

Chapter 19

Environment

Article 19.01 Levels of Protection

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

Article 19.02 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 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.

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 19.03 Procedural Matters

1. Each Party shall ensure that judicial or administrative proceedings, in accordance with its law, are available to sanction or remedy violations of its environmental laws.

- (a) Such proceedings shall be fair, equitable, and transparent and, to this end, shall comply with due process of law and be open to the public, except where the administration of justice otherwise requires.
- (b) The parties to such proceedings shall be entitled to support or defend their respective positions, including by presenting information or evidence.
- (c) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:
 - (i) 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
 - (ii) may include criminal and civil remedies and sanctions such as compliance agreements, penalties, fines, injunctions, suspension of activities, and requirements to take remedial action or pay for damage to the environment.

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 each Party's competent authorities shall 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 proceedings referred to in paragraph 1.

4. Each Party shall provide appropriate and effective access to remedies, in accordance with its law, which may include rights such as:

- (a) to sue another person under that Party's jurisdiction for damages under that Party's laws;
- (b) to seek sanctions or remedies such as monetary penalties, emergency closures or temporary suspension of activities, or orders to mitigate the consequences of violations of its environmental laws;
- (c) to request 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; or

- (d) to seek injunctions 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 that is contrary to that Party's environmental laws or that violates a legal duty under that Party's law relating to human health or the environment.

5. Each Party shall ensure that tribunals that conduct or review proceedings referred to in paragraph 1 are impartial and independent and do not have any substantial interest in the outcome of the matter.

6. For greater certainty, nothing in this Chapter shall be construed to call for the examination under this Agreement of whether a Party's judicial or administrative tribunals have appropriately applied that Party's environmental laws.

Article 19.04 Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of environmental protection, complementing the procedures set out in Article 19.03. 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) 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 exchanging 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 indicators used in measuring environmental performance; and
- (b) flexibility in the means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

Article 19.05 Principles of Corporate Stewardship

Recognizing the substantial benefits brought by international trade and investment as well as the opportunity for enterprises to implement policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives, each Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both Parties.

Article 19.06 Environmental Affairs Committee

1. The Parties hereby establish an Environmental Affairs Committee comprising cabinet-level or equivalent representatives of the Parties, or their designees. Each Party shall designate an office in its appropriate ministry that shall serve as a contact point for carrying out the work of the Committee.

2. The Committee shall meet within the first year after the date of entry into force of this Agreement, and once every two years thereafter unless the Parties otherwise agree, to oversee the implementation of and review progress under this Chapter.

3. In order to share innovative approaches for addressing environmental issues of interest to the public, the Committee shall ensure a process for promoting public participation in its work, including by engaging in a dialogue with the public on those issues.

4. The Committee shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities.

Article 19.07 Opportunities for Public Participation

1. Each Party shall provide for the receipt and consideration of public communications on matters related to this Chapter. Each Party shall promptly make available to the other Party and to its public all communications it receives and shall review and respond to them in accordance with its domestic procedures.

2. Each Party shall make best efforts to accommodate requests by persons of that Party to exchange views with that Party regarding that Party's implementation of this Chapter.

3. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of

business and environmental organizations, to provide views on matters related to the implementation of this Chapter.

4. The Parties shall take into account public comments and recommendations regarding cooperative environmental activities undertaken pursuant to Article 19.08.

Article 19.08 Environmental Cooperation

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening trade and investment relations.

2. The Parties are committed to expanding their cooperative relationship, recognizing that cooperation is important for achieving their shared environmental goals and objectives, including the development and improvement of environmental protection, as set out in this Chapter.

3. The Parties recognize that strengthening their cooperative relationship on environmental matters can enhance environmental protection in their territories and may encourage increased trade and investment in environmental goods and services. The Parties have established an Environment Cooperation Mechanism (ECM) as set out in Annex 19.08.

Article 19.09 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 other Party.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter and information exchanged by the consulting Parties, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

Article 19.10 Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are party play an important role in protecting the environment globally and domestically and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. The Parties further recognize that this Chapter can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are party and trade agreements to which they are party.

