Model Labour Chapter for European Union Trade Agreements

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FRIEDRICH EBERT STIFTUNG

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In cooperation with Bernd Lange MEP,
Chairman of the Committee on International Trade
and commissioned by Friedrich-Ebert-Stiftung

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FOREWORD TO THE FINAL EDITION

The debates about trade agreements have changed fundamentally over the past years. A decade ago, trade agreements and its provisions were merely subject to the scrutiny of experts and a hand full of journalists, with the public at large only being addressed at official signing events. Through the involvement of civil society and the subsequent global debates about the Transatlantic Trade and Investment Partnership (TTIP), the Comprehensive Economic and Trade Agreement (CETA) and the Trans-Pacific Partnership (TTP), this has changed for the better.

Stronger public engagement, a new interest by the media and reactive decision makers shaped the fundamental questions about free trade we ask until today: Will free trade lead to a race to the bottom especially regarding working conditions, wages and the rights of employees? How can we establish lasting institutions and mechanisms to ensure that the benefits of trade are distributed equally? And how can labour standards be enforced once a trade agreement is in place?

Today, the debates about European Union (EU) trade agreements have matured. While the level of scrutiny is significantly higher than ten years ago, the EU is working productively with its partners in the Asia-Pacific region to expand the number of trade agreements. In the past year, the EU negotiated and finalized trade and investment agreements with Vietnam, Singapore and Japan, while trade agreements with Australia and New Zealand are on its way.

In light of this more hands-on stage of European trade policies, we are grateful to have found Peter-Tobias Stoll, Henner Gött and Patrick Abel who developed this Model Labour Chapter for European Union trade agreements. Their practical work gives potential answers to the fundamental questions on free trade in a legal framework, ready to use by decision makers, civil society and journalists alike.

This project wouldn't have been the same without Bernd Lange, the Chair of the Committee on International Trade at the European Parliament and a formidable supporter of and adviser for this venture. He presented this blueprint for a comprehensive and progressive trade agreement labour chapter to the European Commission and the then Commissioner for Trade Cecilia Malmström.

This Model Labour Chapter is part of the regional project series Core Labour Standards Plus (CLS+), which was launched by Friedrich-Ebert-Stiftung in Asia in 2016. This series aims to promote and develop binding labour standards in trade and global value chains. With growing consumer concern and lasting scrutiny of free trade agreements, there is momentum to push for binding social clauses in international trade.

If governments can show that trade agreements contribute to making the life of workers in Asia better, the growing scepticism towards such agreements could be reduced. The scope of the CLS+ project is ambitious in the sense that it goes beyond the ILO core labour standards and includes additional important rights such as living wages, maximum working hours, and safe and healthy workplaces.

The CLS+ project also developed four county studies in Bangladesh, Cambodia, Pakistan and Vietnam to examine asymmetric power structures in global supply chains. It moreover conducted two studies on the governance structures of international trade, analysing the enforcement mechanisms of conditional or promotional trade agreements, as well as potentials to enforce labour standards with targeted sanctions.

Furthermore, the project commissioned country studies on industrial policies for Asia to explore alternative paths for economic and social upgrading in developing countries.

Lastly, we would like to thank all those who have contributed to the project with their knowledge and insights and helped shape this publication.

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FOREWORD

Trade and sustainable development (TSD) chapters have become a standard feature of trade agreements concluded by the European Union. They contain important provisions on labour rights and environmental standards and are intended to refrain parties to an agreement from lowering these standards to gain a competitive advantage. They thereby form an integral part of the quest to regulate international trade and globalization in the interests of workers and citizens. While the substantive provisions are clearly a step in the right direction, the enforcement of these crucial aspects is lacking.

Unlike market access elements of trade agreements, TSD chapters are excluded from the state-to-state dispute settlement (SSDS) mechanism that governs our agreements. Under the SSDS, if a Party to an agreement disagrees on the implementation of certain aspects of that agreement, that Party can escalate a dispute up to a potential withdrawal of preferences.

This is not the case for labour and environmental provisions. So far, the European Union is relying on the good faith of partner countries to comply with their commitments – the enforcement mechanism only ends with a report by a panel of experts that parties are bound to respect but will bear no consequences for non-compliance.

Experience with the agreement between the European Union and the Republic of Korea has highlighted several shortcomings of this dialogue-based approach. First, domestic advisory groups need to be empowered. Ignoring the calls of civil society representatives and taking no action discredits an agreements as a tool to promote trade and labour rights in the interests of all people. We need a mechanism that allows civil society to trigger a dispute. This would also de-politicize any action taken under the TSD chapter because it would not require the European Commission to bring any dispute to a panel.

Second, we need to reconsider our "soft" approach. While I agree that overly aggressive actions will not serve our interests, I also think that obligations in the labour and environmental fields should not be treated differently from classical market access questions.

These observations and experiences have led to discussions in Brussels, across Europe and beyond, spearheaded by progressive parties, trade unions and think tanks. The common goal is to improve what we have on paper and develop a model that has more teeth and delivers on the aim of improving labour rights.

The result of one such collaboration is the model labour chapter that I have developed with Friedrich-Ebert-Stiftung as an output of the regional Core Labour Standards Plus Project, which seeks to promote and implement labour standards in trade policies. The chapter draws upon European experiences as well as Asian experiences in partner countries and thus adds an additional perspective that many other models and approaches lack.

We presented this model in a workshop in Brussels in 2017 with European Commissioner for Trade Cecilia Malmström and representatives from the International Labour Organization and the Organisation for Economic Co-operation and Development, at a time in which many people were talking about the need to improve our current approach in abstract terms. In proposing a legal text to incorporate into the TSD chapters that builds on the phrasing of existing free trade agreements and includes progressive features, we shaped the ensuing discussions within the European Parliament, with member States, the European Commission and other stakeholders.

It would be an illusion to say that our work is done. On the contrary, it has just begun. While more and more trade agreements are being implemented and negotiated, we find ourselves in an ever more complex network that we seek to influence. We will keep on pushing to introduce progressive elements into our free trade agreements and follow them up by engaging with civil society in the European Union and our partner countries.

Bernd Lange
Chair of the Committee of International Trade of the European Parliament

Introduction

A comprehensive and progressive trade agreement labour chapter

This model labour chapter presents a progressive and ambitious approach to secure and enhance the protection of workers in future European Union (EU) trade agreements. It provides a comprehensive model containing both substantive labour protection standards and rights and an institutional and procedural framework to enforce them. The model labour chapter empowers social partners and civil society organizations to participate and monitor all labour-related activities of the Parties under the respective free trade agreement.

This model labour chapter is based on five core ideas.

1. Integration and implementation of state-of-the art international rules and guidelines on labour protection

This model labour chapter comprehensively integrates the current leading international rules and standards on labour issues. It follows an ambitious approach: The parties undertake not only to ratify and implement the fundamental International Labour Organization (ILO) conventions and protocols but agree to go beyond them. The model labour chapter notably includes important, yet often under-represented, standards on occupational safety and health, decent living wages and working hours. Special regard is given to horizontal challenges for labour protection, such as global supply chains and specific modes of labour.

2. Powerful and well-balanced institutions for an effective participation of social partners and civil society

Essential for the success of a labour chapter in practice is the comprehensive and effective involvement of social partners and civil society. This model labour chapter assures their continuous participation in all labour-related activities of the Parties to a trade agreement. Representation and participation are realized in particular through the establishment of reformed Domestic Advisory Groups and a Civil Society Forum. Detailed rules on competencies and procedures are provided to ensure an effective and prominent role for organizations and to give employees and employers a balanced and equal say.

3. Detailed cooperative and promotional activities

This model labour chapter takes up and improves the traditional focus of the European Union on cooperative and promotional activities in labour matters in trade agreements. It provides a suitable framework for continuous and guided cooperation aimed at successively furthering labour protection. This includes continuous bilateral cooperation meetings between the Parties, in consultation with the social partners and organized civil society, flanked by capacity building and technical assistance essential for developing countries in case they become a party to the trade agreement. A public submission procedure allows for an easy exchange of views by any person with the parties, which allows for unbureaucratic solutions. A periodic mandatory review of the model labour chapter is coupled with an innovative impact assessment carried out by an independent rapporteur, in line with international and European standards.

4. Effective dispute settlement between the Parties and a collective complaint procedure

Separately and in addition to cooperative and promotional activities, this model labour chapter provides for adjudicatory dispute settlement procedures. This model labour chapter thus complements the traditional EU cooperative and promotional approach with sanctions-based dispute settlement procedures drawn from labour chapters of United States free trade agreements. The model labour chapter provides for two different dispute settlement procedures: First, an interstate labour dispute settlement between the Parties, and, second, an innovative collective complaint procedure, allowing workers, employers and civil society organizations to directly enforce the agreed labour standards against a Party.

Dispute settlement between the Parties involves a legal review of adherence to labour obligations under this model labour chapter with a legally binding report by an independent Panel of Experts. Effective enforcement is available through remedies, namely consensual compensation, monetary assessment and the suspension of obligations. Priority is given to monetary assessment.

The new collective complaint procedure is a progressive and ambitious approach to empower social partners to enforce labour obligations under this model labour chapter on their own and with full control over the proceedings. They can, after the exhaustion of all adequate and affordable local remedies, initiate legal review regarding an alleged violation of an obligation by a Party. This review results in a legally binding report by an independent Panel of Experts. The report may include the award of monetary just satisfaction that is enforceable before the domestic courts of both Parties without any further examination by any domestic institution. This procedure aims to give the social partners the means to actively defend their rights on an international level.

5. Strong and well-balanced language integrating and improving existing and established texts

The model labour chapter aims at providing strong and well-balanced language for inclusion in future EU trade agreements. For that purpose, it draws primarily on existing EU trade agreements and EU textual proposals published by the European Commission. The central point of reference is the final text of the Comprehensive Economic and Trade Agreement (CETA) and the Commission's Transatlantic Trade and Investment Partnership (TTIP) textual proposals. Where appropriate, other EU trade agreements and instruments have been taken into account. Occasionally, trade agreements of the European Union's most important trading partners were taken into account, such as the Comprehensive and Progressive Agreement on Trans-Pacific Partnership and its predecessor, the Trans-Pacific Partnership Agreement. To the extent that language had not existed before, the model labour chapter closely follows existing established texts, notably ILO and Council of Europe conventions. The model labour chapter greatly profits from the extensive legal, economic, political and sociological research that has been conducted on labour provisions in earlier trade agreements, including studies commissioned by the European Parliament and the ILO. The model labour chapter aims at addressing the shortcomings of these earlier texts, which surfaced in the studies, while preserving accomplished progress.

Einleitung

Ein umfassendes und fortschrittliches Arbeitskapitel für Freihandelsabkommen

Das vorliegende Modellkapitel zum Arbeitsrecht ist ein fortschrittlicher und ambitionierter Ansatz, um den Schutz von Arbeitnehmer_innen in zukünftigen EU-Freihandelsabkommen zu sichern und zu verbessern. Es zielt auf die umfassende Sicherung materieller Arbeitsstandards und -rechte ab und sieht dafür einen eigenen institutionellen und prozessualen Rahmen zur Durchsetzung vor. Das Kapitel betont dabei in besonderem Maße die Beteiligung von Sozialpartner_innen und zivilgesellschaftlichen Organisationen, indem diesen Mitwirkungs- und Überwachungsrechte bei allen arbeitsrechtlich relevanten Aktivitäten der Vertragsparteien im Rahmen des Freihandelsabkommens eingeräumt werden.

Das vorliegende Modellkapitel beruht auf fünf grundlegenden Pfeilern:

1. *Einbeziehung und Implementierung aktueller internationaler Standards und Richtlinien zum Arbeitsrecht*

Das Modellkapitel integriert in umfassender und ambitionierter Weise die aktuellen internationalen Arbeitsstandards. Die Vertragsparteien verpflichten sich nicht nur, die fundamentalen ILO-Konventionen und ihre Protokolle zu ratifizieren und umzusetzen, sondern gehen weit darüber hinaus. Insbesondere umfasst das Modellkapitel wichtige, aber bislang häufig unterrepräsentierte Standards zur Sicherheit und zum Gesundheitsschutz am Arbeitsplatz, zu existenzsichernden Löhnen und angemessenen Arbeitszeiten. Spezifische Regeln finden sich für besonders sensible Bereiche. Dazu gehören etwa Arbeitsstandards in globalen Wertschöpfungsketten oder spezielle Arten von Arbeit, in denen Arbeitnehmerrechte besonders bedroht werden, wie etwa die Arbeit in der sog. informellen Wirtschaft.

2. *Starke und ausgewogene Institutionen für eine effektive Beteiligung von Sozialpartner_innen und Zivilgesellschaft*

Entscheidend für den Erfolg eines Arbeitskapitels in der Praxis ist die umfassende und effektive Einbeziehung von Sozialpartner_innen und Zivilgesellschaft. Das vorliegende Modellkapitel sichert deren fortwährende Beteiligung in allen arbeitsrelevanten Aktivitäten der Vertragsparteien im Rahmen des Freihandelsabkommens. Repräsentation und Mitwirkung werden insbesondere durch die Errichtung von Institutionen gesichert, die mit eigenen Rechten ausgestattet sind, insbesondere die reformierten Domestic Advisory Groups und das Civil Society Forum. Detaillierte Regeln über Zuständigkeiten und Verfahren sichern eine effektive und hervorgehobene Rolle von Organisationen und bieten Arbeitnehmer_innen und Arbeitgebern effektive und ausgewogene Beteiligungsmöglichkeiten.

