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## PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	28 September 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 562 final - ANNEX 5
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Economic Partnership Agreement between the Republic of Kenya, Member of the East African Community of the one part, and the European Union of the other Part

Delegations will find attached document COM(2023) 562 final - ANNEX 5.

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Encl.: COM(2023) 562 final - ANNEX 5



EUROPEAN  
COMMISSION

Brussels, 28.9.2023  
COM(2023) 562 final

ANNEX 5

## **ANNEX**

*to the*

### **Proposal for a Council Decision**

**on the conclusion, on behalf of the European Union, of the Economic Partnership Agreement between the Republic of Kenya, Member of the East African Community of the one part, and the European Union of the other Part**

**TRADE AND SUSTAINABLE DEVELOPMENT**

**ARTICLE 1**

**Context and Objectives**

1. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development adopted at the United Nations (UN) Conference on Environment and Development, held in Rio de Janeiro on 3 to 14 June 1992, the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002, the ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 97th Session, held in Geneva on 10 June 2008, (ILO Declaration on Social and Justice for a Fair Globalization), the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" endorsed by UN General Assembly Resolution 66/288 adopted on 27 July 2012, UN General Assembly Resolution 70/1 adopted on 25 September 2015 containing the Outcome Document entitled "Transforming our world: the 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals" (2030 Agenda) , and the ILO Centenary Declaration for the Future of Work, adopted by the International Labour Conference at its 108th Session held in Geneva on 21 June 2019.

2. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing and affirm their commitment to promote the development of international trade and investment in a way that contributes to the objective of sustainable development.

3. The Parties recognise the urgent need to address climate change, as outlined by the Intergovernmental Panel on Climate Change (IPCC) in its special report entitled "Global Warming of 1.5°C", as a contribution to the economic, social and environmental objectives of sustainable development.

4. In light of the above, the objective of this Annex is to enhance the integration of sustainable development, notably its labour<sup>1</sup> and environmental dimensions, in the Parties' trade and investment relationship, including through strengthening dialogue and cooperation.

## 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 relevant law and policies. Such levels, law and policies shall be consistent with each Party's commitment to the internationally recognised standards and agreements referred to in this Annex.

2. Each Party shall strive to ensure that its relevant law and policies provide for, and encourage, high levels of environmental and labour protection, and shall strive to improve such levels, law and policies.

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

3. A Party shall not weaken or reduce the levels of protection afforded in its environmental or labour law with the intention to encourage trade or investment.

4. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental or labour law with the intention 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 law with the intention to encourage trade or investment.

6. The Parties recognise each other's developmental policies and priorities with respect to their trade and investment aspirations in accordance with the Special and Differential Treatment provisions under the WTO Agreement and consistent with each Party's commitments to the internationally recognised standards and agreements under this Annex.

### ARTICLE 3

#### Multilateral Labour Standards and Agreements

1. The Parties affirm their commitment to promote the development of international trade in a way that is conducive to decent work for all, as expressed in the ILO Declaration on Social Justice for a Fair Globalization .

2. In accordance with the ILO Constitution, adopted as Part XIII of the Treaty of Versailles, signed on 28 June 1919, and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in Geneva on 18 June 1998 (ILO Declaration on Fundamental Principles and Rights at Work) and as amended at its 110th Session in 2022, each Party shall respect, promote and realise the principles concerning the fundamental rights at work, as defined in the fundamental ILO Conventions, namely:

- (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<sup>1</sup>;
- (c) the effective abolition of child labour;
- (d) the elimination of discrimination in respect of employment and occupation; and
- (e) a safe and healthy working environment.

3. Each Party shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so.

4. The Parties shall periodically exchange information on their respective situations and advances with regard to the ratification of ILO Conventions or protocols classified as up-to-date by the ILO.

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<sup>1</sup> In this context, the Parties underline the importance of ratification of the Protocol of 2014 to the Forced Labour Convention, adopted by the General Conference of the International Labour Organization at its 103rd ILC session in Geneva on 11 Jun 2014.

