

RECORD OF UNDERSTANDING
RELATING TO CHAPTER 13 (TRADE AND SUSTAINABLE
DEVELOPMENT) OF THE FREE TRADE AGREEMENT
BETWEEN THE EFTA STATES AND MERCOSUR

Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (EFTA States),

and

The Common Market of the South (MERCOSUR) and its State Parties, signatories of the Free Trade Agreement between the EFTA States and MERCOSUR, the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay (MERCOSUR States),

hereinafter referred to as the “Parties”¹;

HAVE AGREED, in pursuit of the above, to conclude the following Record of Understanding:

I. Context and Objectives

1. Convinced that the Free Trade Agreement between the EFTA States and MERCOSUR (the Agreement) can play an important role in promoting sustainable development in its three dimensions, the State Parties hereafter outline their mutually shared understanding of the implementation of the commitments relating to trade and sustainable development foreseen under the Agreement.

2. This Record of Understanding takes into account each Party’s right to determine its sustainable development policies and priorities, in accordance with its national circumstances, and in a manner consistent with its international obligations. It also takes into account the specific challenges of landlocked developing countries, and that countries at different levels of development face different challenges and have different needs, concerns and capacities, as highlighted by relevant international agreements, including the WTO agreements.

3. The Parties recall that, pursuant to Principle 11 of the Rio Declaration on Environment and Development of 1992, environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply.

¹ For the purposes of this Record of Understanding, “State Party” means an EFTA State or a MERCOSUR State.

II. Environmental and Labour Protection Standards

4. Recognising the right of each State Party, subject to the Agreement, to establish its own levels of environmental and labour protection, and to adopt or modify accordingly its relevant domestic laws and regulations, policies and practices, each State Party is committed to seek to ensure that its domestic laws and regulations, policies and practices provide for and encourage high levels of environmental and labour protection, consistent with standards, principles and agreements referred to in Articles 13.5 (International Labour Standards and Agreements) and 13.6 (Multilateral Environmental Agreements), and will strive to further improve the level of protection provided for in those domestic laws and regulations, policies and practices.

5. The State Parties recognise the importance of scientific and technical information, as well as relevant internationally agreed standards, guidelines and recommendations when preparing and implementing measures related to the environment and labour conditions that affect trade and investment between them.

6. The State Parties acknowledge that sustainability measures affecting trade must be fully consistent with their obligations under the WTO agreements, including those under articles XX of GATT and XIV of GATS.

7. The Parties recall that, in accordance with the WTO TBT Agreement, measures which amount to technical regulations restricting trade subject to that agreement should, inter alia, (i) be based on scientific and technical information; (ii) not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create; and (iii) be based on relevant international standards, if they are available, except as otherwise provided for in the TBT Agreement. The Parties also recall that, sanitary and phytosanitary measures which are subject to the SPS Agreement should, in accordance with that agreement, inter alia, (i) be applied only to the extent necessary to protect human, animal or plant life or health, (ii) be based on scientific principles, (iii) be based on relevant international standards, guidelines or recommendations, except as otherwise provided for in the SPS Agreement, (iv) not be maintained without sufficient scientific evidence, except as otherwise provided for in the SPS Agreement, and (v) not be applied in a manner which would constitute a disguised restriction to international trade.

8. In addition, the State Parties have agreed in Article 13.4 (Upholding Levels of Protection) of the Agreement not to fail to effectively enforce their domestic environmental and labour laws, regulations or standards in a manner affecting trade or investment between the State Parties, or allow derogations from such legislation, in order to encourage trade or investment. They have further agreed that they shall not lower their environmental and labour standards with the intention to gain a competitive trade advantage.

III. Trade and Biological Diversity

9. The State Parties commit to effectively implement the multilateral environmental agreements to which they are a party. The State Parties understand that this commitment relates to their respective obligations in accordance with the Convention on Biological

Diversity (CBD) of 1993 and its protocols as well as other multilateral biodiversity related agreements such as CITES, and reiterate their commitment to the implementation of the Kunming-Montreal Global Biodiversity Framework of 2022 (KMGBF)² and its targets and goals in accordance with their national circumstances, priorities and capabilities.

10. With regard to the fair and equitable sharing of benefits arising from the commercial and other utilisation of genetic resources, the State Parties recognise the importance of fulfilling their respective rights and obligations under international agreements to which they are a party. In this regard, they express their resolve to develop and implement effective measures to ensure fair and equitable sharing of benefits arising out of the utilisation of genetic resources and from digital sequence information on genetic resources, consistently with each State Party's international commitments.

11. The State Parties reaffirm their relevant international commitments to eliminate, phase out or reform incentives, including subsidies, harmful for biodiversity, in a proportionate, just, fair, effective and equitable way, while substantially and progressively reducing them by 2030, starting with the most harmful incentives, and scale up positive incentives for the conservation and sustainable use of biodiversity, thereby contributing to the global target in the Kunming-Montreal Global Biodiversity Framework.

IV. Sustainable Forest Management and Associated Trade

12. On the sustainable management of forests and associated trade, the State Parties commit to fulfilling their obligations and commitments under Article 13.10 (Sustainable Forest Management and Associated Trade) of the Agreement, the UNFCCC, the Paris Agreement³, the Convention on Biological Diversity, and the related instruments to which they are a party. The State Parties recall the Kunming-Montreal Global Biodiversity Framework. Furthermore, the State Parties also acknowledge the important role that other forest initiatives as well as other funding initiatives may play to contribute to the objectives of Article 13.10 (Sustainable Forest Management and Associated Trade) of the Agreement.

13. Each State Party commits to implement measures in accordance with its domestic laws and regulations, policies and practices, to prevent further deforestation and to enhance efforts to stabilise or increase forest cover.