3. *Detaillierte Vorschriften zur Kooperation und zur Förderung von Arbeitsstandards*

Das vorliegende Modellkapitel greift den auf Kooperation und Förderung von Arbeitsstandards liegenden Fokus aktuell bestehender EU-Freihandelsabkommen auf und entwickelt diesen weiter. Es stellt einen auf Arbeitspolitik zugeschnittenen Rahmen für eine fortgesetzte und zielgerichtete Kooperation bereit, die auf eine sukzessive Verbesserung des Schutzes von Arbeitnehmer_innen gerichtet ist. Dieses umfasst fortgesetzte bilaterale Treffen zwischen den Vertragsparteien in Beratung mit den Sozialpartner_innen und der Zivilgesellschaft, flankiert von Mechanismen zum Aufbau von Kapazitäten und zur technischen Unterstützung, die essenziell für Entwicklungsländer sind. Die Möglichkeit von Eingaben durch Individuen ermöglicht einen unkomplizierten Austausch von Standpunkten mit den Vertragsparteien zur Herbeiführung von unbürokratischen Lösungen. Schließlich besteht eine Pflicht zur wiederkehrenden Überprüfung des Kapitels, die mit einem innovativen Impact Assessment-Verfahren durch eine/n unabhängige/n Berichterstatter/in nach europäischen und internationalen Standards verbunden ist.

4. *Effektive Streitbeilegung zwischen den Vertragsparteien und ein Kollektivbeschwerdeverfahren*

Zusätzlich zu Aktivitäten zur Kooperation und Förderung von Arbeitsstandards sieht das Modellkapitel auch rechtsförmige Streitbeilegungsmechanismen vor. Damit ergänzt das Kapitel den hergebrachten, auf Kooperation und Förderung ausgerichteten EU-Ansatz mit sanktionsbewährten Streitbeilegungsverfahren, die bisher etwa in Arbeitskapiteln in US-Freihandelsabkommen vorkommen. Das Modellkapitel sieht zwei verschiedene Streitbeilegungsverfahren vor: Erstens, ein zwischenstaatliches Streitbeilegungsverfahren sowie zweitens, ein innovatives Kollektivbeschwerdeverfahren, welches Arbeitnehmer- und Arbeitgeberverbänden sowie zivilgesellschaftlichen Organisationen eine direkte rechtsförmige Durchsetzungsmöglichkeit der im Kapitel vereinbarten Arbeitsstandards gegen eine Vertragspartei eröffnet.

Das zwischenstaatliche Streitbeilegungsverfahren sieht eine juristische Überprüfung der Einhaltung von im Arbeitskapitel enthaltenen Verpflichtungen vor, die in einem rechtsverbindlichen Bericht eines Expertengremiums mündet. Eine effektive Umsetzung des Berichts wird durch eine konsensual zu vereinbarende Entschädigung oder aber durch eine festgesetzte Geldzahlung gewährleistet. Bei Nichtzahlung steht überdies die Möglichkeit der Aufhebung von Handelsvergünstigungen (sog. „Handelssanktionen") offen. Im Interesse einer konstruktiven Rechtsdurchsetzung setzt das Kapitel über Handel und Arbeit dabei die Priorität und Anreize auf eine Durchsetzung durch Geldzahlung.

Das neue Kollektivbeschwerdeverfahren ist ein progressiver und ambitionierter Ansatz, damit Sozialpartner_innen und zivilgesellschaftliche Organisationen die im Modellkapitel niedergelegten Arbeitsstandards eigenständig und mit voller Verfahrenskontrolle zur Geltung bringen können. Sie können nach Ausschöpfung aller zumutbaren und erschwinglichen nationalen Rechtsbehelfe eine rechtliche Überprüfung von Verletzungen des Kapitels durch eine Vertragspartei herbeiführen, die in einen rechtsverbindlichen Bericht eines Expertengremiums mündet. Der Bericht kann den Beschwerdeführer_innen eine gerechte Entschädigung in Geld zusprechen, die durch die Gerichte beider Vertragsparteien unmittelbar vollsteckt werden kann. Dieses Verfahren gibt den Sozialpartner_innen ein Mittel an die Hand, um ihre Rechte aktiv auch auf internationaler Ebene umzusetzen.

5. *Belastbare und ausgewogene Formulierungen, die bisherige Vertragstexte integrieren und verbessern*

Das Modellkapitel zielt darauf ab, belastbare und ausgewogene Formulierungen für zukünftige EU-Freihandelsabkommen bereitzustellen. Zu diesem Zweck orientiert es sich in erster Linie an bestehenden EU-Freihandelsabkommen sowie den diesbezüglich von der Europäischen Kommission veröffentlichten Textvorschlägen. Den Hauptreferenzpunkt stellen der finale CETA-Text sowie die von der Kommission veröffentlichen TTIP-Textvorschläge dar. Daneben wurden auch Formulierungen anderer EU-Handelsabkommen und EU-Rechtsakte herangezogen. An einigen ausgewählten Stellen greift das Modellkapitel auf einzelne Formulierungen aus Handelsabkommen wichtiger EU-Handelspartner_innen zurück, insbesondere auf den unterzeichneten Text des Transpazifischen Partnerschaftsabkommens (TPP). Soweit zu Themen bislang noch keine Formulierung in bestehenden Verträgen oder Vertragsentwürfen bestand, orientiert sich das Modellkapitel eng an international etablierten Vertragswerken, vor allem an Konventionen der Internationalen Arbeitsorganisation (ILO) und des Europarats. Das Modellkapitel profitiert zudem in erheblichem Maße von der juristischen, politikwissenschaftlichen, ökonomischen und soziologischen Erforschung von Arbeitskapiteln früherer Handelsabkommen. Dies betrifft insbesondere von der ILO und vom Europäischen Parlament in Auftrag gegebene Studien. Das Modellkapitel zielt auf die Behebung von in den Studien zutage getretenen Schwachstellen früherer Abkommen unter gleichzeitiger Erhaltung bereits erreichter Fortschritte ab.

Model Labour Chapter

Part I
General provisions

Overview of Part I: Part I contains overarching provisions that set out the context (Article X.1) or rules on cross-cutting issues (Articles. X.2–X.6). The provisions reproduce, with minor amendments, the language of the CETA and the EU TTIP proposal.

Article X.1
Context and objectives

1. The Parties recognize the value of international cooperation and agreements on labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalization and as fundamental instruments to promote and achieve decent work for all. The Parties stress the need to enhance the mutual supportiveness between trade, investment and labour policies and rules. They recognize the contribution that international trade and investment could make to full and productive employment and decent work for all. Accordingly, they agree to promote the development of their trade and investment relations in a manner conducive to the realization of the Decent Work Agenda, as expressed through the International Labour Organization (ILO) 2008 Declaration on Social Justice for a Fair Globalization, in its four strategic objectives

(a) employment promotion;
(b) social protection;
(c) social dialogue; and
(d) fundamental principles and rights at work
and the cross-cutting issues of gender equality and non-discrimination.

The Parties commit to consulting and cooperating as appropriate on trade- and investment-related labour and employment issues of mutual interest.

2. Affirming the value of greater policy coherence in decent work, encompassing 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 as well as governments and commit to the promotion of such dialogue.

3. The Parties reaffirm their commitment to pursue sustainable development, the dimensions of which – economic development, social development and environmental protection – are interdependent and mutually reinforcing and are committed to promoting the development of international trade and investment in such a way as to contribute to this overarching objective. The Parties recall the Rio Declaration and the Agenda 21 on Environment and Development of 1992, the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and its Follow-up, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Declaration on Social Justice for a Fair Globalization of 2008, the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled The Future We Want and the outcome of the UN Summit on Sustainable Development of 2015 entitled Transforming Our World: the 2030 Agenda for Sustainable Development. The Parties underline the benefit of considering labour issues, including those that are trade- and investment-related, as part of a global approach to trade and sustainable development.

4. The Parties recognize 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 arbitrary or unjustifiable discrimination or protectionist trade purposes.

5. The Parties are mindful of their common history, including colonialism. Against this backdrop, the Parties affirm that this Chapter is in no way seeking to exert pretended superiority through standards. They recognize that the provisions of this Chapter build upon and serve to further principles and rights that are universal and accepted globally.

6. The Parties recognize the benefits of commerce in fair and ethical trade products and the importance of facilitating such commerce between them.

7. The Parties recall the UN Guiding Principles on Business and Human Rights, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the 2016 ILO Resolution on Decent Work in Global Supply Chains and reaffirm the responsibilities of businesses to safeguard human rights as laid down in these instruments. The Parties reaffirm their commitment to promote decent work and ensure compliance with applicable labour standards, with a particular view to the specific labour-related challenges arising in connection with global supply chains.

Comments: Article X.1 provides context and sets out the specific objectives of the Chapter. It does not contain specific obligations but provides context that can be taken into account when interpreting the Chapter according to the Vienna Convention on the Law of Treaties rules. Paragraph 1, a combination of language from Article 23.1 CETA and Article 4 TTIP, contains a commitment to the ILO Decent Work Agenda and highlights the beneficial contributions of trade and investment to the protection and promotion of labour standards. Paragraph 2, based on Article 23.1 CETA, emphasizes the beneficial economic effects of labour protection. Paragraph 3 reproduces language from Article 1 TTIP and links the Model Chapter to the Parties' commitments to pursue sustainable development. Paragraph 4 is taken from Article 4 TTIP and interlinks the two statements that labour standards violations must not be relied upon as a comparative advantage and that labour standards must not be abused for protectionism. Paragraph 5, which contains new language, aims at countering sentiments of continued colonialist dominance by the European Union and its member States in free trade agreements with former colonies or developing countries. Paragraph 6 is based on Article 191 paragraph 5 of the EU-CARIFORUM Economic Partnership Agreement. Paragraph 7 contains new language and addresses issues of corporate social responsibility and responsible business conduct, especially in global value chains.

Article X.2 Right to regulate; high levels of protection

1. The Parties recognize the right of each Party to determine its labour policies and priorities, to set and regulate its levels of domestic labour protection and to adopt or modify relevant policies and laws accordingly. The right to regulate shall be exerted in a manner that fully conforms with the obligations under this Chapter, including the international instruments referred to therein.

2. Each Party shall ensure that its domestic labour policies and laws provide for and encourage high levels of workers' protection and shall strive to continue to improve those policies and laws and their underlying levels of protection.

Comments: Article X.2 reproduces Article 3 TTIP Proposal with minor modifications to enhance clarity.

Article X.3 Social partners and civil society

1. The Parties highlight and reinforce the central importance of social partners and civil society for achieving the objectives of this chapter. The Parties agree on promoting and ensuring a high level of effective participation and integration of social partners and civil society in all phases and modes of application of this chapter. The Parties commit to giving due regard to the views of social partners and civil society in their policy decisions on issues under this Chapter.

2. Social partners and civil society organizations shall participate in cooperative and promotional activities and in dispute settlement proceedings as provided for under this Chapter. Participation of social partners and civil society in cooperative and promotional activities shall be realized in particular through the Domestic Advisory Groups and the Civil Society Forum as laid down in Article X.24 (Domestic Advisory Groups and Civil

Society Forum). Their participation in dispute settlement proceedings shall be realized in particular through their role and the role of the Domestic Advisory Groups and the Civil Society Forum in dispute settlement between the Parties pursuant to Part V, Section 1 of this Chapter and the collective complaint procedure pursuant to Part V Section 2 of this Chapter.

3. The Parties agree to respect, protect and ensure the independence and the freedom of association of social partners and civil society in conformity with the ILO Convention on Freedom of Association and Protection of the Right to Organise of 1948 (No. 87), the ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively of 1949 (No. 98), the International Covenant on Civil and Political Rights of 1966 and the International Covenant on Economic, Social and Cultural Rights of 1966. In particular, the Parties commit to respect, protect and ensure the independence and the freedom of association of social partners and civil society in the selection and nomination as well as the treatment of participants of the Domestic Advisory Groups and Civil Society Forum under Article X.24 (Domestic Advisory Groups and Civil Society Forum).

4. The Parties agree to ensure a balanced representation and consideration of organizations of social partners and civil society, giving equal weight to organizations representing or relating to employers' as well as employees' interests and allowing for adequate representation of organizations with a general scope of activities, in particular employers' organizations and trade union federations and of those with a sectoral scope of activities.

5. For greater certainty, nothing in this Article shall be read as permitting infringements on the status or rights of the social partners and civil society organizations enshrined in other provisions of domestic or international law.

Comments: Article X.3 is a cross-cutting provision on the role of social partners and civil society organizations in the context of the Model Chapter. It serves as a reference point for further provisions touching on these organizations, notably Article X.24 (Domestic Advisory Groups and Civil Society Forum). Paragraph 2 highlights their role both in the cooperative and promotional and the sanctions-backed dispute settlement dimensions of the Chapter. Paragraph 3 guarantees basic freedoms and the independence of the respective organizations, in particular with a view to avoiding undue State influence. Paragraph 5 is a safeguard to ensure that Article X.4 does not have any negative impact on any more favourable provisions on social partners and civil society organizations in other areas of international or domestic law.

Article X.4
Non-lowering of standards

1. The Parties shall not encourage trade or investment by weakening or reducing the levels of protection afforded in their labour law and standards.

2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law and standards to encourage trade or the establishment, acquisition, expansion or retention of an investment. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law and standards that implement its obligations under this Chapter.

3. A Party shall not fail to effectively enforce its labour law and standards, including those that implement obligations under this Chapter.

4. For greater certainty, this Article applies to the entirety of each Party's territorial or other jurisdiction, including, in particular, any regional divisions and zones with special status, such as export processing zones.

Comments: Article X.4 builds on Article 23.4 CETA. That provision aims at preventing a "race to the bottom" in labour protection via deregulation by a Party in order to attain comparative advantages. Article 23.4 CETA has been criticized for only prohibiting derogations made with the specific intent of encouraging trade and investment. This focus on a specific regulatory intent implies, e contrario, that derogating measures taken based on other rationales remain permissible. This opens the door to abusive invocations of other regulatory intentions, which, in many instances, will be hard to contest. Accordingly, the last sentence in paragraphs 2 and 3, respectively, were inserted to clarify that the Parties may in no case derogate from or fail to enforce provisions that implement their obligations under the Model Chapter, regardless of their regulatory intent. Insofar as a Party creates "autonomous" labour standards that are not required by this Chapter, the Party remains free to lower these standards at a later stage in accordance with Article X.2 (Right to regulate; high levels of protection), save that it may not do so in order to encourage trade or investment, i.e. in order to attain a comparative advantage.

