

**DRAFT**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**

**CHAPTER TWENTY**  
**ENVIRONMENT**

ARTICLE 20.1: LEVELS OF PROTECTION

Recognizing the right of each Party to establish its own levels of environmental protection and its own environmental development priorities, and to adopt or modify accordingly its environmental laws and 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 its respective levels of environmental protection, including through such environmental laws and policies.

ARTICLE 20.2: 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 its 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.
3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

ARTICLE 20.3: PROCEDURAL MATTERS

1. Each Party shall ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration, in accordance with its law.
2. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to provide sanctions or remedies for violations of its environmental laws and that persons with a recognized interest under its law in a particular matter have appropriate access to such proceedings.

**DRAFT**

**Subject to Legal Review for Accuracy, Clarity, and Consistency**

- (a) Each Party shall ensure in accordance with its law that such proceedings:
  - (i) are fair, equitable, and transparent and, to this end, comply with due process of law, and
  - (ii) are open to the public except where the administration of justice otherwise requires.
- (b) Tribunals that conduct or review such proceedings shall be impartial and independent and shall not have any substantial interest in the outcome of the matter.

3. Each Party shall provide persons with a recognized interest under its law in a particular matter effective access to remedies for violations of that Party's environmental laws or for violations of a legal duty under that Party's law relating to human health or the environment, which may include rights such as:

- (a) to sue another person under that Party's jurisdiction for damages;
- (b) to seek injunctive relief where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to that Party's jurisdiction;
- (c) to seek sanctions or remedies such as monetary penalties, emergency closures, temporary suspension of activities, or orders to mitigate the consequences of such violations; or
- (d) to request, or where applicable to request a tribunal to order, that Party's competent authorities to take appropriate action to enforce its environmental laws in order to protect the environment or to avoid environmental harm.

4. Each Party shall provide appropriate and effective sanctions or remedies for violations of that Party's environmental laws that:

- (a) take into consideration, as appropriate, 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
- (b) may include administrative, civil and criminal remedies and sanctions, such as compliance agreements, penalties, fines, imprisonment, injunctions, closure of facilities, and requirements to take remedial action or pay for damage to the environment including the cost of containing or cleaning up pollution.

**ARTICLE 20.4: MECHANISMS TO ENHANCE ENVIRONMENTAL PERFORMANCE**

1. The Parties recognize that flexible, voluntary and incentive-based mechanisms can contribute to the achievement and maintenance of high levels of environmental protection,

**DRAFT**

**Subject to Legal Review for Accuracy, Clarity, and Consistency**

complementing the procedures set out in Article 20.3. As appropriate and in accordance with its law, each Party shall encourage the development and use of such mechanisms, which may include:

- (a) mechanisms that facilitate voluntary action to protect or enhance the environment, such as:
    - (i) partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations;
    - (ii) voluntary guidelines for environmental performance; or
    - (iii) voluntary sharing of information and expertise among authorities, interested parties, and the public concerning methods for achieving high levels of environmental protection, voluntary environmental auditing and reporting, ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or
  - (b) incentives, including market-based incentives where appropriate, to encourage conservation, restoration, and protection of natural resources and the environment, such as public recognition of facilities or enterprises that are superior environmental performers, or programs for trading permits or other instruments to help achieve environmental goals.
2. As appropriate and feasible and in accordance with its law, each Party shall encourage:
- (a) the maintenance, development, or improvement of performance goals and standards used in measuring environmental performance; and
  - (b) flexible means to achieve such goals and meet such standards, including through mechanisms identified in paragraph one.

**ARTICLE 20.5: INSTITUTIONAL ARRANGEMENTS**

1. The Parties hereby establish an Environmental Affairs Council (Council). The Council shall comprise appropriate senior officials from each Party, including officials with environmental responsibilities.
2. The Council shall meet within the first year after the date of entry into force of this Agreement, and thereafter as necessary, to oversee the implementation of this Chapter. Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters related to the implementation of this Chapter, including input received from national advisory committees. The Council shall make public a written summary of discussions held during the public session.
3. The Council shall promote public participation in its work, including by seeking advice

**DRAFT**

**Subject to Legal Review for Accuracy, Clarity, and Consistency**

from the public in developing agendas for Council meetings and by engaging in a dialogue with the public on those issues.

4. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the environmental cooperation mechanism established by the Parties.

5. Formal decisions of the Council shall be made public, unless the Council decides otherwise.

**ARTICLE 20.6: OPPORTUNITIES FOR PUBLIC PARTICIPATION**

1. Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws and environmental law enforcement and compliance procedures, including procedures for its interested persons to request the Party's competent authorities to investigate alleged violations of its environmental laws.