5. Each Party shall effectively implement the respective ILO Conventions that the EAC Partner State and the Member States of the European Union have ratified.
6. Recalling the ILO Declaration on Social Justice for a Fair Globalization, 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.
7. Each Party shall promote through its law and practices the ILO Decent Work Agenda as set out in the ILO Declaration on Social Justice for a Fair Globalization, in particular with regard to:
- (a) decent working conditions for all with regard to, among others, wages and earnings, working hours, enhancing social security, other conditions of work and social protection;
  - (b) social dialogue on labour matters among workers and employers and their respective organizations, and with relevant government authorities.
8. Consistent with its commitments under the ILO, each Party shall:
- (a) adopt and implement measures and policies regarding terms and conditions of employment, occupational health and safety, including compensation in case of occupational injury or illness;
  - (b) maintain an effective labour inspection system.

9. The Parties shall work together to strengthen their cooperation on trade-related aspects of labour policies and measures, bilaterally, regionally and in international fora as appropriate, including within the ILO. Such cooperation may cover among others:

- (a) implementation of fundamental, priority and other up-to-date ILO Conventions;
- (b) decent work, 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 and gender equality;
- (c) the impact of labour law and standards on trade and investment and the impact of trade and investment law on labour.

10. The Parties shall give due consideration as appropriate, to the views provided by representatives of workers, employers and civil society organisations when identifying areas of cooperation and when carrying out cooperative activities.



## ARTICLE 4

### Trade and Gender Equality

1. The Parties recognise that inclusive trade policies contribute to advancing women's economic empowerment and gender equality, in line with Sustainable Development Goal 5 of the 2030 Agenda and the objectives of the Joint Declaration on Trade and Women's Economic Empowerment on the Occasion of the WTO Ministerial Conference held in Buenos Aires in December 2017. The Parties acknowledge the important contribution by women to economic growth through their participation in economic activity, including international trade. The Parties commit to implement the provisions of this Agreement in a manner that promotes and enhances gender equality.
2. The Parties aim to strengthen their trade relations and cooperation in ways that effectively provide equal opportunities and treatment for women and men to benefit from the provisions of this Agreement, including in matters of employment and occupation, in accordance with their international commitments.
3. Each Party shall effectively implement its obligations under international agreements addressing gender equality and women's rights to which it is a party, including the Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the UN General Assembly on 18 December 1979, noting in particular its provisions related to eliminating discrimination against women in economic life and in the field of employment. In this respect, the Parties reiterate their respective commitments pursuant to Article 3 of this Annex including regarding the effective implementation of the ILO Conventions related to gender equality and the elimination of discrimination in respect of employment and occupation.

4. Each Party shall strive to ensure that its relevant law and policies provide for, and encourage, equal rights, treatment and opportunities between men and women. Each Party shall strive to improve such law and policies, without prejudice to the right of each Party to establish its own scope and levels of protection for equal opportunities for men and women. Such law and policies shall be consistent with each Party's commitments to the internationally recognised standards and agreements referred to in this Article.

5. The Parties reiterate their commitments pursuant to Article 2 of this Annex in relation to their respective law aimed at ensuring gender equality or equal opportunities for women and men.

6. The Parties shall work together bilaterally or in other relevant fora as appropriate to strengthen their cooperation on trade-related aspects of gender equality policies and measures, including activities designed to improve the capacity and conditions for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by this Agreement. Such cooperation may cover among others exchange of information and best practices related to collection of sex-disaggregated data and gender-based analysis of trade policies.

7. The Parties agree on the importance of monitoring and assessing, in accordance with their domestic procedures, the impact of the implementation of this Agreement on gender equality and equal opportunities provided for women in relation to trade.