14. They acknowledge that the social and economic challenges of developing countries and their contribution to global food security should be duly taken into account when implementing such measures.

15. They acknowledge the importance of considering existing monitoring systems, including those established or used by the State Parties.

16. They stress the need and importance of support and investment to achieve these objectives, including through financial resources, technology transfer, capacity-building, and other mechanisms.

² Decision 15/4 of CBD COP 15, Annex.

³ Adopted under the UNFCCC in FCCC/CP/2015/10/Add.1, decision 1/CP.21.

17. The State Parties will collaborate with the aim to provide market access opportunities for products obtained sustainably, and consider in the Joint Committee listing goods from the MERCOSUR States, which contribute to the conservation, restoration, sustainable use and management of forests and vulnerable ecosystems.

18. The State Parties recognise the roles of Indigenous Peoples and Local Communities, including the contribution of their knowledge on sustainable land use and protecting, conserving, sustainably using forests and biodiversity, taking into account the Kunming-Montreal Global Biodiversity Framework and in accordance with the domestic laws and regulations and the relevant international commitments of each State Party.

V. Trade and Sustainable Agriculture

19. The State Parties recognise the importance of sustainable agriculture and food systems and the role of a rules-based, non-discriminatory, open, fair, inclusive, equitable and transparent multilateral trading system. They recognise the relevance of implementing agricultural policies to promote sustainable agriculture and food security, in line with their respective national priorities and consistent with their international obligations, and acknowledge that there is no “one size fits all” approach. In this regard, they also:

- (a) reaffirm their rights and obligations under the WTO SPS Agreement, as referred to in Chapter 6 (Sanitary and Phytosanitary Measures) of the Agreement; and
- (b) reiterate their commitment to providing for substantial progressive reductions in agricultural support and protection in accordance with Article 20 of the WTO Agreement on Agriculture.

20. The State Parties recognise that promoting sustainable agriculture practices includes:

- (a) the non-use of hormonal active growth promoters in meat production;
- (b) sustained efforts towards the phase-out of the use of antimicrobial agents as growth promoters for animals, in line with the recommendations of the Codex Alimentarius and the World Organisation for Animal Health; and
- (c) measures to guarantee animal health and welfare, based on the Terrestrial and Aquatic Animal Health Codes of the World Organisation for Animal Health.

21. The State Parties recall the dialogues established under Article 13.12 (Trade and Sustainable Agriculture and Food Systems) as well as under Chapter 7 (Dialogues) of the Agreement and commit to actively use these fora to exchange on topics or issues of mutual interest.

VI. International Labour Standards and Agreements

22. The State Parties are committed to the protection of labour rights in line with the obligations deriving from membership of the International Labour Organisation (ILO) and recognise the role of the ILO as a multilateral organisation in this field.

23. The MERCOSUR States and the EFTA States recall the obligations deriving from membership of the ILO, as stated in Article 13.5 (International Labour Standards and Agreements) of the Agreement, to effectively implement the ILO Conventions to which they are a party and the commitment to make continued efforts to ratify the fundamental ILO Conventions as well as the other conventions that are classified as “up-to-date” by the ILO, while respecting the sovereign right of a State Party to enter into other relevant international obligations.

24. The State Parties also recall their respective obligations related to the ILO Declaration on Fundamental Principles and Rights at Work (1998) as amended in 2022 and its Follow-up adopted by the International Labour Conference at its 86th Session in 1998 and the ILO Centenary Declaration for the Future of Work of 2019.

25. In addition, as expressed in Article 13.5 (International Labour Standards and Agreements) of the Agreement, the State Parties have committed to ensure that administrative and judicial proceedings are accessible and available in order to permit effective action to be taken against infringements of labour rights referred to in Chapter 13 (Trade and Sustainable Development) of the Agreement.

VII. Cooperation

26. In order to achieve the objectives expressed in Article 13.2 (Context and Objectives) of the Agreement, the State Parties highlight the importance of an open and transparent multilateral trade system, with the WTO at its core, and of interregional cooperation and agree to work together on the implementation of their respective multilateral commitments in the areas of climate change, biodiversity, environmental pollution and labour standards.

VIII. Women in Trade

27. The State Parties acknowledge the important contribution by all segments of society, including women, to economic growth through their participation in economic activity, including international trade. The State Parties also acknowledge that changes in trade flows may have a differential effect on the employment opportunities and participation of men and women, on their income and their well-being. Accordingly, the State Parties intend to implement the Agreement in a manner that promotes equal opportunities and treatment for women and men in trade and investment policies, and to strengthen their cooperation in this regard. Such cooperation may cover, among others, exchange of information and best practices related to data collection that supports trade policies aimed at improving the capacity and conditions for women in international trade.

IX. Monitoring and Implementation

28. The State Parties agree that the Joint Committee established under the Agreement shall oversee the implementation of Chapter 13 (Trade and Sustainable Development) and this Record of Understanding.

29. As provided for in Article 13.14 (Implementation, Consultations and Panel of Experts) of the Agreement, the Parties shall not have recourse to arbitration under Chapter 15 (Dispute Settlement) of the Agreement for any matter arising under Chapter 13 (Trade and Sustainable Development) and this Record of Understanding.

30. The State Parties stress that this Record of Understanding does not modify in any manner the nature or scope of the commitments adopted under the relevant international agreements referred to above, as well as in the applicable WTO agreements.

31. The State Parties furthermore recognise the importance of access to information and of providing their stakeholders with opportunities to provide inputs regarding this Record of Understanding and Chapter 13 (Trade and Sustainable Development) of the Agreement in accordance with their respective legal frameworks.
