

Draft as of January 27, 2004

Explanatory note by the Department of State: This draft Environmental Cooperation Agreement (ECA) has been negotiated in the context of, but is separate from, the U.S.-Central America Free Trade Agreement. This draft ECA represents the results of negotiations by delegations representing the Parties listed in the title below. This draft ECA is subject to further revision, and has not been signed by the Parties.

DRAFT AGREEMENT AMONG THE GOVERNMENTS OF THE UNITED STATES OF AMERICA, COSTA RICA, EL SALVADOR, GUATEMALA, HONDURAS, AND NICARAGUA ON ENVIRONMENTAL COOPERATION

The Governments of the United States of America, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua,

CONVINCED of the importance of promoting all possible forms of cooperation to protect, improve and conserve the environment, including natural resources, in the context of achieving their sustainable development objectives.

NOTING the existence of differences in the Parties' respective natural endowments, climatic, geographical, social, cultural and legal conditions and economic, technological and infrastructural capabilities,

RECOGNIZING the long and productive history of such cooperation among these six governments and the importance of implementing the Agreement in close coordination, where appropriate, with existing and future environmental agreements, accords, initiatives and mechanisms for cooperation between and among their countries,

EMPHASIZING the importance of building capacity to protect the environment in concert with the strengthening of trade and investment relations as reflected in the U.S. - Central America Free Trade Agreement ("FTA"),

ACKNOWLEDGING that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development and considering the need to augment institutional, professional and scientific capacity to achieve the objective of sustainable development for the well- being of present and future generations,

CONSIDERING that the broad participation of civil society is important for building effective cooperation to achieve sustainable development,

AFFIRMING their political will to further strengthen and demonstrate the importance attached by the governments to cooperation on environmental protection and the conservation of natural resources.

Have agreed as follows:

ARTICLE I – Short Title

The Agreement Among the Governments of the United States of America, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua on Environmental Cooperation may be referred to as the United States – Central America Environmental Cooperation Agreement (the “Agreement”).

ARTICLE II - Objective

The Governments of the United States of America, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (the “Parties”) agree to cooperate to protect, improve and conserve the environment, including natural resources. The objective of the Agreement is to establish a framework for such cooperation among the Parties. The Parties recognize the importance of both bilateral and regional cooperation to achieve this objective.

ARTICLE III: Modalities and Forms of Cooperation

Cooperation developed under the Agreement may occur through bilateral or regional capacity-building activities, consistent with Article 9 of Chapter Seventeen (Environment) of the FTA, on the basis of technical and/or financial assistance programs, including, but not limited to:

- (a) the exchange of delegations, professionals, technicians and specialists from the academic sector, nongovernmental organizations, industry and the governments, including study visits, to strengthen the development, implementation and assessment of environmental policies and standards;
- (b) the organization of joint conferences, seminars, workshops, meetings, training sessions and outreach and education programs;
- (c) the development of joint programs and actions, including technological and practical demonstrations, applied research projects, studies and reports;
- (d) the facilitation of partnerships, linkages or other new channels for the development and transfer of knowledge and technologies among representatives from academia, industry, intergovernmental and nongovernmental organizations, and government to promote the development and/or exchange of best practices and environmental information and data likely to be of interest to the Parties;
- (e) the collection, publication and exchange of information on environmental policies, laws, standards, regulations, indicators, national environmental programs and compliance and enforcement mechanisms; and
- (f) any other forms of environmental cooperation that may be agreed by the Parties.

ARTICLE IV – Establishment and Operation of the United States – Central America Environmental Cooperation Commission

1. The Parties shall establish a United States – Central America Environmental Cooperation Commission (the “Commission”), which shall be composed of government representatives, appointed by

each Party. The Commission shall be responsible for:

- (a) establishing priorities for cooperative activities under the Agreement;
- (b) developing a program of work as described in Article V below in accordance with those priorities;
- (c) examining and evaluating the cooperative activities under the Agreement;
- (d) making recommendations and providing guidance to the Parties on ways to improve future cooperation; and
- (e) undertaking such other activities that may be agreed by the Parties.