Article X.5
Global supply chains and similar economic arrangements

1. The Parties recognize that the cross-border organization of the supply, production and distribution of goods and the provision of services, in particular in global supply chains, poses distinct and significant challenges to the protection and promotion of decent work for all. In particular, they recognize challenges resulting from economic dependency between contracting enterprises, excessive competition among subcontractors and suppliers, and difficulties in implementing and enforcing domestic and pertinent international labour standards and rights.

2. The Parties shall maintain and enhance their domestic and bilateral efforts to address the challenges referred to in paragraph 1. The Parties affirm and agree to promote and effectively implement international efforts, decisions and instruments to address the challenges mentioned in paragraph 1, such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the 2016 ILO Resolution on Decent Work in Global Supply Chains and its follow-up, in accordance with Section 3 of Part II.

3. The Parties shall
(a) effectively assume and exercise jurisdiction under their internal laws over all participants involved in the cross-border organization of the supply, production and distribution of goods and the provision of services, including global supply chains, which have their nationality or operate from or on their territory, and
(b) effectively implement and enforce their domestic labour law and regulations and international obligations, including those arising under this Chapter, with particular regard to the cross-border organization of the supply, production and distribution of goods and the provision of services, in particular in global supply chains, and the accompanying challenges to the protection and promotion of decent work for all.

Comments: Article X.5 contains a cross-cutting obligation of the Parties to effectuate the Chapter with special regard to the specific challenges of global supply chains and other forms of cross-border production.

Article X.6
Specific modes of labour

1. 1. The Parties recognize that specific modes of labour may encompass a specific vulnerability of workers and lead to challenges for the attainment of decent work for all, and they are mindful that economic globalization may have the inadvertent side effect of aggravating such vulnerability. The specific modes of labour include
(a) economic activities by workers and economic units that are—in law or in practice—not covered or insufficiently covered by formal arrangements, excluding illicit activities,
(b) domestic work,
(c) work carried out by migrant workers,
(d) maritime labour, or
(e) hired labour.

2. The Parties agree to implement and enforce this Chapter with a view to securing and promoting decent work for all in specific modes of labour. They agree to promote, in accordance with their obligations under international law, efforts that have been made to secure and promote decent work for all in specific modes of labour. The Parties recognize the importance of international instruments on this matter, such as the ILO Domestic Workers Convention, 2011 (No. 189), the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) and the Maritime Labour Convention, 2006.

Comments: Article X.6 contains a cross-cutting obligation to implement the Model Chapter, taking into account the increased vulnerability of workers employed in certain specific modes of labour.

Part II
Substantive provisions

Overview of Part II: Part II contains substantive obligations of the Parties. It builds upon Articles 4–9 and Article 18 TTIP and Articles 23.3 and 23.5 CETA, with certain modifications and amendments as explained further below. Part II follows an integrated two-tier approach: On one hand, Parties commit to adhere to certain central ILO instruments (Article X.7). On the other hand, the Chapter creates genuine obligations with regard to certain subject matter, especially core labour standards and working conditions (Articles X.8–X.15). This follows the EU TTIP proposal's approach. It reconciles the need for coherence with key ILO instruments to avoid fragmentation and the need for genuine free trade agreement safeguards concerning certain minimum standards in the designated subject areas, even insofar as the Parties have not ratified or do not implement ILO instruments. To the extent that this two-tiered approach contains overlapping obligations, the obligation to interpret them coherently and in light of pertinent ILO standards explicitly enshrined in Article X.30 paragraph 12 ensures a sound and uniform application.

Section 3 of Part II sets forth provisions on the domestic implementation of the obligations in Sections 1 and 2. Issues covered are transparency in regulation, labour inspection, review and domestic enforcement proceedings. It largely builds on pre-existing language in CETA and the TTIP proposal.

Section 4 sets forth the Parties' obligations in regard to corporate social responsibility and responsible business conduct.

Section 1
Instruments of the International Labour Organization

Article X.7
Adherence to ILO instruments; further ratification of ILO conventions

1. The Parties reaffirm and commit to fulfil their respective obligations as ILO members, including under the ILO Constitution, the Declaration of Philadelphia of 1944, the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and its follow-up and the ILO Decent Work Agenda, as expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008. Each Party shall at all times ensure that its laws and practices respect, promote and realize within an integrated strategy, in its whole territory and for all, the internationally recognized core labour standards, which are the subject of the fundamental ILO conventions.

2. Each Party, to the extent it has not yet done so, shall ratify, without undue delay, all fundamental ILO conventions and their protocols. The Parties shall regularly exchange information on their respective situation and advancements as regards the ratification of these as well as of priority and other ILO conventions that are classified as up to date by the ILO and their protocols.

3. Each Party shall effectively implement in its laws and practices and in its whole territory all ILO conventions it has ratified. For all areas covered by up-to-date conventions, each Party shall implement its policies in the relevant areas, bearing in mind the recommendations adopted by the ILO, where they exist.

4. The obligations set forth in this Article shall not be read as to prejudice or limit in any way the Parties' obligations and their timely and comprehensive implementation under other provisions of this model chapter, especially under Sections 2 and 3 of this Part, nor shall they be read as to prejudice or limit in any way the Parties' commitment to high levels of protection and the Partiers' right to enhance their domestic labour policies, laws and protection levels pursuant to Article X.2 (Right to regulate; high levels of protection).

Comments: Article X.7 embodies the "instrument-focused" obligations of the Parties, i.e. the Parties' obligations to adhere to certain key ILO instruments.

Paragraph 1 contains a commitment to observe the Parties' obligations as ILO members, as framed by the ILO Constitution and the ILO's three declarations of principles cited there.

Paragraphs 2 and 3 contain obligations regarding ILO conventions. Paragraph 2 refers to their ratification. Continued ratification of ILO conventions is highly recommended for four reasons. First, it serves the economic goal of countering a "race to the bottom" and the broader goal of improving labour standards at the same time. Second, the ILO's regular supervisory mechanisms apply, improving monitoring. Third, it improves the legitimacy of the ILO. Fourth, it enhances the "gold standard" the European Union is aiming to set with its trade agreements. In this vein, paragraph 2 calls for the ratification without undue delay of the eight fundamental ILO conventions, which refer to universally recognized core labour standards and comprise

1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
3. Forced Labour Convention, 1930 (No. 29);
4. Abolition of Forced Labour Convention, 1957 (No. 105);
5. Minimum Age Convention, 1973 (No. 138);
6. Worst Forms of Child Labour Convention, 1999 (No. 182);
7. Equal Remuneration Convention, 1951 (No. 100); and
8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

All of these conventions have already been ratified by all EU Member States. The phrase "without undue delay" emphasizes the urgency of ratification while preserving latitude for conducting an adequate ratification procedure within a reasonable time.

Article X.7 does not oblige the Parties to ratify any other ILO convention, including those classified as "priority" by the ILO. Following CETA and TTIP, the Model Chapter calls for an exchange of information concerning the Parties' progress and the state of ratifications of such other conventions.

Paragraph 3 concerns the effective implementation of all – i.e. not only the fundamental – ILO conventions a Party has ratified.

Paragraph 4 defines the relation between Article X.7 and the subsequent, subject-specific Articles of Part II. In particular, adherence to ILO instruments as required by Article X.7 does not relieve the Parties from fulfilling their obligations under the subsequent Articles. This is of relevance because these subsequent Articles, which were taken from the EU TTIP proposal, contain some obligations that reflect well-established ILO practice, albeit not explicitly mentioned in the conventions.

Section 2
Core labour standards and working conditions

Article X.8
Freedom of association and right to collective bargaining

Comments on Articles. X.8–X.11: Articles X.8–X.11 resemble Articles 5–8 TTIP, with minor clarifications. As mentioned previously, these Articles set forth subject-specific obligations.

1. The Parties underline their commitment to protecting the freedom of association and the right to collective bargaining and recognize the importance of international rules and agreements in this area, such as ILO Conventions No. 87 and No. 98, the UN Universal Declaration of Human Rights of 1948 and the UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966.

2. Accordingly, the Parties shall uphold and implement in their laws and practices

(a) the right to form and join trade unions and the inherent corollary of the right to strike;

(b) the right to establish and join employers' organizations;

(c) the effective recognition of the right to collective bargaining and the right to collective action;

(d) effective social dialogue and tripartite consultations;

as referred to in the instruments under paragraph 1.

3. To this end, the Parties shall

(a) implement effective domestic policies and measures for social dialogue by involving employers' and workers' representatives in the formulation of or consultation on domestic labour policies and laws;

(b) implement effective domestic policies and measures for information and consultation of workers through dialogue with workers, including through permanent workers' representation bodies in companies, such as work councils, and encourage their active functioning in accordance with domestic laws;

(c) provide effective protection against acts of anti-union discrimination in respect of workers' employment;

(d) maintain the right to negotiate, conclude and enforce collective agreements as well as to take collective action in accordance with domestic laws and practices;

(e) enable and promote the organization of employers' and workers' representation;

(f) facilitate dialogue and exchanges between employers' and workers' organizations established in their territories;

(g) promote and facilitate the information and consultation of workers in companies at a transnational level;

(h) promote worldwide implementation of the principles under paragraph 2, in particular through promoting adherence to relevant international instruments, including with regard to ratification where appropriate, as well as participation in relevant international processes and initiatives.

Article X.9
Forced and compulsory labour

1. The Parties underline their commitment to eliminate forced or compulsory labour, and recognize the importance of international rules and agreements in this area, such as ILO Convention 29 and its Protocol, ILO Convention 105, the UN Universal Declaration of Human Rights of 1948, and the UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966.

2. Accordingly, the Parties shall uphold and implement in their laws and practices
(a) the effective suppression of forced or compulsory labour, in all its forms, including with regard to trafficking in persons;
(b) the prevention of the use of forced or compulsory labour;
(c) the provision to victims of protection and access to appropriate and effective remedies;
as referred to in the instruments under paragraph 1.

3. To this end, the Parties shall
(a) implement effective domestic policies and measures, including the establishment and application of adequate deterrent measures for offences, to prevent and eliminate forced or compulsory labour, and provide protection to the victims;

(b) exchange information and cooperate, as appropriate, on the prevention and elimination of forced or compulsory labour worldwide, including through the promotion of comprehensive approaches and international cooperation in this regard;

(c) promote worldwide implementation of the principles under paragraph 2, in particular through promoting adherence to relevant international instruments, including with regard to ratification where appropriate, as well as participation in relevant international processes and initiatives.

Article X.10
Effective abolition of child labour

1. The Parties underline their commitment to protect the rights of the child and to the abolition of child labour, and recognize the importance of international rules and agreements in this area, such as ILO Conventions 138 and 182, the UN Universal Declaration of Human Rights of 1948, the UN Declaration on the Rights of the Child of 1959, the UN International Covenant on Economic, Social and Cultural Rights of 1966, the UN Convention on the Rights of the Child of 1989, and the Brasilia Declaration on Child Labour of 2013.

2. Accordingly, the Parties shall uphold and implement in their laws and practices

(a) the immediate and effective prohibition and elimination of the worst forms of child labour;

(b) the effective abolition of all child labour;

(c) the protection of children of compulsory schooling age from performing labour; as referred to in the instruments under paragraph 1.

3. To this end, the Parties shall

(a) implement effective domestic policies and measures to protect children from performing hazardous work;

(b) promote access to quality basic education to all children;

(c) promote decent working conditions for young people in employment;

(d) exchange information and cooperate, as appropriate, on the elimination of the worst forms of child labour worldwide, including through the promotion of comprehensive approaches in this regard;

(e) promote worldwide implementation of the principles under paragraph 2, in particular through promoting adherence to relevant international instruments, including with regard to ratification where appropriate, as well as participation in relevant international processes and initiatives.

Article X.11
Equality and non-discrimination in respect of employment and occupation

1. The Parties underline their commitment to equality and non-discrimination at the workplace, and recognize the importance of international rules and agreements in this area, such as ILO Conventions 100 and 111, the UN Universal Declaration of Human Rights of 1948, the UN International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights of 1966, the UN Convention on the Elimination of All Forms of Discrimination against Women of 1979, and the UN Convention on the Rights of Persons with Disabilities of 2006.

2. Accordingly, the Parties shall in their laws and practices

(a) ensure equal opportunity and treatment in employment and occupation for all;

(b) ensure protection against all forms of direct and indirect discrimination as regards employment and occupation;

(c) promote gender equality;

(d) ensure equal remuneration for men and women for work of equal value;

as referred to in the instruments under paragraph 1.

3. To this end, the Parties shall

(a) implement effective domestic policies and measures to ensure equal opportunity and equal treatment in employment and occupation for all, with a view to preventing and eliminating any discrimination, direct and indirect, in respect thereof;

(b) ensure the application of equal remuneration for women and men for work of equal value;

(c) exchange information and cooperate, as appropriate, including through the promotion of integrated approaches in this regard, on

(i) the worldwide elimination of discrimination in employment and occupation;
(ii) gender equality at the workplace worldwide;

(d) share experiences and information on measures to eliminate direct and indirect discrimination in the workplace and to ensure equal remuneration for women and men for work of equal value;

(e) take adequate measures to ensure that persons with disabilities can enjoy their right to work on an equal basis with others;

(f) promote worldwide implementation of the principles under paragraph 2, in particular through promoting adherence to relevant international instruments, including with regard to ratification where appropriate, as well as participation in relevant international processes and initiatives.

Article X.12
General obligation to ensure and promote decent working conditions

In accordance with the ILO Decent Work Agenda, as expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008, and in accordance with its other international commitments, each Party shall ensure and promote decent working conditions.

Comments: Article X.12 serves as a "catch-all" general obligation to maintain and promote decent working conditions, including those not covered by the specific issues covered by the next three Articles.

Article X.13
Occupational safety and health

1. The Parties underline their commitment to ensure and promote occupational safety and health, and recognize the importance of international rules and agreements in this area, such as ILO Conventions No. 155 and No. 187 and other ILO instruments relevant to the promotional framework for occupational safety and health, the UN Universal Declaration of Human Rights of 1948 and the UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966.

2. Accordingly, in line with the ILO Decent Work Agenda, as expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008, and in conformity with its other international commitments, each Party shall protect health and safety at work, including through relevant policies, systems and programmes, the fostering and promotion of a preventive safety and health culture and the adoption of risk-based and precautionary approaches.

