

This document is the European Union's (EU) proposal for the EU-New Zealand FTA. It will be tabled for discussion with New Zealand. The actual text in the final agreement will be a result of negotiations between the EU and New Zealand.

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CHAPTER [XX]

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE X.1

Objectives

1. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development adopted by the United Nations (UN) Conference on Environment and Development in 1992, the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002, the International Labour Organisation (ILO) Declaration on Social Justice for a Fair Globalisation of 2008, the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" endorsed by the UN General Assembly Resolution 66/288 adopted on 27 July 2012 and the UN 2030 Agenda for Sustainable Development, adopted by the UN General Assembly Resolution 70/1 on 25 September 2015 and its Sustainable Development Goals.
2. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing and affirm their commitment to promote the development of international trade and investment in a way that contributes to the objective of sustainable development.

3. In light of the above, the objective of this Chapter is to enhance the integration of sustainable development, notably its labour¹ and environmental dimensions, in the Parties' trade and investment relationship.

ARTICLE X.2

Right to Regulate and Levels of Protection

1. The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection it deems appropriate and to adopt or modify its relevant law and policies. Such levels, law and policies shall be consistent with each Party's commitment to the internationally recognised standards and agreements referred to in this Chapter.

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

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

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

5. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental or labour laws in order to encourage trade or investment.

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

ARTICLE X.3

Multilateral Labour Standards and Agreements

1. The Parties affirm their commitment to promote the development of international trade in a way that is conducive to decent work for all, as expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008.
2. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, each Party shall respect, promote and effectively implement the internationally recognised core labour standards, as defined in the fundamental ILO Conventions, which are:
 - (a) freedom of association and the effective recognition of the right to collective bargaining;
 - (b) the elimination of all forms of forced or compulsory labour²;
 - (c) the effective abolition of child labour; and
 - (d) the elimination of discrimination in respect of employment and occupation.
3. Each Party shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so³.
4. The Parties shall regularly exchange information on their respective situations with regard to the ratification of ILO Conventions or protocols classified as up-to-date by the ILO.
5. Each Party shall effectively implement the ILO Conventions that New Zealand and the Member States of the European Union have respectively ratified.
6. Recalling the ILO Declaration on Social Justice for a Fair Globalisation of 2008, the Parties note that the violation of fundamental principles and rights at work cannot be invoked

² In this context, the Parties underline the importance of ratification of the 2014 Protocol to the Forced Labour Convention.

³ The Parties note that all Member States of the European Union have ratified the fundamental ILO Conventions.

or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

7. Each Party shall promote through its laws and practices the ILO Decent Work Agenda as set out in the Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session, in particular with regard to:

- (a) decent working conditions for all, with regard to, *inter alia*, wages and earnings, working hours, other conditions of work and social protection;
- (b) social dialogue on labour matters among workers and employers and their respective organizations, and with relevant government authorities.

8. Consistent with its commitments under the ILO, each Party shall:

- (a) adopt and implement measures and policies regarding occupational health and safety, including compensation in case of occupational injury or illness;
- (b) maintain an effective labour inspection system.

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

- (a) trade-related aspects of implementation of fundamental, priority and other up-to-date ILO Conventions;
- (b) trade-related aspects of the ILO Decent Work Agenda, including on the inter-linkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue and gender equality;
- (c) the impact of labour law and standards on trade and investment; or the impact of trade and investment law on labour.

ARTICLE X.4

Multilateral Environmental Governance and Agreements

1. The Parties recognise the importance of the UN Environment Assembly (UNEA) of the UN Environment Programme (UNEP) and multilateral environmental governance and agreements as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies.

2. In light of paragraph 1, each Party shall effectively implement the multilateral environmental agreements (MEAs), protocols and amendments that it has ratified.

3. The Parties shall regularly exchange information on their respective situations as regards the ratifications of MEAs, including their protocols and amendments.

4. The Parties reaffirm the right of each Party to adopt or maintain measures to further the objectives of MEAs to which it is a party. The Parties recall that measures adopted or enforced to implement such MEAs may be justified under Article [*insert article number - General Exceptions – Chapter Exceptions*].