## ARTICLE 5

### Multilateral Environmental Governance and Agreements

1. The Parties recognise the importance of international environmental governance, in particular the role of the UN Environment Assembly (UNEA) of the UN Environment Programme (UNEP), as well as multilateral environmental agreements (MEAs) 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, rules and measures.
2. In light of paragraph 1, each Party shall effectively implement the MEAs, protocols and amendments that it has ratified.
3. The Parties shall periodically exchange information on their respective situations as regards the ratifications of MEAs, including their protocols and amendments.
4. The Parties affirm the right of each Party to adopt or maintain measures to further the objectives of MEAs to which it is a party. The Parties recall that measures adopted or enforced to implement such MEAs may be justified pursuant to Part VIII of this Agreement.
5. The Parties shall work together to strengthen their cooperation on trade-related aspects of environmental policies and measures, bilaterally, regionally and in international fora, as appropriate, including in the UN High-level Political Forum for Sustainable Development, the UNEP, the UNEA, MEAs, and the WTO. Such cooperation may cover among others:

- (a) policies and measures promoting mutual supportiveness of trade and environment including:
  - sharing information on policies and practices and promoting initiatives to encourage the shift to a circular economy;
  - promoting initiatives on sustainable production and consumption, green growth and pollution abatement;
  - exchanging information on policies and practices, and promoting common positions, in the framework of MEAs.
- (b) initiatives to encourage trade and investment in environmental goods and services, including by addressing related tariff and non-tariff barriers;
- (c) the impact of environmental law and standards on trade and investment; or the impact of trade and investment law on the environment;
- (d) other trade related aspects of MEAs, including their protocols, amendments and implementation.

6. The Parties will give due consideration, as appropriate, to the views or input from the relevant public and interested stakeholders for the definition and implementation of their cooperation activities, and they may involve such stakeholders further in those activities, as appropriate.

## ARTICLE 6

### Trade and Climate Change

1. The Parties recognise the importance of taking urgent action to combat climate change and its impacts, and the role of trade in pursuing this objective, consistent with the UN Framework Convention on Climate Change done at New York on 9 May 1992 (UNFCCC), the Paris Agreement under the UNFCCC, done at Paris on 12 December 2015 (Paris Agreement), and with other MEAs and multilateral instruments in the area of climate change.
2. In light of paragraph 1, each Party shall effectively implement the UNFCCC and the Paris Agreement.
3. The commitment to effectively implement the Paris Agreement pursuant to paragraph 2 includes the obligation to refrain from any action or omission which materially defeats the object and purpose of the Paris Agreement.
4. A Party may take appropriate measures relating to this Agreement in the event of a violation of the obligation under paragraph 3. Appropriate measures shall be taken in accordance with the procedure set out in Article 96 of the Cotonou Agreement or the corresponding provisions of its successor agreement, as provided by Article 136.3 of this Agreement.

5. In light of paragraph 1, each Party shall:

- (a) promote the mutual supportiveness of trade and climate policies and measures thereby contributing to the transition to a *low greenhouse gas emission economy*, to a resource-efficient and circular economy, and to climate-resilient development;
- (b) facilitate the removal of obstacles to trade and investment in goods and services of particular relevance for climate change mitigation and adaptation, such as renewable energy and energy-efficient products and services;

6. The Parties shall work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally, regionally and in international fora, as appropriate, including under the UNFCCC, the Paris Agreement, , the Montreal Protocol on Substances that Deplete the Ozone Layer concluded at Montreal on 16 September 1987 (Montreal Protocol) and in the WTO and the International Maritime Organisation (IMO). Such cooperation may cover among others:

- (a) policy dialogue and cooperation regarding the implementation of the Paris Agreement, such as on means to promote climate resilience, renewable energy, low-carbon technologies, energy efficiency, preparation and adoption of carbon pricing action including Emission Trading Systems, sustainable transport, sustainable and climate-resilient infrastructure development and emissions monitoring;
- (b) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the IMO to be implemented by ships engaged in international trade;

- (c) supporting an ambitious phase-out of ozone depleting substances (ODS) and phase-down of hydrofluorocarbons (HFCs) under the Montreal Protocol through measures to control their production, consumption and trade, the introduction of environmentally friendly alternatives to ODS and HFCs, ; the updating of safety and other relevant standards as well as by combatting the illegal trade of substances regulated by the Montreal Protocol.