3. In particular, each Party shall ensure that its labour law and practices embody and provide protection for working conditions that respect the health and safety of workers, including by formulating and implementing policies that promote principles aimed at preventing accidents and injuries that arise out of or in the course of work, and that are aimed at developing a preventive safety and health culture where the principle of prevention is accorded the highest priority.

4. The Parties shall exchange information and cooperate, as appropriate, on occupational safety and health worldwide, including through the promotion of comprehensive approaches in this regard. They shall promote worldwide implementation of the principles underlying paras. 1, 2 and 3, in particular through promoting adherence to relevant international instruments, including with regard to ratification where appropriate, as well as participation in relevant international processes and initiatives.

Comments: Article X.13 is based on language in Article 23.3 CETA and the TTIP Proposal. It requires the Parties to provide for decent occupational safety and health in accordance with pertinent international standards, aiming at a preventive culture.

Article X.14 Decent living wages and minimum wages

1. The Parties underline their commitment to ensure and promote decent living wages and equal remuneration for work of equal value. They recognize the importance of international rules and agreements in this area, such as the UN International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the ILO Equal Remuneration Convention, 1951 (No. 100), the ILO Protection of Wages Convention, 1949 (No. 95), the ILO Minimum Wage Fixing Convention, 1970 (No. 131), the ILO Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) and further instruments of the International Labour Organization, as well as other instruments pertaining to decent living wages or equal remuneration for work of equal value. The Parties affirm that decent living wages are an important factor in reducing poverty.

2. Accordingly, in line with the ILO Decent Work Agenda, as expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008, and in conformity with its other international commitments, each Party shall promote and strive to ensure decent living wages, regardless of their form of employment and including those not covered by collective agreements, with a view to enable wage earners and their families to afford a basic, but decent, living that is considered acceptable by society at its current level of economic development.

3. The Parties affirm the central importance of setting decent living wages by collective means, including collective bargaining. In addition to their obligations under Article X.8 (Freedom of association and right to collective bargaining), the Parties shall ensure a robust and fair environment for collective bargaining and shall promote, without limiting the autonomy rights of the social partners, the determination of decent living wages by collective bargaining.

4. Notwithstanding their further obligations under the preceding paragraphs of this Article, the Parties shall, in accordance with their respective international commitments and the principles enshrined in the instruments referred to in paragraph 1, establish and maintain an effective and fair system for minimum wages covering all wage earners, regardless of their form of employment and including those not covered by collective agreements. Insofar as a Party chooses to provide for statutory minimum wages, it shall ensure the full consultation and, insofar as possible, direct participation, on a basis of equality, of the social partners in the establishment and operation of minimum wage systems.

5. Further to their obligations under Article X.17 (Domestic enforcement procedures, administrative proceedings and review of administrative action), paragraph 1(b), each Party shall ensure that the administrative and judicial proceedings mentioned in that provision provide for easily accessible, prompt and effective remedies to enforce justified claims to back pay, in order to secure a timely receipt of at least the pertinent minimum wage as defined in paragraph 4 of this Article for all wage earners.

Article X.15 Working hours

1. The Parties underline their commitment to ensure and promote decent hours of work and adequate rest periods to ensure high productivity while safeguarding workers' physical and mental health. They recognize the importance of international rules and agreements in this area, such as the ILO conventions and recommendations on the subjects of working hours, weekly rest and paid holidays.

2. Accordingly, in line with the ILO Decent Work Agenda, as expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008, and in conformity with its other international commitments, each Party shall

(a) uphold and implement in their laws and practices decent working hours, oriented towards the principle of the 40-hour workweek and at least ensure a general standard of a maximum of 48 regular hours of work per week, with a general maximum of ten hours per day and lower maximum hours per day for sectors with particularly strenuous work demands;

(b) uphold and implement in their laws and practices that workers enjoy a rest period of at least 24 consecutive hours every seven days;

(c) in their laws and practices take appropriate measures required by the nature of night work for the protection of night workers;

(d) ensure that part-time workers receive the same protection, basic wage and social security, as well as employment conditions equivalent to those accorded to comparable full-time workers.

(e) uphold and implement in their laws and practices the entitlement of all workers to an annual paid holiday of a minimum length specified by law, which should aim for at least three working weeks of annual paid holiday for one year of service.

Section 3
Domestic implementation and enforcement

Article X.16
Transparency and public participation in domestic labour regulation

1. Each Party, in accordance with Chapter [##] [The Agreement's Transparency Chapter, e.g. Chapter 27 CETA], shall ensure that any measures pursuing labour objectives, particularly measures to protect labour conditions, that may affect trade or investment—or trade or investment measures that may affect the protection of labour conditions—are developed, introduced, implemented and reviewed in a transparent manner.

2. To this end, each Party shall

(a) encourage public dialogue with and among stakeholders, particularly non-state actors, including social partners, as regards the development and definition of priorities that may lead to the adoption by public authorities of such measures;

(b) take account of relevant scientific and technical information and international standards, guidelines or recommendations if they exist, including on risk management and precautionary approaches;

(c) ensure timely communication to, and consultation of, stakeholders, particularly non-state actors, including social partners, on such measures and their administration and review;

(d) promote, once they are adopted, awareness of these measures, including related enforcement and compliance procedures, by ensuring the availability of information to the public;

(e) recognize the role of stakeholders, particularly non-state actors, including social partners, concerning the respect and enforcement of relevant domestic measures.

Comments: Article X.16 is based on Article 18 TTIP Proposal.

Article X.17
Domestic enforcement procedures, administrative proceedings and review of administrative action

1. The Parties recognize the importance of international rules and agreements, such as the ILO governance conventions, which comprise the Labour Inspection Convention (No. 81), the Employment Policy Convention (No. 122), the Labour Inspection (Agriculture) Convention (No. 129) and the Tripartite Consultation (International Labour Standards) Convention (No. 144). Bearing these instruments in mind, each Party shall promote compliance with and shall effectively enforce its labour law, including by

(a) maintaining a system of labour inspection in accordance with its international commitments aimed at securing the enforcement of legal provisions relating to working conditions and the protection of workers which are enforceable by labour inspectors; and

(b) ensuring that administrative and judicial proceedings are available in a particular matter to persons with a legally recognized interest and their legal representatives who maintain that a right is infringed, in order to permit effective action against infringements of its labour law, including appropriate remedies for violations of such law.

2. Each Party shall fulfil its obligations under subparagraph 1(a) through appropriate government action, such as

(a) establishing and maintaining effective and adequately staffed, funded and resourced labour inspection services, including by appointing and training inspectors;

(b) monitoring compliance and investigating suspected violations, including through onsite inspections;

(c) requiring record keeping and reporting;

(d) encouraging the establishment of worker-management committees to address labour regulation of the workplace;

(e) providing or encouraging mediation, conciliation and arbitration services; and

(f) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

3. Each Party shall, in accordance with its law, ensure that the proceedings referred to in subparagraph 1(b) are not unnecessarily complicated or prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide injunctive relief, if appropriate, and are fair and equitable, including by

(a) providing defendants with reasonable notice when a procedure is initiated, including a description of the nature of the proceeding and the basis of the claim;

(b) providing the parties to the proceedings with a reasonable opportunity to support or defend their respective positions, including by presenting information or evidence, prior to a final decision;

(c) providing that final decisions are made in writing and give reasons as appropriate to the case and based on information or evidence in respect of which the parties to the proceeding were offered the opportunity to be heard; and

(d) allowing the parties to administrative proceedings an opportunity for review and, if warranted, correction of final administrative decisions within a reasonable period of time by a tribunal established by law, with appropriate guarantees of tribunal independence and impartiality.

Comments: Paragraphs 1 and 3 were taken from Article 23.5 of CETA. Paragraph 1 includes, in line with the structure of the previous Articles, a definition of the overall objective and recalls pertinent international instruments. The express mentioning of the ILO governance conventions seeks to define international reference points without obliging the Parties to ratify these conventions. Paragraph 2 aims at specifying paragraph 1(a) and is based on a proposal tabled by Canada in the CETA negotiations.

Section 4
The Parties' obligations regarding the conduct of enterprises

Overview of Part 4: The text of the Articles of Section 4 is based on Articles 20 and 21 of the EU proposal on TTIP, with minor modifications, partly inspired by other international documents. Section 4 addresses the Parties' obligations with regard to the conduct of multinational enterprises, to employers and investors with reference to relevant international standards and guidelines and to the consultative participation of stakeholders.

Article X.18
Corporate social responsibility and responsible business conduct

1. The Parties recognize that corporate social responsibility (CSR) and responsible business conduct, which refer to companies taking responsibility for their impact on society and their employees and to their actions over and above their legal obligations towards society and their employees, strengthen the contribution of trade and investment to sustainable growth and contribute to the objectives of this Agreement to support high levels of labour protection. The Parties further recognize that CSR and responsible business conduct, by their voluntary nature, build on and supplement the respect for domestic laws in these areas.

2. The Parties agree to promote CSR and responsible business conduct, including with regard to accountability and adherence to, implementation, follow-up and dissemination of internationally agreed guidelines and principles. They agree to encourage the incorporation of these guidelines and principles into public initiatives by governments and into corporate policies and practices by companies and investors, including with regard to global supply chains, including through exchange of information and best practices. They agree to improve the legal, institutional and regulatory framework for CSR and responsible business conduct. They agree to consider transforming norms of CSR and responsible business conduct into binding domestic law.

3. In this regard, the Parties shall refer to and support internationally recognized guidelines and principles on CSR and responsible business conduct, including by endorsing, adhering to, or participating in, according to the nature of the instrument, the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the UN Guiding Principles on Business and Human Rights, ISO 26000 and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, as revised in 2017, as well as specific or sectoral standards of responsible practice where these exist. The Parties equally agree to facilitate progress in responsible business conduct by supporting actions that can allow for a greater uptake of these internationally recognized instruments among companies established in their respective territories.

4. Accordingly, the Parties shall cooperate to foster among both governments and private sector actors adherence, implementation, follow-up, and dissemination of internationally recognized instruments on CSR and responsible business conduct, including by promoting

(a) communication and exchanges of best practices between the national contact points established under the OECD Guidelines for Multinational Enterprises;

(b) awareness and encouragement of the use of the tools and dialogue practices established under the 2017 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;

(c) sharing of experiences and best practices on the development and implementation of National Action Plans on the implementation of the UN Guiding Principles on Business and Human Rights or their integration in national CSR strategies.

5. The Parties agree to encourage disclosure by companies of social information, including by relying on the international frameworks referred to in paragraph 3, the Global Reporting Initiative, and other relevant frameworks;

6. The Parties agree to consult and exchange information on CSR and Responsible Business Conduct on a regular basis with the Civil Society Forum and the ILO in the Committee on Labour Matters.

Comments: The Article on CSR and responsible business conduct stresses the importance of these non-binding instruments and obliges the Parties to promote and encourage their use, as well as to improve the regulatory framework for their application. As one possible and voluntary policy option, the Parties agree to consider transforming non-binding CSR and responsible business conduct standards into binding domestic law. The Article emphasizes the relevance of a series of key international CSR and responsible business conduct instruments of the United Nations, the OECD and the ILO in their latest versions and any future international standards equally or more progressively according social responsibility to companies. It provides for regular consultation with stakeholders in the Civil Society Forum and the ILO in the Committee on Labour Matters.

Article X.19 Voluntary labour standards protection schemes

The Parties recognize that impartial, open and transparent voluntary initiatives to protect labour rights through codes of conduct, standard schemes, labelling, certification, verification fair trade schemes and other related corporate policies or public initiatives can contribute to the achievement and maintenance of high levels of labour protection and complement domestic regulatory measures, and agree to encourage, with the involvement of stakeholders, the development of and participation in such initiatives, including voluntary sustainable assurance schemes such as fair and ethical trade schemes and eco-labels.

Part III Institutional provisions

Overview of Part III: Part III contains provisions on the institutional framework of the Model Chapter. It includes the Committee on Labour Matters, the Domestic Contact Points, the Domestic Advisory Groups and the Civil Society Forum. Part III provides rules on their roles, structure and ways of working.

Article X.20 Committee on Labour Matters

1. A Committee on Labour Matters shall be established, as provided for under Article [##] [Article in the free trade agreement's general institutional provisions on specialized intergovernmental committees, e.g. Article 26.2 CETA], and shall be comprised of high-level representatives of the Parties competent for labour matters. The Committee on Labour Matters shall oversee the implementation of this Chapter and address issues relevant to this Chapter that arise in the implementation of other parts of this Agreement, including cooperative activities and the review of the impact of this Agreement on labour, and address in an integrated manner any matter of common interest to the Parties in relation to the interface between economic development and labour matters.

2. The Committee on Labour Matters shall meet within the first year of the entry into force of this Agreement and shall be convened at least once a year. The contact points referred to in Article X.21 (Domestic contact points) are responsible for the communication between the Parties regarding the scheduling and the organization of those meetings.

3. Each regular meeting of the Committee on Labour Matters includes a public session to discuss matters relating to the implementation of the relevant Chapters.

4. The Committee on Labour Matters shall promote transparency and public participation. To this end

(a) any decision or report of the Committee on Labour Matters shall be made public, unless it decides otherwise;

(b) the Committee on Labour Matters shall present updates on any matter related to this model chapter, including its implementation, to the Civil Society Forum referred to in Article X.24 (Domestic Advisory Groups and Civil Society Forum). Any view or opinion of the Civil Society Forum shall be presented to the Parties directly, or through the Domestic Advisory Groups referred to in Article X.24 (Domestic Advisory Groups and Civil Society Forum). The Committee on Labour Matters shall report annually on the follow-up to those communications;

(c) the Committee on Labour Matters shall report annually on any matter that it addresses.

5. The Committee on Labour Matters may establish standing or other subsidiary bodies and appoint Rapporteurs in order to assist it in the performance of its tasks. It may change or undertake the tasks assigned to such bodies and Rapporteurs. It may dissolve such bodies and dismiss such Rapporteurs.