2. The Commission shall meet once a year in the country of the Party that is chairing the meeting. The first meeting of the Commission should take place within six months after the Agreement enters into force. The Chair of the Commission shall rotate annually among each of the Parties and shall be a high-level official designated by the Party hosting the meeting. An official from the Department of State of the United States of America shall chair the first meeting of the Commission. Thereafter, the Chair will rotate among officials designated by the Ministry of Environment and Energy in Costa Rica, the Ministry of Environment and Natural Resources in El Salvador, the Ministry of Environment and Natural Resources in Guatemala, the Ministry of Natural Resources and Environment in Honduras, and the Ministry of Environment and Natural Resources in Nicaragua. The Chair will continue to rotate among each of the Parties in this order unless the Commission decides otherwise. Each Party should ensure that its departments or ministries with an environmental mission play a role, either directly or indirectly, in the work of the Commission.

3. All decisions of the Commission shall be taken by consensus of the Parties. These decisions shall be made public, unless the Commission decides otherwise, or as otherwise provided in the Agreement.

4. Representatives of the Parties may meet between meetings of the Commission to analyze and promote the implementation of the Agreement and to exchange information on the progress of cooperative programs, projects and activities. Each Party shall identify a Coordinator from each of the departments or ministries identified in paragraph 2 above to serve as a general point of contact for cooperative work under the Agreement.

5. The Commission shall periodically inform the Environmental Affairs Council established under Article 5 of Chapter Seventeen (Environment) of the FTA of the status of cooperation activities developed under the Agreement.

ARTICLE V – Program of Work and Priority Cooperation Areas

1. The program of work developed by the Commission shall reflect national priorities for cooperative activities and shall be agreed upon by the Parties. The program of work may include long, medium and short-term activities related to:

- (a) strengthening each Party's environmental management systems, including reinforcing

institutional and legal frameworks and the capacity to develop, implement, administer and enforce environmental laws, regulations, standards and policies;

(b) the development and promotion of incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, including the development of market-based initiatives and economic incentives for environmental management;

(c) the fostering of partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;

(d) the conservation and management of shared, migratory, and endangered species in international commercial trade and management of marine parks and other protected areas;

(e) the exchange of information on the domestic implementation of multilateral environmental agreements which all the Parties have ratified;

(f) the promotion of best practices leading to sustainable management of the environment;

(g) facilitating technology development and transfer and training to promote the use, proper operation and maintenance of clean production technologies;

(h) the development and promotion of environmentally beneficial goods and services;

(i) building capacity to promote public participation in the process of environmental decision-making;

(j) the exchange of information and experiences among Parties wishing to perform environmental reviews, including reviews of trade agreements, at the national level; and

(k) any other environmental cooperation areas that may be agreed by the Parties.

2. In developing the cooperative programs, projects and activities, the Parties shall develop benchmarks or other types of performance measures to assist the Commission in its ability to examine and evaluate, pursuant to Article IV.1(c) above, the progress of specific cooperative programs, projects and activities in meeting their intended goals. The Commission should consider the extent to which the activities taken collectively are contributing to the fulfillment of the Parties' long-term national and/or regional environmental goals. As appropriate, the Commission may draw upon relevant benchmarks that have been established through other mechanisms.

3. As the Commission periodically examines and evaluates cooperative programs, projects and activities, it shall seek and consider input from relevant local, regional, or international organizations in how best to ensure that it is accurately monitoring their progress. Each Party shall periodically share with its public information regarding the progress of the cooperative activities.

4. In order to avoid duplication and to complement ongoing and future environmental cooperation that is continuing outside of the Agreement, the Commission shall endeavor to develop its program of

work in a way that is compatible with the environmental work of other organizations and initiatives in which the Parties have an interest, including the Central America-United States of America Joint Accord (CONCAUSA) and programs conducted by government agencies. As part of its program of work, the Commission shall seek to develop proposals and other means to complement and enhance the work of these organizations and initiatives.

5. The Commission may also include in its program of work regional environmental cooperative activities of particular interest to the Parties, or a subset of the Parties, in order to concentrate on an issue or achieve an objective that the Commission determines is not being fully addressed in other fora.

ARTICLE VI - Participation by the Public, Governmental Organizations and Other Institutions

1. Unless otherwise agreed, the Commission shall include a public session in the course of its regular meetings.

2. The Commission shall promote the development of opportunities for public participation in the development and implementation of cooperative environmental activities. Each Party shall solicit and take into account, as appropriate, the views of its public with respect to the program of work and should review and respond to such communications in accordance with its own domestic procedures. Each Party shall consider making available to the other Parties and to its public these communications.