## ARTICLE 7

### Trade and Biological Diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing these objectives, consistent with relevant MEAs to which they are a party, including the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 (CBD) and its protocols, the Convention on International Trade in Endangered Species of Wild Fauna and Flora , done at Washington D.C. on 3 March 1973 (CITES), and the decisions adopted thereunder.
2. In light of paragraph 1, each Party shall:
  - (a) implement effective measures to combat illegal wildlife trade, including with respect to third countries as appropriate;

- (b) promote the long-term conservation and sustainable use of CITES listed species and 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, as well as conduct periodic reviews, which may result in a recommendation to amend the Appendices to the CITES, in order to ensure that they properly reflect the conservation needs of species threatened by international trade;
  - (c) promote trade in products derived from a sustainable use of biological resources in order to contribute to the conservation of biodiversity;
  - (d) promote the fair and equitable sharing of the benefits arising from the utilisation of genetic resources and traditional knowledge associated with genetic resources, in accordance with the Nagoya Protocol to the CBD, done at Nagoya on 29 October 2010 (Nagoya Protocol);
  - (e) take measures to conserve biological diversity when it is subject to pressures linked to trade and investment, in particular to prevent the spread of zoonosis and invasive alien species.
3. The Parties shall work together to strengthen their cooperation on trade-related aspects of biodiversity policies and measures bilaterally, regionally and in international fora, as appropriate, including under the CBD and CITES. Such cooperation may cover among others:
- (a) initiatives and good practices concerning trade in products and services derived from the sustainable use of biological resources with the aim of conserving biological diversity;



- (b) responsible trade and the conservation and sustainable use of biological diversity, including the development and application of natural capital and ecosystem accounting methods, the valuation of ecosystems and their services and related economic instruments, and the mainstreaming of biodiversity in trade and trade processes;
- (c) combatting illegal wildlife trade, including through initiatives to reduce demand for illegal wildlife products and initiatives to enhance information sharing and cooperation, law enforcement, voluntary technological transfer, exchange programmes and capacity building;
- (d) access to genetic resources as well as the fair and equitable sharing of benefits from their utilisation consistent with the Nagoya Protocol.

## ARTICLE 8

### Trade and Forests

1. The Parties recognise the importance of the conservation and sustainable management of forests for providing environmental functions and economic and social opportunities for present and future generations and the role of trade in pursuing this objective.
2. In light of paragraph 1, each Party shall:
  - (a) implement measures to combat illegal logging and related trade, including with respect to third countries as appropriate and promote trade in legally harvested forest products;

- (b) promote the conservation and sustainable management of forests and trade and consumption of timber and timber products harvested in accordance with the law of the country of harvest and from sustainably managed forests;
- (c) exchange information with the other Party on trade-related initiatives regarding sustainable forest management, forest conservation, forest governance, initiatives designed to combat illegal logging, and other relevant policies of mutual interest and cooperate to maximise the impact and mutual supportiveness of their respective policies of mutual interest.

3. Recognising that deforestation is a major driver of global warming and biodiversity loss, the Parties shall exchange knowledge and experience on ways to encourage the consumption and trade in products from deforestation-free supply chains, minimising the risk that products associated with deforestation or forest degradation are being placed on their markets.

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of sustainable forest management, improving forest conservation, minimising all forms of deforestation and forest degradation, improving traceability and chain of custody of forest products, promoting initiatives to enhance information sharing, fighting illegal logging and strengthening the role of forests in climate change mitigation, in the fight against biodiversity loss and in the circular economy and bioeconomy, bilaterally, regionally and in international fora as appropriate.