Comments: Article X.20 is based on Article 22.4 CETA with modifications. The Committee on Labour Matters is one of the specialized committees which operate under the auspices of a joint main committee under all EU trade agreements. The Committee on Labour Matters is the intergovernmental administrative body of the Model Chapter and entrusted with important competences in various provisions of the chapter. Article X.20 lays down the general objectives of the Committee on Labour Matters and ensures that it is convened on a regular basis. It also safeguards the transparency of the Committee's work and the participation of the public and stakeholders. Paragraph 5 is based on Article 26.1 CETA. It ensures that the Committee on Labour Matters can fulfil its tasks.

Apart from Article X.20, the Committee on Labour Matters is also governed by the trade agreement's general administrative institutional provisions (see as a reference point Chapter 26 CETA, notably Article 26.2 CETA), which are not reproduced here.

Article X.21 Domestic contact points

1. Each Party shall designate an office to serve as the contact point with the other Party for the implementation of this Chapter, including with regard to

(a) cooperative programmes and activities in accordance with Part IV (Bilateral Labour Cooperation);

(b) the receipt of public submissions in accordance with Article X.23 (Public Submissions), consultation requests in accordance with Article X.29 (Consultation Between the Parties) and the request for an establishment of a Panel of Experts in accordance with Article X.30 (Complaint procedure between the parties before a Panel of Experts); and
(c) information to be provided to the other Party, the Panels of Experts and the public.

2. Each Party shall inform the other Party, in writing, and shall inform the public by appropriate means, of the contact point referred to in paragraph 1.

Comments: Art: X.21 is based on Article 23.8 CETA.

Article X.22 Cooperation and coherence with the International Labour Organization and other intergovernmental entities

1. In all matters under this Chapter, the Parties, including through the Committee for Labour Matters, shall communicate and cooperate with the ILO wherever appropriate.

They shall take into account the activities of the ILO so as to promote greater cooperation and coherence between the work of the Parties under this Chapter and the ILO. For that purpose, the Committee for Labour Matters shall invite the Director-General of the International Labour Office or a representative to participate in its meetings on a consultative basis to maintain coherence between the work of the Parties under this Chapter and the ILO. The Parties should seek to make arrangements with the ILO to promote cooperation and coherence between the work of the Parties and the ILO. In reports submitted to the ILO pursuant to an obligation under the ILO Constitution or other ILO instrument, the Parties shall include information on the implementation of this Chapter.

2. The Parties, including through the Committee for Labour Matters, may decide to communicate or cooperate with other international organizations and other intergovernmental bodies as they deem appropriate in all matters under this Chapter so as to promote greater cooperation and coherence between the work of the Parties and such organizations and bodies.

Comments: Article X.22 is based on language contained in Article 23.7 CETA. Given that there are potential overlaps between the work of the ILO and the Parties under the Chapter on Trade and Labour, Article X.22 aims for providing principles and procedures for international cooperation with the ILO and coherence of the work of the Parties under the Chapter on Trade and Labour and the ILO. Paragraph 2 concerns communications with other international organizations that may work in fields touched upon by this Chapter.

Article X.23 Public submissions

1. Each Party, through its domestic contact point designated under Article X.21 (Domestic contact points), shall provide for the receipt and consideration of written submissions from persons on matters related to this chapter in accordance with its domestic procedures.

2. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions. A Party may provide in its procedures that, to be eligible for consideration, a submission should, at a minimum

(a) raise an issue directly relevant to this Chapter; and

(b) clearly identify the person or organization making the submission.

3. Each Party shall

(a) consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate, and shall thereby strive to resolve the matter raised; and

(b) make the submission and the results of its consideration available to the other Party, its Domestic Advisory Group, the Civil Society Forum and the public in a timely manner.

4. A Party may request from the person or organization that made the submission additional information that is necessary to consider the substance of the submission.
5. The making or abstention from making of a submission under this Article shall not prejudice in any way the rights of the social partners or civil society organizations to raise the same or other matters in accordance with Article X.24 (Domestic Advisory Groups and Civil Society Forum) or Part V, Section 2 of this Chapter.

Comments: Article X.22 is based on language in CETA and on Article 19.9 TPP. Public submissions with domestic contact points provide an easily accessible and flexible recourse for persons to articulate concerns and matters related to the Chapter on Trade and Labour to a Party. It is a communication channel that may raise Parties' awareness and facilitate quick solutions on matters of trade and labour. Public submissions do not require the Parties to act in a certain manner but call for a communicative response only and are without prejudice to any other dispute settlement procedures and institutional participatory procedures of this chapter.

Article X.24 Domestic Advisory Groups and Civil Society Forum

1. Each Party shall convene a new or consult its existing standing Domestic Advisory Group and the Parties shall facilitate and convene a joint Civil Society Forum to seek views and advice on labour issues relating to this Agreement, to monitor and evaluate the functioning and implementation of this Agreement with a focus on labour issues, to provide a space for participation and deliberation and to conduct a domestic and bilateral dialogue between civil society and the Parties and among the members of civil society on the labour aspects of this Agreement.

2. The Domestic Advisory Groups shall comprise independent representative organizations of civil society in a balanced representation of employers, unions, their respective federations and other non-government organizations working on matters covered by this chapter, as well as other relevant stakeholders as appropriate. Balanced representation of the representative organizations of civil society shall be mirrored in equal and balanced rights to participate in meetings of the Domestic Advisory Groups. Each Party's Domestic Advisory Group shall comprise such organizations and stakeholders that are that Party's nationals or established in that Party's territory. All participants in the Domestic Advisory Group shall be organizations in the sense of

Article X.3 (Social partners and civil society) and shall in particular enjoy at least the status and rights as mentioned in paragraph 3 of that Article. Of the total number of members of a Domestic Advisory Group, at least one third shall be employers' organizations and at least one third shall be trade unions or their respective federations. Employers' organizations and trade unions shall be represented in equal numbers. The Parties shall ensure, including by ensuring adequate funding, that all members of their Domestic Advisory Groups can participate on equal conditions in its meetings. With a view to enhancing efficiency and accessibility of the Domestic Advisory Groups, each Party, in consultation with any affected existing Domestic Advisory Group, may provide that its Domestic Advisory Group may also fulfil functions under other international agreements that are equivalent to the functions of the Domestic Advisory Group under this Agreement.

3. The Civil Society Forum shall be convened at least once a year. The Civil Society Forum shall comprise independent representative organizations of participants in the Domestic Advisory Groups of both Parties in a balanced representation of employers, unions, their respective federations and other non-government organizations working on matters covered by this chapter, as well as other relevant stakeholders as appropriate. All members of the Civil Society Forum shall be organizations in the sense of Article X.3 (Social partners and civil society) and shall in particular enjoy at least the status and rights as mentioned in paragraph 3 of that Article. The Civil Society Forum shall comprise an equal number of members from each Party. The Parties shall ensure, including by ensuring adequate funding, that all members of the Civil Society Forum can participate on equal conditions in its meetings. With a view to enhancing efficiency and accessibility of the Civil Society Forum, the Parties may facilitate participation by electronic means. For the same purposes, they shall strive to include equivalent standards for civil society fora or equivalent mechanisms in other international agreements that provide for such a forum or equivalent mechanism, taking into account experiences made under previous mechanisms and any views of the Civil Society Forum on this matter.

4. With a view to facilitating the immediate and proper functioning of the Civil Society Forum, the Parties, in consultation with their Domestic Advisory Groups, shall adopt rules of procedure for the Civil Society Forum no later than the first meeting of the Civil Society Forum. The Civil Society Forum, at its first meeting or anytime thereafter, may choose to approve or amend its rules of procedure. The rules of procedure shall at all times comply with this Agreement.

5. The members of the Civil Society Forum shall make every effort to take decisions and adopt statements by consensus. In case consensus cannot be reached on the taking of a decision, the decision may be taken by a majority of the members of the Civil Society Forum, comprising at least a majority of employers' and a majority of workers' representatives. In any case of disagreement on the adoption of a statement, the conclusions and the minutes of the meeting should reflect that disagreement and display the views of every member of the Civil Society Forum that wishes to include them.

6. Each Domestic Advisory Group and the Civil Society Forum may submit opinions and make recommendations to the Parties, the Committee on Labour Matters, the [trade agreement Main Committee] or any other [trade agreement specialized committee] on any labour issues relating to this Agreement on their own initiative. If opinions or recommendations are submitted to the Committee on Labour Matters, they shall be placed on the agenda of its next meeting. The Party addressed or the Committee on Labour Matters or the addressed committee, respectively, shall consider matters raised by any Domestic Advisory Group or the Civil Society Forum and shall provide a timely response in writing, no later than 90 days from the date of receipt. The submission or recommendation and the response shall be made available to the Parties and to the public in a timely manner.

Comments: Article X.24 is based on Article 22.5 and 23.8 CETA. Paragraph 5 is taken from the Rules of Procedure of the EU-Korea Civil Society Forum. The aforesaid provisions were modified to account for experience made with mechanisms under earlier trade agreements. Article X.24 institutes bodies for the balanced and representative participation of civil society in the application and implementation of the Model Chapter. These organs are referenced in other provisions of this Chapter. The Domestic Advisory Groups provide for representation of the domestic civil society of each Party separately, whereas the Civil Society Forum provides for joint representation of both Parties' civil societies. The Article stipulates rules on the composition and procedure of these organs in order to ensure transparency, balanced representation and effective participation

Part IV
Bilateral labour cooperation

Overview of Part IV: Part IV contains provision on diplomatic cooperation between the Parties in labour matters. It follows the European Union's traditional dialogue-seeking promotional approach in trade agreements, which aim for continuous progress by successive mutual agreements and coordination between the Parties on labour issues.

Section 1
Cooperation in labour matters

Article X.25
Bilateral cooperation in labour matters

The Parties recognize the importance of working together on trade-related aspects of labour policies to achieve the objectives of this Agreement. In this context, they shall consult and cooperate as appropriate at bilateral, regional and global levels, paying specific attention to developing countries and, in particular, least developed countries, with respect to trade-related labour matters of mutual interest. In addition to areas and activities of cooperation identified elsewhere in this Chapter, priority areas and activities in this regard may include, inter alia, the following:

(a) cooperation with and within international fora dealing with issues relevant for both trade and labour and employment policies, including, in particular, the World Trade Organization, the ILO and [depending on the trade partner, further international fora can be highlighted here, e.g. the G20];

(b) cooperation on aspects of the ILO Decent Work Agenda relevant for the interlinkages between trade, decent work and full and productive employment freely chosen by the employee;

(c) exchange of information on each Party's experience in implementing ILO standards and conventions;

(d) exchange of information on data and statistics concerning labour inspections;

(e) exchange of views and experiences on the information and consultation of workers at the workplace;

(f) exchange of information concerning health and safety at work measures and occupational diseases;

(g) cooperation with and in third countries, with a view to promoting respect and giving effect to the ILO core labour standards and to promoting ratification and effective implementation of fundamental and other ratified ILO conventions;

(h) exchange of information on each Party's experience in implementing labour provisions in trade agreements concluded with third countries, including with regard to technical assistance and, where appropriate, cooperation in this regard in countries and regions of common interest;

(i) exchange of views on the impacts of this Agreement on labour and employment, on tools to jointly or individually assess such impacts and on ways to enhance, prevent or mitigate them, taking into account impact assessments carried out by the Parties;

(j) cooperation on the analysis of the trade impact of labour laws and standards, as well as the labour impacts of trade and investment rules, including on the development of domestic labour laws and policy;

(k) cooperation on the promotion of decent work in global supply chains.

Section 2 Technical assistance and capacity building

Overview of Section 2: This Section gives special regard to the need for technical assistance and capacity building for developing countries. It is based on language of Chapter 21 TPP on cooperation and capacity building, with modifications and language of Article 196 of the EU-CARIFORUM Economic Partnership Agreement

Article X.26 General provisions

1. The Parties recognize that technical assistance and capacity building are central elements and essential factors in the realization of the objectives of this chapter. The Parties shall undertake and strengthen these activities, also recognizing that the involvement of the private sector is important in these activities.

2. Technical assistance and capacity building shall seek to complement and build on existing agreements or arrangements between the Parties.

3. Technical assistance and capacity building shall include financial and non-financial forms and may, inter alia, be conducted in such modes as: dialogue, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate capacity building and training; the sharing of best practices on policies and procedures; and the exchange of experts, information and technology.

4. Technical assistance and capacity building shall be coordinated by the national contact points of the Parties, in consultation with the Domestic Advisory Groups and the Civil Society Forum.

Article X.27 Areas of technical assistance and capacity building

1. TThe Parties agree to undertake and strengthen technical assistance and capacity building to assist in

(a) implementing the provisions of this Chapter; and

(b) enhancing each Party's ability to safeguard and improve labour standards as envisaged in this Chapter.

2. Technical assistance and capacity building shall be undertaken, inter alia, in the following areas

(a) exchange of information on the respective social and labour legislation and related policies, regulations and other measures;

(b) the formulation of national labour and social legislation and the strengthening of existing legislation, as well as mechanisms for social dialogue, including measures aimed at promoting the Decent Work Agenda as defined by the ILO;

(c) educational and awareness-raising programmes, including skills training and policies for labour market adjustment, and raising awareness of health and safety responsibilities, workers' rights and employers' responsibilities; and

(d) enforcement of adherence to national legislation and work regulation, including training and capacity-building initiatives of labour inspectors, and promoting CSR through public information and reporting.

Article X.28
Resources

Recognizing the different levels of development of the Parties, the Parties shall work to provide the appropriate financial or in-kind resources for technical assistance and capacity-building activities conducted under this Chapter, subject to the availability of resources and the comparative capabilities that the Parties possess to achieve the goals of this Chapter.

Part V
Dispute settlement procedures

Overview of Part V: Part V covers two different dispute settlement procedures in two sections. Section 1 covers dispute settlement between the Parties, which consists of three steps: consultations, a complaint procedure before a Panel of Experts and a compliance procedure. The adjudicatory complaint procedure leads to a final report with legally binding force. Enforcement is possible through three alternative types of temporary measures: consensual compensation, monetary assessment and suspension of obligations. Monitoring is provided by the Committee on Labour Matters.