3. In developing and implementing the program of work, the Commission should take into account the views and recommendations of the appropriate government agencies in each country as well as the Environment Affairs Council established by the FTA and other established regional mechanisms concerned with the environment.

4. The Commission shall encourage and facilitate, as appropriate, direct contacts and cooperation among government agencies, multilateral organizations, foundations, universities, research centers, institutions, nongovernmental organizations, firms and other entities of the Parties, and the conclusion of implementing arrangements among them for the conduct of cooperative activities under the Agreement.

ARTICLE VII - Bilateral Cooperation

To further promote environmental cooperation under the Agreement, each of the Central American Parties and the United States of America may pursue bilateral cooperative projects with each other in priority areas of shared interest. The Central American Parties may also choose to pursue bilateral projects with each other under the Agreement. Bilateral cooperation under the Agreement is intended to complement activities that are conducted outside of the Agreement.

ARTICLE VIII - Resources

1. All cooperative activities under the Agreement shall be subject to the availability of funds and human and other resources, and to the applicable laws and regulations, of the participating Parties.

2. In developing its program of work, the Commission should consider the mechanisms by which the cooperative activities may be financed and the adequate allocation of human, technological, material, and organizational resources that may be required for the effective implementation of the cooperation activities in accordance with the capacities of the Parties. The following funding mechanisms may be considered for environmental cooperation:

(a) cooperative activities jointly financed as agreed by the Parties;

(b) cooperative activities in which each institution, organization, or agency assumes the costs of its own participation; and

(c) cooperative activities financed, as appropriate, by private institutions, foundations, or public international organizations, including through ongoing programs.

4. Unless otherwise agreed, each Party shall assume the costs of its participation on the Commission and its work.

5. Each Party shall facilitate, in accordance with its laws and regulations, duty free entry for materials and equipment provided pursuant to cooperative activities provided for under the Agreement.

6. Commodities provided pursuant to cooperative activities provided for under the Agreement and acquired by the United States, its contractors, grantees, or by foreign governments or their agents where such commodities were financed with United States funds, shall be exempt from taxation, including value-added taxes (VAT) and customs duties. If such taxation is imposed, then the Central American Parties shall provide timely reimbursement to the Government of the United States of America or its agents. Commodities include any material, article, supplies, goods, or equipment. These same rules apply to all funds provided for under the Agreement, including grants, salaries and all monetary assistance.

ARTICLE IX - Equipment and Personnel

Each Party shall facilitate the entry of equipment and personnel related to the Agreement into its territory, subject to its laws and regulations.

ARTICLE X - Technical and Confidential Information and Intellectual Property

1. Except as provided below, all technical information obtained through the implementation of the Agreement will be available to the Parties.

2. The Parties do not foresee the creation of intellectual property under the Agreement. In the event that intellectual property that can be protected is created, the Parties shall consult to determine the allocation of the rights to that intellectual property.

3. In the event that a Party deems information confidential under its laws, or identifies information in a timely fashion as “business-confidential,” which is furnished or created under the Agreement, each Party

and its participants shall protect such information in accordance with their respective applicable laws, regulations, and administrative practices. Information may be identified as “business-confidential” if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

ARTICLE XI - Entry into Force, Withdrawal, Amendments

1. The Agreement shall enter into force when the Parties notify each other, through written diplomatic notes, of the completion of their respective internal requirements necessary for the entry into force of the Agreement. The date of last notification will be deemed to be the date of entry into force of the Agreement.
2. The Agreement shall remain in force indefinitely unless one of the Parties notifies the other Parties in writing of its desire to withdraw. Any Party may withdraw from the Agreement six months after written notification to the other Parties. Unless otherwise agreed, such withdrawal shall not affect the validity of any ongoing activities not fully completed at the time of termination, nor shall it affect the Agreement as it relates to the remaining Parties.
3. The Agreement may be amended by written mutual consent of the Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the Agreement.

DONE at _____, in six copies, this ___ day of _____, 2003 in the English and Spanish languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF COSTA RICA:

FOR THE GOVERNMENT OF EL SALVADOR:

FOR THE GOVERNMENT OF GUATEMALA:

FOR THE GOVERNMENT OF HONDURAS:

FOR THE GOVERNMENT OF NICARAGUA: