

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
JUNE 18, 2004

CHAPTER SIXTEEN
ENVIRONMENT

ARTICLE 16.1: LEVELS OF PROTECTION

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

ARTICLE 16.2: APPLICATION AND ENFORCEMENT OF ENVIRONMENTAL LAWS

1. (a) Neither Party shall 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 recognize 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 recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic 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.

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ARTICLE 16.3: PROCEDURAL MATTERS

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to sanction or remedy violations of its environmental laws.
 - (a) Such proceedings shall be fair, open, and equitable, and to this end shall comply with the due process of law, and be open to the public (except where the administration of justice otherwise requires).
 - (b) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:
 - (i) take into consideration the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and
 - (ii) may include compliance agreements, penalties, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.
2. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that the competent authorities give such requests due consideration in accordance with its law.
3. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial, quasi-judicial, or administrative proceedings for the enforcement of the Party's environmental laws.
4. Each Party shall provide appropriate and effective rights of access to remedies, in accordance with its laws, which may include rights such as:
 - (a) to sue another person under that Party's jurisdiction for damages under that Party's environmental laws;
 - (b) to seek sanctions or remedies such as monetary penalties, emergency closures, or orders to mitigate the consequences of violations of its environmental laws;
 - (c) to request the competent authorities to take appropriate action to enforce the Party's environmental laws in order to protect the environment or to avoid environmental harm; or
 - (d) to seek injunctions where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person under that Party's

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jurisdiction contrary to that Party's environmental laws or from tortious conduct that harms human health or the environment.

ARTICLE 16.4: MEASURES TO ENHANCE ENVIRONMENTAL PERFORMANCE

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of high levels of environmental protection, complementing the procedures set forth in Article 16.3. As appropriate and in accordance with its law, each Party shall encourage the development of incentives and voluntary mechanisms, which may include:

- (a) Mechanisms that facilitate voluntary action to protect or enhance the environment, such as partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations, or voluntary guidelines for environmental performance.
- (b) Sharing of information and expertise among authorities, interested parties and the public, concerning: methods for achieving high levels of environmental protection; initiatives such as voluntary environmental auditing and reporting; methods for improving efficiency of resource use or reducing environmental impacts; environmental monitoring; and collection of baseline data.
- (c) Incentives to encourage protection of natural resources and the environment, including market-based mechanisms where appropriate, such as: financial incentives for conserving, restoring, or enhancing the environment; incentives for the exchange or trade of environment-related permits, credits, or other instruments that facilitate efficient achievement of environmental goals; and public recognition of facilities or companies that are superior environmental performers.

2. As appropriate and in accordance with its law, each Party shall encourage:

- (a) the development and improvement of performance goals and standards used in measuring environmental performance; and
- (b) flexibility in the means by which such goals are achieved and standards are met, including through measures identified in paragraph 1.

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ARTICLE 16.5: INSTITUTIONAL ARRANGEMENTS

1. In addition to discussions of matters related to the operation of this Chapter that may take place in the Joint Committee established under Chapter 18 (Administration of the Agreement), the Joint Committee shall, at the request of either Party, establish a subcommittee comprising government officials to discuss matters related to the operation of this Chapter. Meetings of the subcommittee shall include, unless otherwise agreed by the Parties, a session where members of the subcommittee have an opportunity to meet with the public to discuss matters related to the operation of this Chapter.
2. The Parties, when they consider appropriate, shall jointly prepare reports on matters related to the implementation of this Chapter, and shall make such reports public, except as otherwise provided in this agreement.
3. Any formal decision of the Parties concerning the implementation of this Chapter shall be made public, unless the Parties decide otherwise.

ARTICLE 16.6: OPPORTUNITIES FOR PUBLIC PARTICIPATION

1. To ensure the availability of opportunities for public participation in the discussion of matters related to the operation of this Chapter, and to facilitate the sharing of best practices and the development of innovative approaches to issues of interest to the public with regard to such matters, each Party shall develop or maintain procedures for dialogue with its public concerning the implementation of this Chapter, including:
 - (a) the identification of matters to discuss at the meetings of the Joint Committee or the subcommittee described in Article 16.5; and
 - (b) the opportunity for its public to provide, on an on-going basis, views, recommendations, or advice on matters related to the operation of this Chapter. Such views, recommendations, or advice shall be made available to the other Party and the public.
2. Each Party may convene, or consult with an existing, national advisory committee, composed of representatives of both its environmental and business organizations and other members of its public, to advise it on the implementation of this Chapter, as appropriate.
3. Each Party shall make best efforts to respond favorably to requests for consultations by persons or organizations of its territory regarding that Party's implementation of this Chapter.
4. Each Party shall take into account, as appropriate, public comments and recommendations it receives regarding cooperative environmental activities the Parties

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undertake pursuant to the United States-Bahrain Memorandum of Understanding on Environmental Cooperation described in Article 16.7.

ARTICLE 16.7: ENVIRONMENTAL COOPERATION

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations. The Parties agree to undertake cooperative environmental activities pursuant to a United States-Bahrain Memorandum of Understanding on Environmental Cooperation, as developed by the Parties, and in other fora.
2. Each Party shall also seek opportunities for its citizens to participate in the development and implementation of cooperative environmental activities, such as through the use of public-private partnerships.
3. The Parties also recognize the ongoing importance of current and future environmental cooperation that may be undertaken outside this Agreement.
3. The Parties shall, as they deem appropriate, share information with each other and the public on their experiences in assessing and taking into account positive or negative environmental effects of trade agreements and policies.

ARTICLE 16.8: ENVIRONMENTAL CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. Unless the Parties otherwise agree, consultations shall commence within 30 days of a Party's delivery of 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 described in Article 16.5 be convened to consider the matter, and if the subcommittee has not yet been established, the Parties shall establish it expeditiously. The subcommittee shall convene within 30 days of a Party's delivery of a written request to the other Party's contact point designated pursuant to paragraph 1, unless the Parties otherwise agree. The subcommittee shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or outside experts and 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 16.2.1 (a), the Party may request consultations pursuant to Article

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19.5 (Consultations) or under paragraph 1 of this Article.

- (a) If a Party requests consultations pursuant to 19.5 (Consultations) at a time when the Parties are engaged in consultations on the same matter under paragraph 1 of this Article or the subcommittee is endeavoring 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 19.5 (Consultations), no consultations may be entered into under this Article on the same matter.
- (b) If a Party requests consultations pursuant to 19.5 (Consultations) more than 60 days after delivery of a request for consultations under paragraph 1, the Parties may at any time agree to refer the matter to the Joint Committee pursuant to Article 19.6 (Dispute Settlement Procedures).

5. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 17.2.1(a).

ARTICLE 16.9: RELATIONSHIP TO ENVIRONMENTAL AGREEMENTS

The Parties recognize that multilateral environmental agreements to which they are both parties play an important role in protecting the environment globally and domestically and that implementation of these agreements at the national level is critical to achieving the environmental objectives of these agreements. Having regard to this, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are both parties and international trade agreements to which they are both parties. In particular, the Parties shall consult regularly with respect to negotiations in the WTO regarding multilateral environmental agreements.

ARTICLE 16.10: DEFINITIONS

For purposes of this Chapter,

environmental laws means any statute or regulation of a Party¹, or provision thereof, the primary purpose 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;

¹ For the United States, a **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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- (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 and fauna, including endangered species, their habitat, and specially protect 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.