Section 2 covers a collective complaint procedure that follows the example of the European Convention on Human Rights, the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, and the ILO's supervisory mechanisms, with modifications. It consists of two steps: an adjudicatory complaint procedure between a workers', employers' or civil society organization and a Party before a panel of experts and a compliance phase. The adjudicatory complaint procedure leads to a final report with legally binding force and may grant just satisfaction to the complainant; this is to say, monetary payment for damage suffered. Enforcement is possible through direct enforcement of the final report in the Parties' domestic legal system. Monitoring is provided by the Committee on Labour Matters.

The text of Section 1 is largely based on the dispute settlement provisions of the CETA Chapter on Trade and Labour, with modifications and refers to the Agreement's general dispute settlement chapter. The text of Section 2 is based on Article X.30 (Complaint procedure between the Parties before a panel of experts) and contains a series of modifications that are in part sui generis and in part draw on, inter alia, the European Convention on Human Rights, ILO supervisory mechanisms, the European Social Charter's monitoring system and on minor aspects of CETA's Investment Chapter.

Section 1
Dispute settlement between the Parties

Overview of Section 1: Section 1 is divided into three subsections, which reflect the three phases of dispute settlement between the Parties.

Subsection A:
Consultations

Article X.29
Consultations between the Parties

1. A Party may request consultations with the other Party regarding any matter arising under this chapter by delivering a written request to the domestic contact point of the other Party. A Party shall request consultations with the other Party if its Domestic Advisory Group adopts a corresponding decision with a majority of three quarters of its participants, comprising at least a majority of employers' and a majority of workers' representatives, regarding the matter arising under this Chapter specified in the decision of the Domestic Advisory Group. The Party shall present the matter clearly in its request, identify the questions at issue and provide a brief summary of any claims under this Chapter. Consultations must commence promptly after a Party delivers a request for consultations.

2. During consultations, each Party shall provide the other Party with sufficient information in its possession to allow a full examination of the matters raised, subject to its law regarding confidential personal and commercial information.

3. If relevant, and if both Parties consent, the Parties shall seek the information or views of any person, organization or body, including the ILO, that may contribute to the examination of the matter that arises.

4. If a Party considers that further discussion of the matter is required, that Party may request that the Committee on Labour Matters be convened to consider the matter by delivering a written request to the contact point of the other Party. The Committee on Labour Matters shall convene promptly and endeavour to resolve the matter. If appropriate, it shall seek the advice of the Parties' Domestic Advisory Groups or the Civil Society Forum through the consultative mechanisms referred to in Article X.24 (Domestic Advisory Groups and Civil Society Forum).

5. Each Party shall make publicly available any solution or decision on a matter discussed under this Article.

Comments: Article X.29 is based on Article 23.9 of CETA. Consultations allow for case-related discussions between the Parties on alleged violations of labour obligations under this chapter, with the possibility to involve stakeholders. They form a necessary first phase for a request for the establishment of a Panel of Experts under the subsequent Article X.30 (Complaint procedure between the Parties before a Panel of Experts).

Subsection B: Panel of Experts

Article X.30 Complaint procedure between the Parties before a Panel of Experts

1. For any matter on the alleged violation of obligations under this Chapter that is not satisfactorily addressed through consultations under Article X.29 (Consultations between the Parties), a Party may, 90 days after the receipt of a request for consultations under Article X.29 (Consultations between the Parties), request that a Panel of Experts be convened to examine that matter, by delivering a written request to the contact point of the other Party. The requesting Party shall notify the Director-General of the International Labour Office and the Domestic Advisory Groups of both Parties of its request.

2. The rules on general dispute settlement in Chapter [Chapter of the trade agreement on general dispute settlement, e.g. CETA Chapter 29] apply, including the rules of procedure and the code of conduct set out in Annexes [Annexes of the trade agreement on rules of procedure and panellists' code of conduct, e.g. Annexes 29-A and 29-B CETA], subject to the following modifications.

3. If the request concerns an alleged breach of the Agreement by the European Union or a Member State of the European Union, the procedure for determination of the responding Party for disputes with the European Union or its Member States laid out in Article [Article of the trade agreement dispute settlement or investment protection chapter addressing the selection of the responding Party in case of the European Union and its Member States, e.g. Article 8.21 CETA] applies mutatis mutandis.

4. The Panel of Experts is composed of three panellists.

5. The Parties shall consult, with a view to reaching an agreement on the composition of the Panel of Experts, nominated from the list established as provided in paragraph 7, within 10 working days of the receipt by the responding Party of the request for the establishment of a Panel of Experts.

6. If the Parties are unable to decide on the composition of the Panel of Experts within the period of time specified in paragraph 5, the selection procedure set out in Article [provisions of the trade agreement general dispute settlement chapter on the composition of an arbitral panel, e.g. Article 29.7 CETA] applies in respect of the list established in accordance with paragraph 7.

7. The Committee on Labour Matters shall, at its first meeting after the entry into force of this Agreement, establish a list of at least nine individuals chosen for their objectivity, reliability and sound judgement, who are willing and able to serve as panellists. For that purpose, the Committee on Labour Matters shall consult with the Director-General of the International Labour Office or its representative and the Civil Society Forum. Each Party shall name at least three individuals to the list to serve as panellists. The Parties shall also name at least three individuals who are not nationals of either Party and who are willing and able to serve as chairperson of a Panel of Experts. The Committee on Labour Matters shall ensure that the list is always maintained at this level. The

Committee on Labour Matters may decide to increase or to decrease the number of the experts by multiples of three. Additional appointments shall be made on the same basis as provided in this paragraph.

8. The experts proposed as panellists must have specialized knowledge or expertise in labour law, other issues addressed in this Chapter or in the resolution of disputes arising under international agreements. Furthermore, they must be independent, serve in their individual capacities and not take instructions from any organization or government with regard to the matter at issue or be affiliated with the government of either Party, and they must comply with the code of conduct set out in Annex [the free trade agreement's annex on code of conduct, e.g. Annex 29-B CETA].

9. Unless the Parties decide otherwise, within five working days of the date of the selection of the panellists, the terms of reference of the Panel of Experts are as follows "to examine, in the light of the relevant provisions of Chapter [##] (Trade and Labour), the matter referred to in the request for the establishment of the Panel of Experts and to deliver a report, in accordance with Article X.30 (Complaint procedure between the parties before a Panel of Experts) of Chapter [##] (Trade and Labour)."

10. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of the disputing Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of the disputing Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party, and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

11. In considering the complaint, the Panel of Experts shall have due regard to ongoing and finalized procedures of other international bodies, in particular the ILO, and strive for international coordination and coherence.

12. In respect of matters related to other international treaties, the Panel of Experts shall take into account relevant available international practice in conformity with the Vienna Convention on the Law of Treaties. In respect of matters related to or covered by ILO instruments, the Panel of Experts shall seek information from the ILO, including any pertinent available interpretative guidance, findings or decisions adopted by the ILO. The ILO shall be invited by the Panel of Experts to appoint representatives to participate, in a consultative capacity, in the meetings of the Panel of Experts. The Panel of Experts can invite representatives of other international bodies to participate, in a consultative capacity, in the meetings of the Panel of Experts.

13. The Panel of Experts shall consult with the Domestic Advisory Groups and give due regard to their submissions. The Panel of Experts shall receive written submissions or any other information from persons with relevant information or specialized knowledge, in particular by relevant stakeholders, such as employers' organizations and trade unions, and may request such submissions or information.

14. For determining a relevant violation of obligations of this Chapter, the Panel of Experts shall take into consideration any report issued against the responding Party by a Panel of Experts through collective complaints under Article X.37 (Collective complaint procedure before a Panel of Experts).

15. The Panel of Experts shall issue to the Parties an interim report and a final report in accordance with the general dispute settlement procedure in Article [Article in the trade agreement general provisions on reports of dispute settlement panels, e.g. Article 29.9 f. CETA]. They shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the rationale behind any findings and determinations. The final report shall determine any violation of obligations under this chapter and order the cessation of the violation. The Panel of Experts shall deliver to the Parties the interim report within 120 days after the last panellist is selected. The Parties may provide comments to the Panel of Experts on the interim report within 45 days of its delivery. After considering these comments, the Panel of Experts may reconsider its report or carry out any further examination that it considers appropriate.

The Panel of Experts shall deliver the final report to the Parties via their domestic contact points within 60 days of the submission of the interim report. The final report has binding legal force between the Parties.

16. The Panel of Experts shall also deliver the final report to the Domestic Advisory Groups and the Civil Society Forum. If the final report of the Panel of Experts determines that a Party has not conformed with its obligations under this chapter, the Committee on Labour Matters shall discuss the final report at its first meeting after delivery of the final report, consult with the Civil Society Forum and consider appropriate consensual measures, including a mutually agreed action plan.

Comments: Article X.30 is based on the CETA Chapter on Trade and Labour, which provides in its Article 23.10 for the establishment of a panel of experts. The procedure was modified and developed to a full international adjudicatory procedure, which applies the general dispute settlement provisions of the Agreement with modifications. Special regard is given to participation by stakeholders and the involvement of the ILO throughout all steps of the procedure.

By reference to the Agreement's general dispute settlement chapter, which has been modelled along the CETA Chapter 29, a series of important procedural aspects and safeguards are understood to be regulated by that chapter, including, inter alia, general rules of procedure, transparency of proceedings and reports, time periods, the selection procedure of experts by lot (Article 29.7 CETA), etc. Some procedural questions are covered by reference to other CETA provisions, i.e. the procedure for determination of the responding Party in case it is supposed to be either the European Union or one (or more) of its Member States (Article 8.21 CETA).

Subsection C: Compliance

Overview: Subsection C comprehensively regulates compliance in the dispute settlement procedure between the Parties. It is based on Subsection B (Compliance) of the CETA General Dispute Settlement Chapter 29, with modifications. It provides for the subsidiary compliance measures of mutually agreed compensation and suspension of obligations covered by the CETA General Dispute Settlement Chapter 29 and adds monetary assessment as an additional temporary remedy for non-compliance following the model of Article 28.20 TPP. Monetary assessment is given priority over the suspension of benefits because it is considered to result in more constructive effects.

Three types of temporary enforcement measures are available to compel the responding Party to comply. First, the payment of mutually agreed compensation to the complaining Party, as envisaged in CETA's Chapter on general dispute settlement, Article with modifications. Second, as a labour-specific addition and modification, monetary assessment following the example of Article 28.20 TPP. Third, suspension of obligations (also called trade sanctions) by the complaining Party against the responding Party, as stipulated in the CETA Chapter on General Dispute Settlement, with modifications. The relation between monetary assessment and the suspension of obligations is as follows: If a complaining Party notifies its intent to suspend obligations, the responding Party can request the payment of a monetary assessment as a replacement for the suspension of obligations. The monetary assessment then is to be paid into a fund which shall use the money for supporting initiatives to improve the labour standards of the Parties. The use of the money is determined by the Civil Society Forum. Therefore, in practice, monetary assessment is given priority over the suspension of benefits. Only if recourse to monetary assessment fails, is suspension of obligations available. None of these temporary enforcement measures alter the obligation to comply with the Panel of Experts' final report.

Article X.31 Compliance with the final panel report

The responding Party shall take any measure necessary to comply with the final report. No later than 20 days after the receipt of the final report by the Parties, the responding Party shall inform the other Party and the Committee on Labour Matters of its intentions in respect of compliance.

Article X.32 Reasonable period of time for compliance

1. If immediate compliance is not possible, no later than 20 days after the receipt of the final report by the Parties, the responding Party shall notify the complaining Party and the Committee on Labour Matters of the period of time it will require for compliance.

2. In the event of disagreement between the Parties on the reasonable period of time in which to comply with the final panel report, the requesting Party shall, within 20

days after the receipt of the final report by the Parties, the responding Party shall notify the complaining Party and the Committee on Labour Matters of the period of time it will require for compliance.

2. In the event of disagreement between the Parties on the reasonable period of time in which to comply with the final panel report, the requesting Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the responding Party, request in writing the Panel of Experts to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party, to the Committee on Labour Matters, to the Domestic Advisory Groups and the Civil Society Forum. The Panel of Experts shall issue its ruling to the Parties, to the Committee on Labour Matters, to the Domestic Advisory Groups and to the Civil Society Forum within 30 days from the date of the request.

3. The reasonable period of time may be extended by mutual agreement of the Parties.

4. At any time after the midpoint in the reasonable period of time and at the request of the complaining Party, the responding Party shall make itself available to discuss the steps it is taking to comply with the final report.

5. The responding Party shall notify the other Party, the Committee on Labour Matters, the Domestic Advisory Groups and the Civil Society Forum before the end of the reasonable period of time of measures that it has taken to comply with the final panel report.

Article X.33 Temporary remedies in case of non-compliance

if
(a) the responding Party fails to notify its intention to comply with the final report under Article X.31 or the time it will require for compliance under Article X.32;

(b) at the expiry of the reasonable period of time, the responding Party fails to notify any measure taken to comply with the final report; or

(c) the Panel of Experts referred to in Article X.36 paragraph 5 establishes that a measure taken to comply is inconsistent with that Party's obligations under the provisions of this chapter,

the temporary remedies of

– mutually agreed compensation as laid down in Article X.34 (Mutually agreed compensation),
– monetary assessment as laid down in Article X.35 (Monetary assessment), or
– suspension of obligations as laid down in Art. X.36 (Suspension of obligations)
shall be available to bring about the compliance of the responding Party. None of these measures shall relieve the responding Party from its obligations under this chapter, in particular the full implementation of the Panel of Experts' final report. These measures shall be temporary and shall be applied only until the measure found to be inconsistent with the provisions under this chapter has been withdrawn or amended so as to bring it into conformity with those provisions.

Article X.34 Mutually agreed compensation

At any time, subject to Article X.33 (Temporary remedies in case of non-compliance), the complaining Party may request the responding Party to provide an offer for temporary compensation and the responding Party shall present such an offer. Any agreement shall be delivered by the Parties to the Committee on Labour Matters, the Domestic Advisory Groups and the Civil Society Forum.

