

AGREEMENT ON THE ENVIRONMENT

BETWEEN

CANADA

AND

THE REPUBLIC OF PERU

CANADA AND THE REPUBLIC OF PERU, hereinafter referred to as the “Parties”:

RECALLING their resolve in the *Free Trade Agreement between Canada and the Republic of Peru* to implement that Agreement in a manner that is consistent with environmental protection and conservation, and the sustainable use of their resources, and within that area to:

- (a) enhance and enforce environmental laws and regulations;
- (b) strengthen cooperation on environmental matters; and
- (c) promote sustainable development;

CONVINCED of the importance of the conservation, protection and enhancement of the environment in their territories and of the essential role of cooperation in these areas for achieving sustainable development for the well-being of present and future generations;

ACKNOWLEDGING the growing economic, environmental and social links between their countries through the creation of a free trade area;

RECALLING the Parties' commitment to pursue policies that promote sustainable development and sound environmental management; and

ACKNOWLEDGING the importance of transparency and public participation in the development of environmental laws and policies and with respect to environmental governance;

AGREE AS FOLLOWS:

Section I – Environmental Rights and Obligations

Article 1: Definitions

For purposes of this Agreement:

“**environment law**” means any statute or regulation, or provision thereof, of a Party, including legally binding instruments made pursuant to the above, the primary purpose of which is the protection of the environment, or the prevention of a danger to human 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 conservation of biological diversity, which includes the protection of wild flora or wildlife, endangered species and their habitat, and specially protected natural areas in the Party's territory and for the Republic of Peru which also includes the sustainable use of biological diversity;

but does not include any statute or regulation, or any provision thereof, directly related to worker health and safety or public health.

For greater clarity the term “environmental law” does not include any statute or regulation, or provision thereof, of which the primary purpose is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources;

“**indigenous and local communities**” means, for the Republic of Peru, those Native, Indigenous, Afro-American and local communities which are defined in Article 1 of Andean Decision 391 as a human group whose social, cultural and economic conditions distinguish it from other sectors of the national community, that is governed totally or partially by its own customs or traditions or by special legislation and that, irrespective of its legal status, conserves its own social, economic, cultural and political institutions or a part of them;

“**person**” means a natural person, or a legal person such as an enterprise or non-governmental organization incorporated pursuant to the laws of a Party;

“**province**” means a province of Canada, and includes the Yukon Territory, the Northwest Territories and Nunavut;

“**statute**” or “**regulation**” means:

- (a) for Canada: a statute or regulation or provision thereof, including legally binding instruments made pursuant to the above, enacted, made or issued at the federal level of government and by any province listed in a declaration provided by Canada under Annex II;

- (b) for the Republic of Peru: a law of Congress, or Decree or Resolution promulgated by the central level of government to implement a law of Congress, that is enforceable by action of the Central Level of government;

“territory” means:

- (a) with respect to Canada,
 - (i) the land territory, air space, internal waters and territorial sea;
 - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* of 10 December 1982 (UNCLOS); and
 - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;
- (b) with respect to the Republic of Peru, the mainland territory, the islands, the maritime zones and the air space above them, over which the Republic of Peru exercises sovereignty or sovereign rights and jurisdiction, in accordance with its domestic law and international law.

Article 2: General Provisions

1. Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection and its environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its environmental laws and policies provide for high levels of environmental protection and shall strive to continue to develop and improve those laws and policies.
2. Accordingly, and with the aim of achieving high levels of environmental protection, each Party shall effectively enforce, through government action, its environmental laws.
3. For the purpose of this Agreement, a Party has not failed to effectively enforce its environmental law in a particular case where the action or inaction in question by agencies or officials of that Party:
 - (a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or
 - (b) results from bona fide decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities.
4. Neither Party shall encourage trade or investment by weakening or reducing the levels of protection afforded in its environmental laws. Accordingly, neither Party shall waive or otherwise derogate from environmental laws in a manner that weakens or reduces the protections afforded in those laws to encourage trade or investment.

5. Each Party shall ensure that it maintains appropriate procedures for assessing the environmental impacts in accordance with domestic law and policy of proposed plans and projects, which may cause adverse effects on the environment, with a view to avoiding or minimizing such adverse effects.
6. The Parties shall encourage the promotion of the trade and investment of environmental goods and services.
7. Nothing in this Agreement shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.
8. The Parties affirm the importance of the *Convention on Biological Diversity*, done at Rio de Janeiro on 5 June, 1992 ("Convention on Biological Diversity"), and agree to work together to advance the objectives of that Convention.
9. Nothing in this Agreement shall be construed to affect the existing rights and obligations of either Party under other international environmental agreements to which such Party is a party.