5. The Parties shall work together to strengthen their cooperation on trade-related aspects of environmental policies and measures, bilaterally, regionally and in international fora, as appropriate, including in the UN High-level Political Forum for Sustainable Development, UN Environment, UNEA, MEAs, or the WTO. Such cooperation may cover *inter alia*:

- (a) initiatives on sustainable production and consumption, including those aimed at promoting a circular economy and green growth and pollution abatement;
- (b) initiatives to promote environmental goods and services, including by addressing related tariff and non-tariff barriers;
- (c) the impact of environmental law and standards on trade and investment; or the impact of trade and investment law on the environment;

- (d) other trade related aspects of MEAs, including implementation.

ARTICLE X.5

Trade and Climate Change

1. The Parties recognise the importance of taking urgent action to combat climate change and its impacts, and the role of trade in pursuing this objective, consistent with the UN Framework Convention on Climate Change (UNFCCC), the purpose and goals of the Paris Agreement adopted by the Conference of the Parties to the UNFCCC at its 21st session, and with other MEAs and multilateral instruments in the area of climate change.

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

- (a) effectively implement the UNFCCC and the Paris Agreement adopted thereunder, including its commitments with regard to its Nationally Determined Contributions;
- (b) promote the mutual supportiveness of trade and climate policies and measures thereby contributing to the transition to a low greenhouse gas emission, resource-efficient economy and to climate-resilient development;
- (c) facilitate the removal of obstacles to trade and investment in goods and services of particular relevance for climate change mitigation and adaptation, such as renewable energy, energy efficient products and services, for instance through addressing tariff and non-tariff barriers or through the adoption of policy frameworks conducive to the deployment of best available technologies;
- (d) make continuous and sustained efforts to ratify the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer.

3. The Parties shall work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally, regionally and in international fora, as appropriate, including in the UNFCCC, the WTO, the Montreal Protocol on Substances that

Deplete the Ozone Layer and the International Maritime Organisation (IMO). Such cooperation may cover *inter alia*:

- (a) policy dialogue and cooperation regarding the implementation of the Paris Agreement, such as on means to promote climate resilience, renewable energy, low-carbon technologies, energy efficiency, preparation and adoption of carbon pricing action including Emission Trading Systems, sustainable transport, sustainable and climate-resilient infrastructure development, emissions monitoring;
- (b) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the IMO to be implemented by ships engaged in international trade;
- (c) supporting an ambitious phase-out of ozone depleting substances (ODS) and phase-down of hydrofluorocarbons (HFCs) under the Montreal Protocol on Substances that Deplete the Ozone Layer through measures to control their production, consumption and trade; the introduction of environmentally friendly alternatives to them; the updating of safety and other relevant standards as well as by combating the illegal trade of substances regulated by the Montreal Protocol.

ARTICLE X.6

Trade and biological diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing these objectives, consistent with the Convention on Biological Diversity (CBD) and its protocols, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), other relevant MEAs to which they are a party, and the decisions adopted thereunder.

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

- (a) implement effective measures to combat illegal wildlife trade, including with respect to third countries as appropriate;

- (b) promote the long-term conservation and sustainable use of CITES listed species and the inclusion of animal and plant species in the Appendices to the CITES where the conservation status of that species is considered at risk because of international trade; and conduct periodic reviews, which may result in a recommendation to amend the Appendices to the CITES, in order to ensure that they properly reflect the conservation needs of species subject to international trade;
 - (c) promote trade in products derived from a sustainable use of biological resources and contributing to the conservation of biodiversity;
 - (d) take measures to conserve biological diversity when it is subject to pressures linked to trade and investment, in particular through measures to prevent the spread of invasive alien species.
3. The Parties shall work together to strengthen their cooperation on trade-related aspects of biodiversity policies and measures bilaterally, regionally and in international fora, as appropriate, including in the CBD and CITES. Such cooperation may cover *inter alia*:
- (a) initiatives and good practices concerning trade in natural resource-based products with the aim of conserving biological diversity;
 - (b) trade and the conservation and sustainable use of biological diversity, the valuation of ecosystems and their services and related economic instruments;
 - (c) tackling illegal wildlife trade, including through initiatives to reduce demand for illegal wildlife products and initiatives to enhance information sharing and cooperation;
 - (d) access to genetic resources; and the fair and equitable sharing of benefits from their utilisation consistent with the Nagoya Protocol of the CBD.

ARTICLE X.7

Trade and forests

1. The Parties recognise the importance of sustainable forest management and the role of trade in pursuing this objective.
2. In light of paragraph 1, each Party shall:
 - (a) implement measures to combat illegal logging and related trade, including with respect to third countries as appropriate; and promote trade in legally harvested forest products;
 - (b) promote the conservation and sustainable management of forests and trade and consumption of timber and timber products harvested in accordance with the law of the country of harvest and from sustainably managed forests;
 - (c) exchange information with the other Party on trade-related initiatives on sustainable forest management, forest governance and on the conservation of forest cover and cooperate to maximise the impact and mutual supportiveness of their respective policies of mutual interest.
3. The Parties shall work together to strengthen their cooperation on trade-related aspects of sustainable forest management, the conservation of forest cover and illegal logging bilaterally, regionally and in international fora as appropriate.

ARTICLE X.8

Trade and Sustainable Management of Marine Biological Resources and Aquaculture

1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of promoting responsible and sustainable aquaculture, and the role of trade in pursuing these objectives.

2. The Parties acknowledge that illegal, unreported and unregulated (IUU) fishing threatens fishery stocks, the livelihoods of persons engaged in responsible fishing practices and the sustainability of trade in fishery products and confirm the need for action to end IUU fishing in order to address the problems of overfishing and unsustainable utilisation of fisheries resources.

3. In light of paragraphs 1 and 2, each Party shall:

- (a) implement long-term conservation and management measures and sustainable use of marine living resources as defined in the main UN and FAO instruments relating to these issues⁴;
- (b) act consistent with the principles of the UN Convention on the Law of the Sea, the UN Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the FAO Code of Conduct for Responsible Fisheries and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) fishing, and to participate in FAO's initiative on the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels;
- (c) participate actively in the work of the Regional Fisheries Management Organisations (RFMOs) to which they are members, observers, or cooperating non-contracting parties, with the aim of achieving good fisheries governance and sustainable fisheries, such as through the promotion of scientific research and the adoption of conservation measures based on best available science, the strengthening of compliance mechanisms, the undertaking of periodical performance reviews and the adoption of effective control, monitoring and enforcement of the RFMOs' management measures and, where applicable, the

⁴ The UN Convention on the Law of the Sea of 1982, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 1995, the UN Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995, the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of 2009.

adoption and implementation of Catch Documentation or Certification Schemes and port state measures;

- (d) implement effective measures to combat IUU fishing, including measures to exclude IUU products from trade flows, and cooperate to this end, including by facilitating the exchange of information;
- (e) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects, including with regard to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

4. The Parties shall work together to strengthen their cooperation on trade-related aspects of fishery and aquaculture policies and measures, bilaterally regionally and in international fora, as appropriate, including in the WTO, RFMOs and other multilateral instruments in this field with the aim of promoting sustainable fishing practices and trade in fish products from sustainably managed fisheries.

ARTICLE X.9

Trade and Responsible Supply Chain Management

1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct / corporate social responsibility practices and the role of trade in pursuing this objective.

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

- (a) promote corporate social responsibility / responsible business conduct, including by providing supportive policy frameworks that encourage the uptake of relevant practices by businesses;
- (b) support the adherence, implementation, follow-up and dissemination of relevant international instruments, such as the OECD Guidelines for Multinational

Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact, and the UN Guiding Principles on Business and Human Rights.

3. The Parties recognise the utility of international sector-specific guidelines in the area of corporate social responsibility / responsible business conduct and shall promote joint work in this regard. In respect of the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas and its supplements, the Parties shall also implement measures to promote the uptake of this Guidance.
4. The Parties shall promote trade and investment in goods and services beneficial to environment or contributing to enhanced social conditions such as goods and services that are the subject of voluntary sustainability assurance schemes, for example fair and ethical trade schemes and eco-labels.
5. The Parties shall work together to strengthen their cooperation on trade-related aspects of issues covered by this article bilaterally, regionally and in international fora as appropriate, *inter alia* through the exchange of information, best practices and outreach initiatives.

ARTICLE X.10

Scientific and technical information

1. When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall take into account available scientific and technical information, relevant international standards, guidelines or recommendations.
2. Where there is a lack of full scientific certainty and there are threats of serious or irreversible damage to the environment or to occupational safety and health, a Party may adopt measures to prevent such damage, in accordance with the precautionary principle.

ARTICLE X.11

Transparency⁵

Each Party shall, in accordance with **Chapter ... [Transparency]**, ensure that it develops, enacts and implements in a transparent manner:

- (a) measures aimed at protecting the environment and labour conditions that may affect trade or investment, or
- (b) trade or investment measures that may affect the protection of the environment or labour conditions,

thereby ensuring awareness and providing reasonable opportunities for interested persons and stakeholders to submit views.

ARTICLE X.12

[*Body*⁶] on Trade and Sustainable Development and Contact Points

1. The Parties hereby establish a [body] on Trade and Sustainable Development (hereafter "*the [body]*"). The composition and operation of the TSD Sub-Committee is governed by *Article X of Title ... [Trade Committee]* of this Agreement.

2. The functions of the [*body*] are to:

- (a) facilitate, monitor and review the implementation of this Chapter;
- (b) carry out the tasks referred to in Article 15 of this Chapter;

⁵ Note: The Transparency Chapter of the FTA covers matters relating to publication of measures of general applications and access to judicial/administrative procedures. The need to include specific references to these matters in the present Chapter will be assessed in light of the progress/outcome of the negotiations of the Transparency Chapter.

⁶ Note: The name of the "body" will be determined in accordance with the overall institutional structure of the Agreement and terminology.

- (c) contribute to the work of the Trade Committee on issues covered by this Chapter, including with regard to topics for discussion with ... [the civil society mechanisms] referred to in *Article X of Chapter X* of this Agreement;
- (d) consider any other matter related to this Chapter as the Parties may agree.

[2bis. This *[body]* shall establish its own rules of procedure.⁷]

3. The *[body]* shall publish a report after each of its meetings.

4. Each Party shall give due consideration to communications and opinions from the public on matters related to this Chapter. It may inform, where appropriate, the civil society mechanism established under *Article X Chapter X* of this Agreement as well as the contact point of the other Party established in accordance with paragraph 5 of this Article of such communications and opinions.

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

ARTICLE X.13

Dispute resolution

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

2. In case of a disagreement between the Parties regarding the application of this Chapter, the Parties shall have recourse exclusively to the dispute resolution procedures established under Article 14 and Article 15.

⁷ Note: paragraph 2bis is to be included only in case there is no horizontal provision in the Institutional chapter on the rules of procedure for specialised committees.

ARTICLE X.14

Consultations

1. A Party may request consultations with the other Party regarding the application of this Chapter by delivering a written request to the contact point of the other Party established in accordance with Article 12.5. The request shall set out the reasons for requesting consultations, including a description of the matter at issue and its relation to the provisions of this Chapter. Consultations shall start promptly after a Party delivers a request for consultations, and in any event not later than 30 days of the date of receipt of the request, unless the Parties agree to a longer period. Consultations shall be held in person or, if so agreed by the Parties, by technological means. If the consultations are held in person, they shall be held in the territory of the Party to whom the request is made, unless the Parties agree otherwise.
2. The Parties shall enter into consultations with the aim of reaching a mutually satisfactory resolution of the matter. In matters related to the multilateral agreements or instruments referred to in this Chapter, the Parties shall take into account information from the ILO or relevant bodies or organisations established under MEAs in order to promote coherence between the work of the Parties and these organisations. Where relevant, the Parties shall seek advice from such organisations or their bodies, or any other expert or body they deem appropriate.
3. Each Party may seek, when appropriate, the views of the ... [*domestic civil society bodies set up under the Agreement*] referred to in **Article X of Chapter X** or other expert advice.
4. Any resolution reached by the Parties shall be made available to the public.
5. Except as otherwise provided for in this Article, the provisions set out in **Section 2 [Consultations] of Chapter XX [Dispute Settlement]** shall apply.