Article X.35 Monetary assessment

1. Subject to Article X.33 (Temporary remedies in case of non-compliance) and the requirements of this Article, monetary assessment is available as a temporary compliance measure. The Parties agree that monetary assessment should have priority over the suspension of obligations which is understood to be a measure of last resort only, as spelled out in this Article and Article X.36 (Suspension of obligations). The complaining Party shall not suspend obligations pursuant to Article X.36 (Suspension of obligations) if and as long as the responding Party resorts to the payment of a monetary assessment in accordance with this Article.

2. The responding Party may pay a monetary assessment if it provides written notice to the complaining Party, the Committee on Labour Matters, the Domestic Advisory Groups and the Civil Society Forum within 30 days after the complaining Party provided written notice of intent to suspend obligations under Article X.36 paragraph 1, or after the Panel of Experts provided its determination under Article X.36 paragraph 5.

3. The disputing Parties shall begin consultations no later than 10 days after the date on which the responding Party has given notice that it intends to pay a monetary assessment with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level equal to 50 per cent of the level of the obligations the Panel of Experts has determined under Article X.36 paragraph 5 to be of equivalent effect or, if the Panel of Experts has not determined the level, 50 per cent of the level that the complaining Party has proposed to suspend under Article X.36 paragraph 1.

4. A monetary assessment shall be paid in equal, quarterly instalments beginning 60 days after the date on which the responding Party gives notice that it intends to pay an assessment. At the same time, the responding Party shall provide to the complaining Party a plan of the steps it intends to take to cease the violation of this chapter as found by the Panel of Experts in its final report.

5. The assessment is to be paid into a fund designated by the disputing Parties for appropriate initiatives to improve the labour conditions of the Parties in accordance with and in the spirit of this Chapter. The selection of initiatives and use of the monetary assessment by the fund shall be determined by the Civil Society Forum, which shall convene for that purpose in an extraordinary session.

6. A responding Party may pay a monetary assessment in lieu of suspension of obligations by the complaining Party for a maximum of 12 months from the date on which the responding Party has provided written notice under paragraph 2.

7. The complaining Party may suspend the application of obligations in accordance with Article X.36 (Suspension of obligations) if

(a) the responding Party fails to make a payment under paragraph 4; or

(b) the responding Party fails to provide the plan as required under paragraph 4; or

(c) the Civil Society Forum cannot bring about a decision on the selection of labour standard initiatives and the use of the monetary assessment under paragraph 5 within 90 days after the responding Party has made its first instalment under paragraph 4; or

(d) the monetary assessment period has lapsed and the responding Party has not yet ceased the violation under this Chapter.

Article X.36
Suspension of obligations

1. Subject to Article X.33 (Temporary remedies in case of non-compliance), Article X.35 (Monetary Assessment) and the requirements of this Article, the complaining Party may suspend obligations owed to the other Party. The suspension of obligations shall be a measure of last resort, priority understood to be given to monetary assessment as spelled out in this Article and Article X.35 (Monetary assessment). Before suspending obligations, the complaining Party shall notify the responding Party, the Committee on Labour Matters, the Domestic Advisory Groups and the Civil Society Forum of its intention to do so, including the level of obligations it intends to suspend.

2. The suspension of obligations may concern any provision in Chapters [specify trade-related chapters to the exclusion of obligations for the protection of public interest, in particular this Labour Chapter] of this Agreement and shall be equivalent to the exclusion of obligations for the protection of public interest, in particular this Labour Chapter] of this Agreement and shall be equivalent to the violation of the obligation under this chapter by the responding Party, taking into account the gravity of the violation of the obligation under this Chapter and of the labour rights in question.

3. The requesting Party may implement the suspension 10 working days after the date of receipt of the notification referred to in paragraph 1 by the responding Party, unless a Party has requested a Panel of Experts, under paragraphs 5 and 6.

4. A disagreement between the Parties concerning the existence of any measure taken to comply or its consistency with the provisions of this Chapter ("disagreement on compliance") or on the equivalence between the level of suspension and the violation of the obligation under this Chapter ("disagreement on equivalence"), shall be referred to the Panel of Experts.

5. A Party may reconvene the Panel of Experts by providing a written request to the Panel of Experts, the other Party, the Committee on Labour Matters, the Domestic Advisory Groups and the Civil Society Forum. In case of a disagreement on compliance, the Panel of Experts shall be reconvened by the complaining Party. In case of a disagreement on equivalence, the Panel of Experts shall be reconvened by the responding Party. In case of disagreements on both compliance and on equivalence, the Panel of Experts shall rule on the disagreement on compliance before ruling on the disagreement on equivalence.

6. The arbitration panel shall notify its ruling to the Parties, the Committee on Labour Matters, the Domestic Advisory Groups and the Civil Society Forum accordingly

(a) within 90 days of the request to reconvene the Panel of Experts, in case of a disagreement on compliance;

(b) within 30 days of the request to reconvene the Panel of Experts, in case of a disagreement on equivalence;

(c) within 120 days of the first request to reconvene the Panel of Experts, in case of a disagreement on both compliance and equivalence.

7. The complaining Party shall not suspend obligations until the Panel of Experts reconvened, under paras. 5 and 6, has delivered its ruling. Any suspension shall be consistent with the Panel of Experts' ruling.

Section 2
Collective complaint procedure

Article X.37
Collective complaint procedure before a Panel of Experts

1. Any workers', employers' and other civil society organizations in the sense of Article X.3 (Social partners and civil society), including the members of the Domestic Advisory Groups and the Civil Society Forum, can file a collective complaint against a Party, claiming the violation of an obligation of this Chapter by the Party

(a) if the organization is affected by the alleged violation, on its own behalf; or

(b) if one of its members is affected by the alleged violation, on the member's behalf and request a Panel of Experts to be convened.

2. The provisions on dispute settlement in labour matters between the Parties of Article X.30 paragraphs 2–3, 7–8, 10–13 and 16 (Complaint procedure between the Parties before a Panel of Experts) apply mutatis mutandis, subject to the provisions of this Article. Article X.30 paragraphs 4–6 (Complaint procedure between the Parties before a Panel of Experts) apply mutatis mutandis, with the premise that at least one expert nominated from the sub-list of experts of each Party is represented on the Panel.

3. The complaint is to be filed with the Chair of the Committee on Labour Matters or its delegate, which delivers it to the Party, against which the complaint is raised and notifies the Director-General of the International Labour Office and the Domestic Advisory Groups of the Parties of the complaint. The complaint should, at a minimum,

(a) clearly identify the person or organization making the complaint;

(b) elaborate on the facts constituting a violation of this Chapter by a Party, and specify the action or omission of the Party to which the complaint refers; and

(c) state the provisions of this Chapter that are alleged to be violated.

4. The terms of reference of the Panel of Experts are as follows
"to examine, in the light of the relevant provisions of Chapter [##] (Trade and labour), the matter referred to in the request for the establishment of the Panel of Experts and to deliver a report, in accordance with Article X.37 (Collective complaint procedure before a Panel of Experts) of Chapter [##] (Trade and Labour)."

5. The Panel of Experts shall declare inadmissible any collective complaint submitted if

(a) it considers the complaint to be manifestly ill-founded or an abuse of the right of a collective complaint;
(b) the complainant has not or not yet exhausted all reasonably available domestic remedies in accordance with generally recognized rules of international law. If and to the extent the responding Party has not fulfilled its obligations under Article X.17 (Domestic enforcement procedures, administrative proceedings and review of administrative action), especially if no reasonably affordable and expeditious access to domestic remedies is available to the complainant, it shall be assumed that domestic remedies were not reasonably available; or

(c) the claimant files the complaint more than six months after the date on which the final decision under the available domestic remedies was taken.

6. In any proceedings of a Panel of Experts under this Article, any Party that is not a party to the proceedings has the right to submit written comments and to take part in hearings. The Panel of Experts may invite any Party that is not a party to the proceedings to submit written comments or take part in hearings.

7. The Panel of Experts shall issue to the parties an interim report and a final report in accordance with the general dispute settlement procedure in Article [Article in the free trade agreement's general provisions on reports of dispute settlement panels, e.g. Article 29.9 f. CETA]. It shall set out the findings of fact, the applicability of the relevant provisions of this Agreement and the rationale behind any findings and determinations. The final report shall determine any violation of obligations under this Chapter and order the cessation of the violation. The Panel of Experts shall, if necessary, afford just satisfaction to the injured party, which may include pecuniary damage, non-pecuniary damage as well as costs and expenses, if the internal law of the responding Party concerned allows only partial reparation to be made. In the case that the complainant filed the complaint on behalf of one of its members, just satisfaction shall be determined, with a view to that member's situation, and the claimant shall ensure that any payment obtained from the responding Party is transferred to the member in question. The final report has binding legal force between the parties.

8. Each Party shall recognize a final report rendered pursuant to this Article as binding and enforce the pecuniary obligations imposed by that final report within its territories as if it were a final judgment of a court in its domestic legal system. A complainant seeking recognition or enforcement in the territories of a Party shall furnish to a competent court or other authority, which such State shall have designated for this purpose, a copy of the final report. Each Party shall notify the Committee on Labour Matters, the Civil Society Forum and the Domestic Advisory Groups of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation and make such information publicly available. The responding Party shall also separately provide such information to the claimant after a final report was issued, finding a violation under this Chapter. Execution of the final report shall be governed by the laws concerning the execution of judgements in force in the Party in whose territories such execution is sought.

Article X.38 Compliance

In the event of disagreement between the disputing parties on compliance with the report of the Panel of Experts, the complainant can bring the matter to the attention of the Committee on Labour Matters, which shall investigate the matter at its next meeting. The other Party may take any instance of alleged non-compliance as a basis for consultations, in accordance with Article X.29 (Consultations between the Parties) and for dispute settlement in labour matters between the Parties, including the compliance procedure, in accordance with Article X.30 (Complaint procedure between the parties before a Panel of Experts).

Comments: The collective complaint procedure provides for international adjudication open to workers', employers' and other civil society organizations. The collective complaint procedure builds on Article X.30 (Complaint procedure between the parties before a Panel of Experts) with modifications and assures a similar level of participation by stakeholders and the involvement of the ILO.

The Article strikes a balance between providing international labour protection to natural and legal persons in the context of the Agreement through an international adjudicatory procedure and giving due regard to the Parties' representation in the procedure and to their sovereignty and sovereign equality.

Collective complaints lead to legally binding reports, which order the cessation of the violation. Complainants can profit from the political pressure arising from the publicly available report. The reports may also provide for just satisfaction following the example set by the European Convention on Human Rights. The complainant can claim pecuniary as well as non-pecuniary damage, costs and expenses. Complainants can directly enforce these reports in the domestic legal systems of all Parties. As Parties accept final reports to have the status of binding final domestic judgements, domestic courts must generally enforce final reports without further examination, which provides for an effective enforcement tool at the disposal and initiative of the complainant. Moreover, the complainant can bring non-compliance to the attention of the Committee on Labour Matters, which carries out a monitoring function.

Separate and in addition to the complainant's own option to directly enforce just satisfaction awarded in a final report in the Parties' domestic legal system, a Party can also decide to file a separate complaint in accordance with Article X.30 (Complaint procedure between the Parties before a Panel of Experts). It can base this complaint on the non-compliance of the other Party with a report initiated by a workers', employers' or other civil society organization, which may then result in enforcement through temporary enforcement measures as stipulated in Article X.33–X.36. This allows for an additional and optional link between the two different procedures in Section 1 and Section 2 of Part V.

Part VI Conditions for entry into force and for maintenance of benefits

This Part sets out general rules applicable to labour protection-related action plans agreed upon by the Parties during the negotiation of this Agreement. It contains rules on their binding character, their conditional character for the entry into force of the Agreement and their relationship with other parts of the Agreement. The actual conditions will be negotiated between the Parties and may be laid down in a separate annex. This Part also addresses action plans that do not contain pre-ratification conditions and also provides for an accelerated procedure for the amendment of such action plans that allows for flexible modifications and amendments, provided they are in conformity with the Agreement and in conformity with any internal requirements, e.g. constitutional prerequisites, of the Parties.

Article X.39 Pre-ratification conditionality and action plans

1. The Parties emphasize the role of legal and institutional reforms agreed upon by the Parties during the negotiation of this Agreement in labour protection-related action plans that refer to this Agreement and reaffirm their legally binding character. The entry into force of this Agreement is contingent upon the full realization of the commitments under these action plans by the Parties, except where provisions of these action plans explicitly provide for otherwise.

2. To the extent that any labour protection-related action plan that refers to this Agreement provides that obligations set forth by that action plan do not need to be enacted and realized before the entry into force of this Agreement, these obligations shall be fulfilled at the latest by the date set forth in the respective action plan and shall be open to dispute settlement procedures under Part V (Dispute settlement procedures).

3. The Committee on Labour Matters, in consultation with the Civil Society Forum, may, on agreement of the Parties and after completion of their respective internal requirements and procedures, adopt and amend labour protection-related action plans, provided any adoption and amendment conforms with this Agreement. Any obligation set forth by an action plan, including any future amendments and any new obligation, shall define a precise date by which the respective obligation must be implemented. Such date shall be ambitious and adequate, taking into account the subject matter concerned and the current political, legal and economic situation in the region concerned. Paragraph 2 applies mutatis mutandis.

Part VII
Evaluation of the Chapter, impact assessments and amendments

Overview of Part VII: The text of Article X.40 (Review of the Chapter on Trade and Labour) is based partly on Article 8.44.1 CETA and on Article 246.1 of the EU-CARIFORUM Economic Partnership Agreement with modifications and additions. The text of Article X.41 (Ex-post impact assessment of the Chapter on Trade and Labour) is based on language from the European Commission's Handbook for Trade Sustainability Impact Assessment, Second Edition, 2016, with modifications that build on the 2011 UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, A/HRC/19/59/Add.5.

Part VII entails rules on the evaluation and consensual amendments of the Chapter on Trade and Labour on the basis of an obligatory ex-post impact assessment.

