endorsed at the first meeting of the Trade Committee. The experts shall be independent of, and not take instructions from, any of the Parties.

4. Each Party to a procedure⁵ shall select one expert from the list of experts within 30 days of the receipt of the request for the establishment of a Group of Experts. The Parties to the procedure may agree to appoint experts not included in the list to serve in the Group of Experts when they deem it necessary. If a Party to the procedure 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 that has failed to select an expert. The two selected experts shall agree on the chairperson, who shall not be a national of either Party to the procedure. In case of disagreement, the chairperson shall be selected by lot. The Group of Experts shall be established within 40 days following the date of receipt of the request for its establishment.

⁵ "a Party to a procedure" shall be understood as a consulting Party which participates in a procedure before a Group of Experts.

5. The Parties to the procedure may present submissions to the Group of Experts. The Group of Experts may request and receive written submissions or any other information from organisations, institutions, and persons with relevant information or specialised knowledge, including written submissions or information from the relevant international organisations and bodies, on matters concerning the international conventions and agreements referred to in Articles 269 and 270.

6. At the entry into force of this Agreement, the Parties shall submit to the Trade Committee, for adoption at its first meeting, rules of procedure, for the Group of Experts.

ARTICLE 285

Report of the Group of Experts⁶

1. The Group of Experts shall, within 60 days after the last expert is selected, present to the Parties to the procedure an initial report that contains its preliminary conclusions on the matter. The Parties to the procedure may submit written comments to the Group of Experts on the initial report within 15 days following its presentation. After examining the written comments, the Group of Experts may reconsider the initial report. The final report of the Group of Experts shall address any argument presented by the Parties to the procedure in their written comments.

⁶ The Group of Experts in issuing its recommendations will take into account the multilateral context of obligations under agreements and conventions referred to in Articles 269 and 270.

2. The Group of Experts shall present to the Parties to the procedure, its final report, including its recommendations, within 45 days from the date in which the initial report is presented pursuant to paragraph 1. The Parties to the procedure shall release a non-confidential version of the final report to the public within 15 days of its issuance.
3. The Parties to the procedure may agree to extend the time limits in paragraphs 1 and 2.
4. The Party to the procedure concerned shall inform the Sub-committee on Trade and Sustainable Development of its intentions as regards the recommendations of the Group of Experts, including the presentation of an action plan to implement the recommendations. The Sub-committee on Trade and Sustainable Development shall monitor the implementation of the measures that such Party has determined.
5. This Title is not subject to Title XII (Dispute Settlement).

ARTICLE 286

Cooperation on Trade and Sustainable Development

Taking into account the cooperative approach of this Title as well as the provisions of Title XIII (Technical Assistance and Trade-Capacity Building), the Parties recognise the importance of cooperation activities that contribute to the implementation and better use of this Title and, in particular, to the improvement of policies and practices related to labour and environmental protection as set out in its provisions. Such cooperation activities should cover activities in areas of mutual interest, such as:

- (a) activities related to the evaluation of impacts of this Agreement on environment and labour, including activities aimed at improving the methodologies and indicators for such evaluation;
- (b) activities related to the investigation, monitoring and effective implementation of fundamental ILO Conventions and multilateral environmental agreements, including trade-related aspects;
- (c) studies related to levels and standards of labour and environment protection and mechanisms to monitor such levels;
- (d) activities related to the adaptation to, and mitigation of, climate change, including activities related to the reduction of emissions from deforestation and forest degradation ("REDD");

- (e) activities related to aspects of the international climate change regime with relevance for trade, including trade and investment activities to contribute to the achievement of the objectives of the UNFCCC;
- (f) activities related to the conservation and sustainable use of biological diversity, as addressed in this Title;
- (g) activities related to the determination of the legal origin of forest products, voluntary forestry certification schemes and traceability of different forestry products;
- (h) activities to encourage best practices for sustainable forest management;
- (i) activities related to trade in fishery products, as addressed in this Title;
- (j) exchange of information and experiences related to the promotion and implementation of good practices of corporate social responsibility; and
- (k) activities related to trade-related aspects of the ILO Decent Work Agenda, including on the interlinkages between trade and productive employment, core labour standards, social protection and social dialogue.