2. Recognizing that opportunities for public participation can facilitate the sharing of best practices and the development of innovative approaches to issues of interest to the public, each Party shall:

- (a) seek to accommodate requests from persons of either Party for information or to exchange views regarding either Party's implementation of this Chapter; and
- (b) provide for the receipt of written submissions from persons of either Party that concern matters related to the implementation of specific provisions of this Chapter. Each Party shall respond to such submissions in accordance with domestic procedures. Each Party shall make such submissions and responses easily accessible to the public in a timely manner.

3. Each Party shall convene a new, or consult an existing, national advisory committee, comprising persons of the Party with relevant experience, which may include experience in business or environmental matters, to solicit its views on matters related to the implementation of this Chapter. Each time it meets, the Council shall consider input that each Party has received from its national advisory committee on matters related to the implementation of this Chapter.

4. The Parties recognize the importance of effective implementation of the provisions contained in this Chapter, as well as the other transparency provisions set out in this Agreement. The Council shall review the implementation of this Article and prepare a written report on such implementation for submission to the Joint Committee no later than 180 days after the first anniversary date of entry into force of this Agreement, and thereafter upon request of either Party. All such reports shall be made public when they are submitted to the Joint Committee.

**ARTICLE 20.7: ENVIRONMENTAL COOPERATION**

**DRAFT**

**Subject to Legal Review for Accuracy, Clarity, and Consistency**

1. The Parties recognize the importance of strengthening capacity to protect the environment and of promoting sustainable development in concert with strengthening their trade and investment relations.
2. The Parties are committed to expanding their cooperative relationship in bilateral, regional, and multilateral fora on environmental matters, recognizing such cooperation will help them achieve their shared environmental goals and objectives, including the development and improvement of environmental protection, practices, and technologies.
3. The Parties are committed to undertaking cooperative environmental activities pursuant to the Agreement between the Government of the United States of America and the Government of the Republic of Korea on Environmental Cooperation or ECA, including activities related to implementation of this Chapter. Activities that the Parties undertake pursuant to the ECA will be coordinated and reviewed by the implementation body established under the ECA. The Parties also acknowledge the importance of environmental cooperation activities in other fora.
4. Each Party shall consider public comments and recommendations it receives regarding cooperative environmental activities undertaken pursuant to this Chapter and the ECA.
5. The Parties shall, as appropriate, share information with each other and the public regarding their experiences in assessing and addressing the positive and negative environmental effects of trade agreements and policies.

ARTICLE 20.8: ENVIRONMENTAL CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point designated by the other Party for this purpose. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond. Unless the Parties agree otherwise, consultations shall commence promptly after a Party delivers a request for consultations to the other Party's contact point.
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 Council be convened to consider the matter. The Council shall convene promptly and shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or other experts and having recourse to such procedures as good offices, conciliation, or mediation.
4. If the matter concerns whether a Party is conforming to its obligations under Article 20.2.1(a), and the Parties have failed to resolve the matter within 60 days of the delivery of a request for consultations under paragraph 1, the complaining Party may request consultations under Article 22.7 (Consultations) or refer the matter to the Joint Committee pursuant to Article 22.8 (Referral to the Joint Committee) and, as provided in Chapter 22 (Institutional Issues and Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

**DRAFT**  
**Subject to Legal Review for Accuracy, Clarity, and Consistency**

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 20.2.1(a).

6. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 20.2.1(a) without first seeking to resolve the matter in accordance with this Article.

7. In cases where the Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement to which they are both party, they shall refer the matter for appropriate action in accordance with that agreement.

**ARTICLE 20.9: RELATIONSHIP TO MULTILATERAL ENVIRONMENTAL AGREEMENTS**

1. The Parties recognize that certain multilateral environmental agreements play an important role globally and domestically in protecting the environment. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of such 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 trade agreements to which they are both party.

2. To this end, the Parties shall consult, as appropriate, with respect to negotiations on environmental issues of mutual interest.

**ARTICLE 20.10: DEFINITIONS**

For purposes of this Chapter:

**environmental law** means any statute or regulation of a Party, 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;
- (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.

**DRAFT**

**Subject to Legal Review for Accuracy, Clarity, and Consistency**

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

For the Republic of Korea, **statute or regulation** means an act of the National Assembly or a regulation promulgated pursuant to an act of the National Assembly that is enforceable by action of the central level of government.