ARTICLE X.15

Panel of experts

1. If, within 90 days of a request for consultations under Article 14.2, no mutually satisfactory resolution of the matter has been reached, a Party may request the establishment of a panel of experts to examine the matter. Any such request shall be made in writing to the contact point of the other Party established in accordance with Article 12.5. The request shall set out the reasons for requesting the establishment of a panel of experts, including a description of the matter at issue and indication of the relevant provision(s) of this Chapter that it considers applicable.
2. The [body] shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists on the panel of experts. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals that are not nationals of either Party. Each Party shall propose at least five individuals for its sub-list. The Parties shall also select at least five individuals for the sub-list of individuals that are not nationals of either Party. The chairperson of a panel of experts shall be selected from the latter list. The [body] shall ensure that the list is kept up to date and that the number of experts is maintained at least at 15 individuals.
3. The individuals referred to in paragraph 3 shall have specialised knowledge of or expertise in labour or environmental law, issues addressed in this Chapter, or the resolution of disputes arising under international agreements and shall act independently.
4. If the panel of experts is composed according to the procedures set out in **Article X.5 [Establishment of a Panel] of Chapter XX [Dispute Settlement]**, the experts shall be selected from the relevant individuals on the sub-lists referred to in paragraph 3 of this Article, in accordance with [the relevant provisions of] Section 3 [Panel Procedures]... and **Section 5 [Common Provisions] of Chapter XX [Dispute Settlement]**.
5. Unless the Parties agree otherwise within five days from the date of establishment of the panel of experts, as defined in Article [Establishment of a Panel] of Chapter XX [Dispute Settlement], the terms of reference shall be:

"to examine, in the light of the relevant provisions of the Trade and Sustainable Development Chapter of [...] Agreement, the matter referred to in the request for the establishment of the panel of experts, and to issue a report, in accordance with Article 15 [*Panel of experts*] of Chapter ... [*Trade and Sustainable Development*] with its findings and recommendations for the resolution of the matter".

6. With regard to matters related to compliance with multilateral agreements and instruments referred to in this Chapter, the opinions of external experts or information requested by the panel of experts should include information and advice from the ILO or relevant bodies or organisations established under the MEAs. The panel of experts shall forward such opinions, information or advice to each Party allowing them to submit their comments within 20 days of its receipt.

7. The reports of panel of experts shall set out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations. The Parties shall make the final report of the panel of experts available to the public within 15 days of its submission by the panel of experts.

8. The Parties shall discuss appropriate measures to be implemented taking into account the report and recommendations of the panel of experts. The Party complained against shall inform its domestic civil society mechanism established under Article XX of this Agreement and the contact point of the other Party established in accordance with paragraph 5 of Article 12 of this Agreement of its decisions on any actions or measures to be implemented no later than three months after the report has been issued to the Parties.

9. The [*body*] shall monitor the follow-up to the report of the panel of experts and its recommendations. The ... [civil society mechanisms set up under the Agreement] referred to in **Article(s) X of Chapter X** may submit observations to the [*body*] in this regard.

10. Except as otherwise provided for in this Article, the provisions set out in Article X.4 [Initiation of Panel Procedures], Article X.5 [Establishment of a Panel], Article X.6 [Lists of Panellists], subparagraphs 1(b), 1(c), and 1(d) of Article X.7 [Requirements for Panellists], Article X.8 Functions of the Panel, Article X.10 Decision on Urgency, Article X.11 Interim Report, Article X.12 Final Report, Article X.13 Compliance Measures, Article X.14 Reasonable Period of Time; Article X.15 Compliance Review; Article X.19 Replacement of

Panellists; Article X.19 Rules of Procedure, Article X.20 Suspension and Termination, Article X.21 Receipt of Information, Article X.22 Rules of Interpretation, Article X.23 Reports and Decisions of the Panel of Section 3 [*Panel Procedures*]and in Article X.32 [*Mutually Agreed Solution*], Article X.33 [*Time Periods*], Article X.34 [*Costs*], Article X.35 [*Annexes*] of Section 5 [*Common Provisions*] of Chapter ... [*Dispute Settlement*], - as well as the Rules of Procedure in Annex X and the Code of Conduct in Annex XX to Chapter XX [*Dispute Settlement*], shall apply.