## ARTICLE 9

### Trade and Sustainable Management of Marine Biological Resources 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.
2. The Parties acknowledge that illegal, unreported and unregulated (IUU) fishing undermines sustainable conservation and management of fish stocks, has a negative impact on the livelihoods of fishing communities and those trading in fish and fishery products. This confirms the need for action to combat and end IUU fishing and to address the problems of overfishing and unsustainable utilisation of fisheries resources.
3. In light of paragraphs 1 and 2, each Party shall:
  - (a) implement long-term conservation and management measures and sustainable use of marine living resources as defined in the UN Agreement for the Implementation of the Provisions of the UN 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 (Fish Stocks Agreement) adopted in New York, on 4 August 1995 and the Food and Agriculture Organization of the UN (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted in Rome, on 24 November 1993 (Compliance Agreement), and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing done in Rome, on 22 November 2009 (PSMA) ;

- (b) act consistently with the principles of UNCLOS, the Fish Stocks Agreement, the Compliance Agreement, the FAO Code of Conduct for Responsible Fisheries, adopted by Resolution 4/95 of 31 October 1995 and the PSMA, and to participate, as appropriate, in FAO's initiative on the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels;
- (c) participate actively in the work of the Regional Fisheries Management Organisations (RFMOs) to which they are members, observers or cooperating non-contracting parties, with the aim of achieving good fisheries governance and sustainable fisheries, such as through the promotion of scientific research and the adoption of conservation and management measures based on best available scientific information, the strengthening of compliance mechanisms, the undertaking of periodical performance reviews and the adoption of effective control, monitoring and enforcement of the RFMOs' management measures and, where applicable, the adoption and implementation of catch documentation or certification schemes and port state measures;
- (d) implement effective measures to combat IUU fishing, including measures to exclude IUU products from trade flows, and cooperate in facilitating the exchange of information to ensure enforcing traceability;
- (e) 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.

- (f) Promote the long-term conservation and sustainable use of CITES-listed species and the inclusion of aquatic 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;
- (g) Comply with the Convention on Migratory Species of Wild Animals, done at Bonn on 23 June 1979(Bonn Convention) and instruments under that convention, for sustainable conservation of migratory species, bycatch management and landing data;

4. The Parties shall work together to strengthen their cooperation and mutual benefits on trade-related aspects of fishery and aquaculture policies and measures, bilaterally regionally and in international fora, as appropriate, including in the WTO, RFMOs, FAO and under other multilateral instruments in this field, with the aim of promoting sustainable fishing practices and aquaculture and trade in fish and seafood products from sustainably managed fisheries and aquaculture. The Parties shall work closely together and accelerate their efforts to achieve UN Sustainable Development Goal 14 (life below water), which aims to conserve and sustainably use the oceans, seas and marine resources for sustainable development including through preventing and significantly reducing marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution, and through mainstreaming marine ecosystems conservation in sustainable blue economy policies.

## ARTICLE 10

### Trade and Investment Supporting Sustainable Development

1. The Parties recognise that trade and investment in goods and services that are related to the protection of the environment or contribute to enhancing social conditions and that fostering the use of sustainability schemes or other voluntary initiatives can meaningfully contribute to sustainable development.
2. To that end, the Parties have eliminated customs duties on environmental goods originating in the other Party pursuant to Articles 10 and 11 of this Agreement.
3. Furthermore, the Parties have made commitments to conclude negotiations on environmental services and manufacturing activities pursuant to Article 3 of this Agreement.
4. In light of paragraph 1, each Party shall promote and facilitate trade and investment in:
  - (a) environmental goods and services;
  - (b) goods that contribute to enhanced social conditions; and
  - (c) goods subject to transparent, factual and non-misleading sustainability assurance schemes such as fair and ethical trade schemes and eco-labels.

5. The promotion and facilitation of trade and investment referred to in paragraph 4, may include:

- (a) awareness-raising actions and information and public education campaigns;
- (b) adoption of policy frameworks conducive to the deployment of best available technologies;
- (c) encouraging the uptake of transparent, factual and non-misleading sustainability schemes especially for SMEs;
- (d) addressing related non-tariff barriers; and
- (e) reference to relevant international standards, such as the ILO Conventions and guidelines or MEAs, as periodically updated by the relevant bodies.