2. For greater certainty, nothing in this Chapter shall be construed to affect the existing rights and obligations of the Parties under other international environmental agreements, including conservation agreements, to which such Parties are party.

Article 19.11 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 and 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.

For greater certainty, **environmental law** does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

For purposes of the definition of “environmental law,” 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; and

statute or regulation means:

- (a) for the Republic of Nicaragua, a law of its legislative body or a regulation promulgated pursuant to an act of its legislative body that is enforceable by the executive body; and
- (b) for the Republic of China (Taiwan), a law of its legislative body or a regulation promulgated pursuant to an act of its legislative body that is enforceable by the executive body.

Annex 19.08

Environmental Cooperation Mechanism

Shared objectives

1. The Parties recognize the importance of promoting all possible forms of cooperation to protect and improve the environment and to promote the optimal use, conservation and sustainable development of their natural resources, taking into consideration their respective levels of development, technologies and financial resources.
2. The Parties agree to cooperate to protect, improve and conserve the environment, including natural resources. The objective of the Environmental Cooperation Mechanism (ECM) is to establish a framework for such cooperation among the Parties. The Parties recognize the importance of bilateral cooperation to achieve this objective.

Modalities and Forms of Cooperation

3. Cooperation developed under the ECM may occur through capacity-building activities, consistent with Article 19.08, on the basis of technical and 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 conferences, seminars, workshops, meetings, training sessions and outreach and education programs;
 - (c) the development of 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;

- (f) financial assistance, as appropriate and mutually agreed, for research projects, biodiversity management and monitoring, wildlife species affected by trade, pollution, and hazardous and non hazardous waste treatment; and
- (g) any other forms of environmental cooperation that may be agreed by the Parties.

Organization and Principal Functions

4. The Parties working through the contact points established under Article 19.06.1 shall be responsible for:

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

5. The contact points shall meet once every two years in a country previously agreed upon by the Parties. The first meeting shall take place within six months after the Agreement enters into force.

6. The contact points may meet between the dates established in paragraph 5 to analyze and promote the implementation of the ECM and to exchange information on the progress of cooperative programs, projects and activities.

7. The contact points shall periodically inform the Environmental Affairs Committee established under Article 19.06, of the status of cooperation activities developed under the ECM.

Program of Work and Priority Cooperation Areas

8. The program of work developed by the contact points shall reflect the Party's priorities for cooperative activities. 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) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, conservation and the sustainable use of biodiversity, including the development of market-based initiatives and economic incentives for environmental management;
- (c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;
- (d) developing and promoting conservation and sustainable management systems for endangered species affected by international commercial trade;
- (e) developing and promoting conservation, research and management systems for protected areas;
- (f) developing and promoting conservation, restoration and research projects for coastal zones and ecosystems;
- (g) promoting best practices leading to sustainable management of the environment;
- (h) facilitating technology development and transfer and training to promote the use, proper operation and maintenance of clean production technologies;
- (i) developing and promoting environmental goods and services;
- (j) building capacity to promote public participation in the process of environmental decision-making;
- (k) exchanging information and experiences among Parties wishing to perform environmental reviews, including reviews of trade agreements, at the national level;
- (l) facilitating technology development, transfer and training on protection, conservation and preservation of basins and water bodies;
- (m) facilitating technology development and transfer and training on hazardous and non hazardous waste management;
- (n) facilitating technology development and transfer and assistance for research, monitoring and management of biodiversity and endangered species affected by international commercial trade; and
- (o) any other areas for environmental cooperation on which the Parties may agree.

9. In developing cooperative programs, projects and activities, the Parties shall develop benchmarks or other types of performance measures to assist the contact points in their ability to examine and evaluate the progress of specific cooperative programs, projects and activities in meeting their intended goals.

10. In developing its program of work, the Committee should consider the mechanisms by which 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 financed as agreed by one of the Parties;
- (c) non refundable cooperative activities jointly financed as agreed by the Parties; or
- (d) cooperative activities financed, as appropriate, by private institutions, foundations, or public international organizations, including through ongoing programs.

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

Public Participation

12. In identifying areas for environmental cooperation and capacity building, and in carrying out cooperative activities, each Party shall consider when appropriate the views of its nationals.