Article X.40
Review of the Chapter on Trade and Labour

1. The Committee on Labour Matters shall provide a forum for the Parties to consult on difficulties that may arise in the implementation of this Chapter and possible improvements of this Chapter, in particular in the light of experience and developments in other international fora, in particular the ILO and international human rights bodies, and under the Parties' other agreements. The Parties agree to consider extending this Agreement with the aim of broadening and supplementing its scope, in accordance with their respective legislation. The Committee on Labour Matters shall conduct such consultations in the spirit of progression of labour standards and labour protection and international coordination of such efforts. The Committee on Labour Matters shall consult and take into account the views of the Civil Society Forum and the Director-General of the International Labour Office and may consult and take into account the views of other international bodies. At least every five years, the Committee on Labour Matters shall conduct a general evaluation of this Chapter. This evaluation shall be based on the impact assessment report under Article X.41 (Ex-post impact assessment of the Labour Chapter). The Parties shall provide reasoned statements on the report's findings and recommendations in the course of the evaluation.

2. The Committee on Labour Matters may, on agreement of the Parties and after completion of their respective internal requirements and procedures, adopt and amend this Chapter (Part II), provided that any adoption or amendment brings about a progression of labour standards and labour protection in the spirit of international cooperation and coherence of efforts and provided that any adoption or amendment does not lower the balanced procedural role and influence of relevant stakeholders, in particular employers, unions, labour and business organizations.

Comments: The Article on review of the Chapter enables the Parties to amend the Chapter in a simplified procedure on the basis of scientific expertise, subject to compliance with internal domestic requirements and procedures of the Parties. For that purpose, the Article provides for an obligatory evaluation of the Chapter and consultations at least every five years on the basis of the results of an impact assessment analysis, which must be conducted by an independent rapporteur nominated one year in advance.

Article X.41
Ex-post impact assessment of the Chapter on Trade and Labour

1. The Parties recognize the importance of basing the periodical review of the Chapter on Trade and Labour under Article X.40 (Review of the Chapter on Trade and Labour) on an economic and social impact assessment, including the impact on labour-related human rights, which is integrated, independent, evidence-based, transparent, participatory and proportionate. The Parties recognize the importance of the 2011 UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, which shall inform the understanding of this Article. The impact assessment report drafted in accordance with this Article shall be taken into consideration by the Committee on Labour Matters, in line with Article X.40 (Review of the Chapter on Trade and Labour) and complement Parties' national impact assessments, as required under their domestic legislation.

2. At least one year before the review under Article X.40 (Review of the Chapter on Trade and Labour) is to be carried out, the Parties in the Committee on Labour Matters shall consensually nominate a rapporteur for the impact assessment of the Chapter on Trade and Labour, who shall carry out the impact assessment within one year. The rapporteur shall be an individual or an institution who or which meets the requirements for experts proposed as panellists for the Panel of Experts under Article X.30 paragraph 8 (Complaint procedure between the parties before a Panel of Experts).

3. The impact assessment process shall be

(a) transparent, making all communication available to the public, with due regard for exceptional and appropriate protection of confidentiality;

(b) evidence-based, resting on sound methodology and the investigation of the relevant facts and applicable law and standards, carried out by experts in order to conduct a high-quality assessment;

(c) proportionate, calibrating the scope and depth to the importance and the type of measures analysed and the magnitude of the expected impacts, mindful of the high importance of a timely finalization of the process within one year after the nomination of the Rapporteur;

(d) independent, the Rapporteur being accorded the same independent status as panellists of the Panel of Experts under Article X.30 paragraph 8 (Complaint procedure between the parties before a Panel of Experts). The Parties assure full support to the Rapporteur, including adequate funding; and

(e) participatory, working as a platform for systematic dialogue between stakeholders and the Parties, through in-depth consultation in line with paragraph 7 in which all stakeholders are given an opportunity to participate, paying due and adequate regard to the manifold and diverse involved and affected interests and rights.

4. The impact assessment shall first conduct a preliminary screening and scoping analysis, aiming at identifying significant labour impacts. Screening shall involve identifying key labour issues, measures and sectors to be assessed in further detail, mindful of the high relevance of a finalization of the impact assessment in time. Scoping shall involve the identifying and analysing of components of measures under the Agreement and of the Parties that are likely to be the main drivers of the impact. Furthermore, the methodological approach of the impact assessment procedure shall be carved out and a draft consultation plan outlined that includes a preliminary list of stakeholders. The preliminary phase shall result in a short and concise draft inception report that is made public for comments, submitted to the Committee on Labour Matters, the Civil Society Forum, the Domestic Advisory Groups, the Parties' national contact points and the Director-General of the International Labour Office. The draft inception report is made subject to consultations, in line with paragraph 7. After consultation, the inception report is finalized; at the latest, three months after nomination of the rapporteur and made public as well as submitted to the Committee on Labour Matters, the Civil Society Forum, the Domestic Advisory Groups and the Parties' national contact points.

5. On the basis of the inception report, the methodological approach proposed therein is implemented in an interim phase. The economic and social impact assessment is carried out which involves evidence gathering and analysis. Evidence gathering shall include the use of both quantitative and qualitative research to determine the impacts

as precisely as possible. Analysis determines the impacts of this Chapter on Trade and Labour, including labour-related economic, social and human rights impacts. Explicit reference shall be made to the normative content of international binding and non-binding legal instruments, in particular, those covered in this Chapter. The interim phase results in an interim report, finalised at the latest nine months after the nomination of the Rapporteur, and encompasses the interim economic and social impact assessment. The interim report is made public, submitted to the Committee on Labour Matters, the Civil Society Forum, the Domestic Advisory Groups, the Parties' national contact points and the Director-General of the International Labour Office. The interim report is made subject to consultations, in line with paragraph 7.

6. Building on the previous phases, the Rapporteur in a final phase refines the overall analyses performed thus far on the basis of the ongoing consultations and, after further consultations in line with paragraph 7, produces a final report that must be clear and understandable, taking into account the need to address both expert and non-expert readers. The final report recapitulates the outcomes and findings of the impact assessment, together with a summary of the methodological approach adopted to arrive at those outcomes. It must summarize and exploit stakeholders' comments in a transparent manner. In the final report, the Rapporteur shall make recommendations and proposals for measures to maximize the benefits of the Labour Chapter and the Agreement and prevent or minimize negative impacts. Such recommendations shall include an analysis of feasibility, costs and possible impact. The final report is made public and submitted to the Committee on Labour Matters, which shall send it to the Civil Society Forum, the Domestic Advisory Groups, the Parties' national contact points and the Director-General of the International Labour Office.

7. Through consultation of stakeholders, the Rapporteur aims to actively engage with all interested parties to reflect their experience, priorities and concerns, contributing to the transparency of the impact assessment analysis and helping to identify priority areas and important issues of trade and labour. For that purpose, the Rapporteur provides regular information to the Civil Society Forum, the Domestic Advisory Groups and the Parties' national contact points and regularly seeks their input. In addition, the Rapporteur provides regular information to the Director-General of the International Labour Office, and regularly seeks its input in order to enhance international cooperation and coherence of efforts. The Rapporteur may in addition consult other international bodies. Consultation shall include a wide range of complementary activities, including, inter alia, interviews, meetings, written comments, digital communication and local inspections. Consultation shall be

(a) continuous, conducting consultations throughout all phases of the impact assessment procedure, on a regular basis providing and seeking information, with an emphasis on the consultation of the different reports described in the paragraphs;

(b) comprehensive, by giving all relevant stakeholders, the ILO and representatives of other consulted international bodies the opportunity to express their views;

(c) balanced, ensuring an adequate and balanced and representative coverage of all relevant interested parties during the consultation, mindful of the tripartite representation in labour matters;

(d) timely, to maximize the usefulness of contributions from stakeholders, the ILO and other consulted international bodies, starting at an early stage of the impact assessment process and ensuring the completion of the process within one year;

(e) tailored, adapting activities and documents to the needs of all target audiences and ensuring that they are easily understandable, concise and clear; and

(f) incorporated, appropriately taking contributions from stakeholders, the ILO and other consulted international bodies into account, responding to and exploiting them in the impact assessment process.

Comments: Article X.41 (Ex-post impact assessment of the Chapter on Trade and Labour) imposes an obligation to conduct an ex-post economic and social impact assessment on the Chapter on Trade and Labour, which also involves labour-related human rights aspects. The final report shall be completed within one year to provide a basis for the mandatory periodic evaluation laid down in Article X.40 (Review of the Chapter on Trade and Labour). It draws upon the established practice and principles of the European Union on internal impact assessment analyses of trade agreements and establishes an international independent and structured expert impact assessment procedure, based on the 2011 UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements. The Article ensures transparency and continuous participation of stakeholders and the ILO.

Labour-relevant model provisions for other trade agreement chapters

Comments: The following provisions relate to the protection and promotion of labour standards outside the actual labour chapter and within the wider trade agreement framework. To enhance the interconnection between provisions on labour and the rest of the trade agreement, these provisions should be inserted into other parts of the trade agreement, as indicated in the following section.

Exceptions chapter

Article [##] General exceptions

1. For the purposes of Article 30.8.5 (Termination, suspension or incorporation of other existing agreements), Chapters Two (National Treatment and Market Access for Goods), Five (Sanitary and Phytosanitary Measures), and Six (Customs and Trade Facilitation), the protocol on rules of origin and origin procedures and Sections B (Establishment of investment) and C (Non-discriminatory treatment) of Chapter Eight (Investment), Article XX of the General Agreement on Tariffs and Trade 1994 is incorporated into and made part of this Agreement. Acknowledging that the maintenance of minimum labour conditions in the way they have been defined by the ILO core labour standards represents a public concern anchored in the morality of society, the Parties understand that the measures referred to in Article XX(a) of the General Agreement on Tariffs and Trade 1994 include measures necessary to protect public morals in this regard. The Parties understand that the measures referred to in Article XX(b) of the General Agreement on Tariffs and Trade 1994 include environmental measures necessary to protect human, animal or plant life or health. The Parties understand that Article XX(g) of the General Agreement on Tariffs and Trade 1994 applies to measures for the conservation of living and non-living exhaustible natural resources.

2. For the purposes of Chapters Nine (Cross-border Trade in Services), Ten (Temporary Entry and Stay of Natural Persons for Business Purposes), Twelve (Domestic Regulation), Thirteen (Financial Services), Fourteen (International Maritime Transport Services), Fifteen (Telecommunications), Sixteen (Electronic Commerce) and Sections B (Establishment of investments) and C (Non-discriminatory treatment) of Chapter Eight (Investment), subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties, where like conditions prevail or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary

(a) to protect public security or public morals or to maintain public order;[1]

Labour-relevant model provisions for other trade agreement chapters

(b) to protect human, animal or plant life or health; or

(c) to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety.

Comments: This Article is based on Article 28.3 CETA. Closely following the line of reasoning in recent World Trade Organization jurisprudence, it includes an acknowledgement that the maintenance of minimum labour conditions is not only a matter of international law but also of public morals. Paragraph 1 adopts this modification for trade in goods, whereas paragraph 2 applies to trade in services, including the investment chapter provisions on establishment and non-discrimination. All references contained in this Article refer to the respective rules in CETA.

[1] The public security and public order exceptions may be invoked only where a genuine and sufficeintly serious threat is posed to one of the fundamental interests of society, including to see minimum labour conditions maintained, as they are defined by the ILO core labour standards.

Public procurement chapter

Article [##] – Security and general exceptions [to be inserted into the Agreement's Chapter of Investment, here following the example of Article 19.3 CETA] (…)

3. For greater certainty, public morals as under Section 2 lit. a encompass the fundamental interest in society to see minimum labour conditions maintained, as they have been defined by the ILO core labour standards.

Investment chapter

Insertion into the Agreement's preamble [here: modification of CETA's preamble]
(…)

RECOGNIZING that the provisions of this Agreement protect investments and investors with respect to their investments and are intended to stimulate mutually beneficial business activity, without undermining the right of the Parties to regulate in the public interest within their territories, recognizing and underlining at the same time the high relevance of CSR of protected investments and investors;
(…)

Article [##] – Corporate social responsibility of investors

The Parties underline that investors bear a CSR in line with, in particular, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines on Multinational Enterprises, the ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy and any applicable sector-specific CSR norms. Accordingly, investors should incorporate into their internal policies internationally recognized voluntary standards, guidelines and principles of CSR that have been endorsed or are supported by that Party, including the CSR norms laid down in Article X.18 and X.19 of Chapter [##] on Trade and Labour.

Model Labour Chapter

Article [##] – Investment and regulatory measures [to be inserted into the Agreement's Chapter of Investment, here following the example of Article 8.9 CETA]
(…)

5. For greater certainty, nothing in this Section shall be construed as preventing a Party from conforming with and applying provisions of the Chapter on Trade and Labour.

Comments: This language is to be inserted as a new paragraph into the general provision on the right to regulate in investment chapters, such as Article 8.9 CETA.

Article [##] – Final award [to be inserted into the Agreement's Chapter of Investment, here following the example of Article 8.39 CETA]

3. Monetary damages shall not be greater than the loss suffered by the investor or, as applicable, the locally established enterprise, reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal may also reduce the damages to take into account any restitution of property or repeal or modification of the measure. The Investment Tribunal shall consider, in the determination of the amount of monetary damages due to the investor, any non-compliance of the investor with standards of CSR and responsible business conduct, as laid down in Article X.18 (Corporate social responsibility and responsible business conduct).
4. (…)

Comments: This language is based on Article 8.39 paragraph 3 CETA and on Policy Option 7.1.3 of the United Nations Conference on Trade and Development's 2015 Investment Policy Framework for Sustainable Development (p. 110). The provision indirectly binds investors to CSR standards. If the investor does not comply with CSR norms, the Investment Tribunal can reduce the damages awarded down to 0 per cent. This applies to all investment obligations and thus has a comprehensive effect on the Chapter on Investment. Thereby, a strong incentive is provided to investors to conform with CSR norms if they do not want to lose investment protection. At the same time, it allows for a more nuanced and balanced consideration and proportionate weighing of CSR norms, as the Tribunal can, e.g., award 25 per cent or 50 per cent of the damages, depending on the scale and intensity of wrongdoing by the investor in contrast to an all-or-nothing solution. This will lower any potential reluctance of the tribunal to give effect to CSR norms when applying the Chapter on Investment.

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