6. The Parties shall work together to strengthen their cooperation on trade-related aspects of issues covered by this Article bilaterally, regionally and in international and multilateral fora as appropriate, among others through the exchange of information, best practices and outreach initiatives.

## ARTICLE 11

### Trade and Responsible Business Conduct and Supply Chain Management

1. The Parties recognise the importance of responsible business conduct and corporate social responsibility practices including responsible supply chain management and the role of trade in pursuing this objective.
2. In light of paragraph 1, each Party shall:
  - (a) promote responsible business conduct and corporate social responsibility, including responsible supply chain management, by providing supportive policy frameworks that encourage the uptake of relevant practices by businesses;
  - (b) support the adherence, implementation, follow-up and dissemination of relevant international instruments, such as the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted in Geneva in November 1977 (the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy), the UN Global Compact, and the UN Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in its Resolution 17/4 of 16 June 2011.



3. The Parties recognise the utility of international sector-specific guidelines in the area of corporate social responsibility/responsible business conduct and shall promote joint work in this regard. In respect of relevant internationally recognized OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and its supplements, the Parties shall also implement measures to promote the uptake of such guidance. As members of the FAO Committee on World Food Security, the Parties shall also promote awareness for the Principles for Responsible Investment in Agriculture and Food Systems and the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of issues covered by this article bilaterally, regionally and in international fora as appropriate, among others through the exchange of information, best practices and outreach initiatives.

## ARTICLE 12

### 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 take into account available scientific and technical information, relevant international standards, guidelines or recommendations.

2. Where there is a lack of full scientific certainty and there are threats of serious or irreversible damage to the environment or to occupational safety and health, a Party may adopt measures to prevent such damage, in accordance with the precautionary principle.

## ARTICLE 13

### Transparency

1. Each Party shall, with the view to ensuring awareness and providing reasonable opportunities for interested persons and stakeholders to submit views, develop, enact and implement in a transparent manner:
  - (a) measures aimed at protecting the environment or 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,
2. Each Party shall give due consideration to communications and opinions from the public on matters related to this Annex. It may inform, where appropriate, the domestic advisory groups established pursuant to Article 15 of this Annex as well as the contact point of the other Party established in accordance with paragraph 5 of Article 14 of such communications and opinions.

## ARTICLE 14

### Special Committee on Trade and Sustainable Development and Contact Points

1. The Parties hereby establish a Special Committee on Trade and Sustainable Development (“the TSD Committee”), governed by Part VI of this Agreement, which shall:
  - (a) meet once a year, or without undue delay on request of either Party,

- (b) be co-chaired, at an appropriate level, by representatives of the Parties; and
- (c) report to the EPA Council.

2. The TSD Committee shall:

- (a) facilitate, monitor and review the implementation of this Annex;
- (b) carry out the tasks referred to in Article 18 of this Annex;
- (c) contribute to the work of the Committee of Senior Officials on issues covered by this Annex, including with regard to topics for discussion with the EPA Consultative Committee referred to in Article 108 of this Agreement;
- (d) consider any other matter related to this Annex as the Parties may agree.

3. The TSD Committee may establish its own rules of procedure, in the absence of which the rules of procedure of the Committee of Senior Officials shall apply *mutatis mutandis*.

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

5. Each Party shall, upon the entry into force of this Agreement, designate a contact point within its administration to facilitate communication and coordination between the Parties on any matter relating to this Annex. Each Party shall notify the other Party of the contact details of its contact point. The Parties shall promptly notify each other of any change of those contact details.

