

## CHAPTER NINETEEN

### ENVIRONMENT

#### ARTICLE 19.1 : LEVELS OF PROTECTION

Recognizing the right of each Party to establish its own levels of environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its laws provide for and encourage high levels of environmental protection and shall strive to continue to improve their respective levels of environmental protection, including through such environmental laws and policies.

#### ARTICLE 19.2 : APPLICATION AND ENFORCEMENT OF ENVIRONMENTAL LAWS

1. (a) A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
  - (b) The Parties recognise that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of resources.
2. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

#### ARTICLE 19.3 : PROCEDURAL GUARANTEES AND PUBLIC AWARENESS

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings for the enforcement of its environmental laws are fair, equitable, transparent, and provide for appropriate administrative and procedural protections in accordance with its law.
2. Each Party shall ensure that persons with a legally recognised interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 1.
3. Each Party shall provide remedies for violations of its environmental laws to ensure the effective enforcement of those laws. The Parties recognise that a variety of activities can contribute to enforcement of environmental laws.

4. Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws and enforcement and compliance procedures, including procedures for interested persons to request the Party's competent authorities to investigate alleged violations of its environmental laws. A Party may use a variety of means available for this purpose, such as publishing information and notices in official bulletins and the mass media, publishing and distributing information manuals, undertaking compliance assistance programs, conducting meetings, and making information available through the Internet.

5. For greater certainty, nothing in this Chapter shall be construed as calling for the examination under this Agreement of whether a Party's court has appropriately applied that Party's environmental laws.

#### ARTICLE 19.4 : VOLUNTARY MECHANISMS TO ENHANCE ENVIRONMENTAL PERFORMANCE

The Parties recognise that flexible, voluntary, and market-based mechanisms can contribute to the achievement and maintenance of high levels of environmental protection. As appropriate and in accordance with its law, each Party shall encourage the development of such mechanisms, which may include partnerships, sharing information, and market-based mechanisms that encourage the protection of natural resources and the environment.

#### ARTICLE 19.5 : INSTITUTIONAL ARRANGEMENTS AND PUBLIC PARTICIPATION

1. In carrying out its functions, the Joint Committee established under Chapter 21 (Institutional Arrangements and Dispute Settlement) shall consider matters related to the operation of this Chapter and the pursuit of the environmental objectives of this Agreement. The Joint Committee may establish a Subcommittee on Environmental Affairs comprising government officials of each Party, to meet at such times as they deem appropriate to discuss the operation of this Chapter. Each meeting of the Subcommittee normally shall include a public session.

2. Each formal decision of the Parties concerning the operation of this Chapter shall be made public, unless the Joint Committee decides otherwise.

3. Each Party shall provide an opportunity for its public, which may include national advisory committees, to provide views, recommendations, or advice on matters related to the implementation of this Chapter, and shall make available such views, recommendations, or advice to the other Party and, as appropriate, to the public in accordance with its law.

#### ARTICLE 19.6 : ENVIRONMENTAL COOPERATION

1. The Parties recognise the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations. Toward this end, the Parties acknowledge the importance of ongoing joint bilateral, regional, and multilateral environmental activities. The Parties agree to negotiate a United States–Australia Joint Statement on Environmental Cooperation under which the Parties will explore ways to further support these ongoing activities.

2. Each Party shall take into account, as appropriate, public comments and recommendations it receives regarding these ongoing cooperative environmental activities undertaken by the Parties.

3. The Parties shall, as appropriate, share information with each other and the public regarding their experiences in assessing and taking into account the positive and negative environmental effects of trade agreements and policies.

#### ARTICLE 19.7 : ENVIRONMENTAL CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. Unless the Parties agree otherwise, consultations shall commence within 30 days after a Party delivers a request for consultations to the contact point designated by the other Party for this purpose.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate.

3. If the consultations fail to resolve the matter, either Party may request that the Subcommittee on Environmental Affairs be convened. The Subcommittee shall convene within 30 days after a Party delivers a written request to the other Party's contact point, unless the Parties agree otherwise. If the Joint Committee has not established the Subcommittee as of the date a Party delivers a request, it shall do so during the 30-day period described in this paragraph. The Subcommittee shall endeavour to resolve the matter expeditiously, including, where appropriate, by consulting governmental or non-governmental experts and by having recourse to such procedures as good offices, conciliation, or mediation.

4. If a Party considers that the other Party has failed to carry out its obligations under Article 19.2.1(a), the Party may request consultations under paragraph 1 or pursuant to Article 21.5 (Consultations).

(a) If a Party requests consultations pursuant to Article 21.5 at a time when the Parties are engaged in consultations on the same matter under paragraph 1 or the subcommittee is endeavouring to resolve the matter under paragraph 3, the Parties shall discontinue their efforts to resolve the matter under this Article. Once consultations have begun under Article 21.5, no consultations on the same matter may be entered into under this Article.

(b) If a Party requests consultations pursuant to Article 21.5 more than 60 days after the delivery of a request for consultations under paragraph 1, the Parties may agree at any time to refer the matter to the Joint Committee pursuant to Article 21.6 (Referral of Matters to the Joint Committee).

5. Articles 21.2 (Scope of Application) and 21.5 (Consultations) shall not apply to a matter arising under any provision of this Chapter other than Article 19.2.1(a).

## ARTICLE 19.8 : RELATIONSHIP TO ENVIRONMENTAL AGREEMENTS

The Parties recognise that multilateral environmental agreements to which they are both party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are both party and international trade agreements to which they are both party. The Parties shall consult regularly with respect to negotiations in the WTO regarding multilateral environmental agreements.

## ARTICLE 19.9 : DEFINITIONS

For the purposes of this Chapter:

1. **environmental law** means any statute or regulation of a Party, or provision thereof, the primary purpose<sup>19-1</sup> of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

- (a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;
- (b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto; or
- (c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

2. For the United States, **statute or regulation** means an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.

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<sup>19-1</sup>For the purposes of this Article, the primary purpose of a particular statutory or regulatory provision shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part. A particular provision whose primary purpose is not the protection of the environment or the prevention of a danger to human, animal, or plant life or health is not an environmental law as defined by this Article.