Article 3: Availability of Proceedings and Procedural Standards

1. Each Party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available to provide sanctions or remedies for violations of its environmental law.
2. Each Party shall ensure that interested persons residing in or established in the territory of such Party may request the Party's competent authorities to investigate alleged violations of its environmental law and 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 covered by this Agreement shall have appropriate access to judicial, quasi-judicial and administrative proceedings for the enforcement of the Party's environmental law, and to remedies for violations of that law.

4. Each Party shall ensure that the proceedings in paragraphs 1 and 3 of Article 3 are fair, equitable and transparent, comply with due process of law and are open to the public, except where the administration of justice otherwise requires.

5. Each Party shall ensure that the parties to the proceedings are entitled to support or defend their respective positions and to present information or evidence, and that the decision is based on such information or evidence.

6. Each Party shall ensure that the final decisions on the merits in such proceedings are in writing, preferably state the reasons on which the decisions are based, and, without undue delay, are made available to the parties to the proceedings and in accordance with its law to the public.

7. Each Party shall further provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek, where warranted review and correction or redetermination, of final decisions in such proceedings.

8. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent, and do not have any substantial interest in the outcome of the matter.

Article 4: Public Information and Participation

1. Each Party shall promote public awareness of its environmental laws and policies by ensuring that information is available to the public regarding its environmental laws and policies, compliance and enforcement and procedures for interested persons to request a Party's competent authorities to investigate alleged violations of its environmental laws.
2. Each Party shall ensure that its laws, regulations, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner so as to enable interested persons to become acquainted with them.
3. In accordance with domestic law and policy, each Party shall ensure that its environmental assessment procedures provide for the disclosure of information to the public concerning proposed plans and projects subject to assessment and shall allow for public participation in such procedures.
4. Any person residing in or established in the territory of either Party may submit a written question to either Party, through its National Coordinating Officer, indicating that the question is being submitted regarding that Party's obligations pursuant to this Agreement. Such National Coordinating Officer shall receive, record and, when the question is directed to the other Party, send the question to the other National Coordinating Officer.
5. The Party to which such question is directed shall acknowledge the question in writing, and provide a response in a timely manner to the person and provide a copy to the National Coordinating Officer of the other Party.

6. Each Party shall make publicly available in a timely manner all questions and responses and shall report on an annual basis with respect to those questions and responses.
7. The Parties shall inform the public of activities, including meetings of the Parties and cooperative activities, undertaken to implement this Agreement.
8. The Parties shall endeavour to engage the public in activities undertaken to implement this Agreement.
9. The Parties shall strive to cooperate to strengthen public participation in all matters related to the implementation of this Agreement.

Article 5: Biological Diversity

1. The Parties recognize the importance of the conservation and sustainable use of biological diversity in achieving sustainable development and reiterate their commitment to promote the conservation and sustainable use of biological diversity.
2. The Parties also reiterate their commitment, as established by the *Convention on Biological Diversity*, to respect, preserve and maintain traditional knowledge, innovations and practices of indigenous and local communities that contribute to the conservation and sustainable use of biological diversity, subject to national legislation.
3. The Parties reiterate their sovereign rights over their natural resources and recognize their authority and obligations as established by the *Convention on Biological Diversity* with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilization of those genetic resources.

4. The Parties also recognize the importance of public participation and consultation, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity.

5. The Parties agree to cooperate on the conservation and sustainable use of biological diversity within the framework provided by Section II of this Agreement.

6. The Parties shall endeavour to cooperate in order to exchange relevant information regarding:

- (a) the conservation and sustainable use of biodiversity;
- (b) the avoidance of illegal access to genetic resources, traditional knowledge, innovations and practices; and
- (c) the equitable sharing of the benefits arising from the utilization of genetic resources and associated knowledge, innovations and practices.

Article 6: Corporate Social Responsibility

Recognizing the substantial benefits brought by international trade and investment, the Parties shall encourage voluntary best practices of corporate social responsibility by enterprises within their territories or jurisdictions, to strengthen coherence between economic and environment objectives.

Section II - Environmental Cooperation

Article 7: Cooperation

1. The Parties recognize that cooperation is an effective way to achieve the objectives of this Agreement and reaffirm their commitment to developing cooperation programs and activities to promote the achievement of these objectives.
2. The Parties agree to strive to strengthen their cooperation on environmental issues in other bilateral, regional and multilateral fora in which they participate.
3. In developing cooperation programs, the Parties may involve the public and interested stakeholders or any other entity as the Parties deem appropriate.
4. The Parties agree to identify priority areas for cooperative activities and to establish a work program which shall be prepared forthwith after the entry into force of this Agreement. The priority areas listed in Annex I to this Agreement shall be taken into account for the initial Work Program.
5. The Parties agree to make best efforts to find appropriate resources to effectively implement a Work Program. The Work Program could be implemented:
 - (a) through technical cooperation programmes under any modality decided by the Parties, including information sharing, exchange of experts and training; and/or

- (b) through financial cooperation for priority projects presented by the Parties.