## ARTICLE 15

### Domestic Advisory Groups

1. Each Party shall create a new or designate an existing domestic advisory group within a year after the date of entry into force of this Agreement. The domestic advisory group shall advise the Party concerned on issues covered by this Agreement. It shall consist of a balanced representation of independent civil society organisations including non-governmental organisations, business and employers' organisations as well as trade unions active on economic, sustainable development, social, human rights, environmental and other matters. The domestic advisory group may be convened in different configurations to discuss the implementation of different Parts and provisions of this Agreement.
2. Each Party shall meet with its domestic advisory group at least once a year. Each Party shall consider views or recommendations submitted by its domestic advisory group on the implementation of this Agreement.
3. In order to promote public awareness of the domestic advisory groups, each Party shall publish the list of organisations participating in its domestic advisory group as well as the contact point for that group.
4. The Parties shall promote the interaction between their respective domestic advisory groups, including their participation at the EPA Consultative Committee established pursuant to Article 108 of this Agreement.

## ARTICLE 16

### Dispute Avoidance and Settlement

1. The Parties shall make all efforts through dialogue, consultation, exchange of information and cooperation to address any disagreement on the application of this Annex.
2. In case of a disagreement between the Parties regarding the application of this Annex, the Parties shall have recourse exclusively to the dispute resolution procedures established pursuant to Article 17 and Article 18 of this Annex.

## ARTICLE 17

### Consultations and Mediation

1. Except as otherwise provided for in this Article, Articles 110 and 111 of this Agreement shall apply.
2. Consultations shall be held within twenty (20) days of the date of receipt of the request by the Party complained against and shall be deemed concluded within ninety (90) days of that date of receipt , unless the Parties agree to continue consultations.

3. If the consultations concern provisions which relate to multilateral agreements or instruments referred to in this Annex, the Parties shall take into account information from the International Labour Organization (ILO) or from relevant organisations or bodies established under MEAs in order to promote coherence between the work of the Parties and that of such organisations or bodies. Where relevant, the Parties shall seek advice from such organisations or bodies, or from any other expert or body they deem appropriate. Each Party may also seek, if appropriate, the views of the domestic advisory groups established pursuant to Article 15 of this Annex or any other expert advice.

4. Any resolution reached by the Parties shall be made publicly available.

## ARTICLE 18

### Dispute Settlement

1. Except as otherwise provided for in this Article, Articles 112 to 115, Article 116 (1), (3), (4) and (5), Articles 119 to 124, Article 125(2) and (3), and Articles 126 and 127 of this Agreement shall apply.

2. The TSD Committee set up pursuant to Article 14 of this Annex shall, not later than six (6) months after the entry into force of this Agreement, establish a list of at least fifteen (15) individuals who are willing and able to serve as arbitrators for disputes under this Annex. The list shall be composed of three sub-lists: one sub-list for each Party to serve as arbitrators; and one sub-list of individuals that are not nationals of either Party and who shall be available to act as Chairperson of the arbitration panel. Each sub-list shall include at least five (5) individuals. The TSD Committee shall ensure that the list is always maintained at this level, in accordance with the Rules of Procedure.

3. Arbitrators shall have specialised knowledge of or expertise in labour or environmental law, issues addressed in this Annex, or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the code of conduct annexed to the rules of procedures to be adopted by the EPA Council within six (6) months after the entry into force of this Agreement pursuant to article 125(4).

4. If the arbitration panel is composed according to the procedure set out in Article 113 of this Agreement, the arbitrators shall be selected from the relevant individuals on the sub-lists referred to in paragraph 2.

5. With regard to matters related to compliance with multilateral agreements and instruments referred to in this Annex, information or expert opinion requested by the arbitration panel pursuant to Article 121 should include information and advice from the ILO or relevant bodies or organisations established under the MEAs.

6. The Party complained against shall no later than 21 days after the delivery of the arbitration panel ruling inform its domestic advisory group set up pursuant to Article 15 of this Annex of the compliance measures it has taken or envisages to take pursuant to Article 115(4) of this Agreement.

7. The TSD Committee shall monitor the implementation of the compliance measures. The domestic advisory groups may submit observations to the TSD Committee in this regard.