The resources could come from, inter alia, public entities or agencies from the Parties, or when appropriate, from private institutions, foundations or international public organizations.

6. The Parties may cooperate with any State not party to this Agreement, where appropriate, to maximize available resources. Where appropriate, the Parties agree to cooperate to identify and to secure resources from external sources.

7. The Parties agree that the public should be informed of cooperative activities undertaken under this Agreement and engaged, as appropriate.

8. The Parties shall meet no later than one year after the entry into force of this Agreement and subsequently as agreed to review progress on cooperative activities. Such meetings shall be organized by the National Coordinating Officers.

Section III - Institutional Provisions

Article 8: Management of the Agreement

1. The Parties hereby establish a Committee on the Environment, comprising representatives of each Party.
2. The Committee shall consider and discuss progress on the implementation of this Agreement.
3. The Committee shall meet, for the first time, no later than one year following the entry into force of this Agreement and subsequently as mutually agreed.
4. The Committee shall prepare a summary record of the meetings unless otherwise agreed and shall prepare reports on the activities related to the implementation of this Agreement when they consider appropriate. Such reports may address, among other things:
 - (a) Actions taken by each Party further to its obligations pursuant to this Agreement; and
 - (b) Cooperative activities undertaken pursuant to this Agreement.
5. Summary records and reports shall be made public, unless otherwise agreed by the Parties.

Article 9: National Coordinating Officer

Each Party shall designate a National Coordinating Officer within the appropriate agency/ministry that shall serve as the official point of contact. The Parties shall inform each other by diplomatic note of such designation and shall make such information available to the public.

Article 10: Review

1. No later than the fifth year after the date of its entry into force, the Committee shall consider undertaking a major review of the Agreement with a view to improving its operation and effectiveness. Further reviews may be agreed to by the Parties.
2. The Committee may provide for the participation of the public in the review process.
3. As part of this review, the Committee may consider further developments in respect of this Agreement and may present recommendations to the Parties for their consideration and action as appropriate.
4. The Parties shall make the results of any major review public.

Article 11: Information Exchange

A Party shall promptly provide any information regarding any environmental measure to the other Party, upon receiving a written request from that other Party.

Article 12: Dispute Resolution

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement.
2. The Parties shall make every attempt, through consultations and the exchange of information with an emphasis on cooperation to address any matter that might affect the interpretation and application of this Agreement.
3. Either Party may request consultations with the other Party regarding any matter arising under this Agreement by delivering a written request to the National Coordinating Officers that the other Party has designated.
4. If the Parties fail to resolve the matter through the National Coordinating Officers, a Party may request in writing consultations to be carried out by:
 - (a) For Canada, the Minister of the Environment;
 - (b) For the Republic of Peru, the Minister of the Environment;or their delegates/successors.

The purpose of the consultations shall be to seek a mutually agreed solution to the matter.

5. The Party that is the object of the request shall respond expeditiously. The consultations shall begin within thirty days after the receipt of the written request, unless the Parties agree otherwise.

6. Neither Party may provide for a right of action under its law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement.

Article 13: Application to the Provinces

The application of this Agreement to the provinces of Canada is subject to Annex II.

Article 14: Annexes

The Annexes to this Agreement form an integral part of this Agreement.

Article 15: Protection of Information

Nothing in this Agreement shall be construed to require a Party to release information that would be otherwise prohibited or exempt from disclosure under its laws and regulations, including those concerning access to information and privacy.

Article 16: Amendments

The Parties may agree in writing on any amendment or addition to this Agreement including its Annexes. Such amendment or addition shall come into force on such date or dates as may be agreed between the Parties and shall constitute an integral part of this Agreement.

Article 17: Termination

1. This Agreement may terminate upon the mutual written consent of the Parties and upon such conditions and within such timeframes as may be mutually agreed upon.

2. In the event of the termination of the *Free Trade Agreement between Canada and the Republic of Peru* either Party may unilaterally, with 60 days written notice to the other Party, terminate this Agreement.

Article 18: Entry into Force

Each Party shall notify the other Party in writing of the completion of the domestic procedures required for the entry into force of this Agreement. This Agreement shall enter into force from the date of the second of these notifications or the date that the *Free Trade Agreement between Canada and the Republic of Peru* enters into force, whichever is later.

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

DONE in duplicate at _____, this _____ day of _____ 2008,
in the English, French and Spanish languages, each version being equally authentic.

FOR CANADA

FOR THE REPUBLIC OF PERU

Annex I

Priority Areas for Cooperation

The priority areas identified by the Republic of Peru for consideration in the initial Work Program include, among others:

- (a) Environmental risk management;
- (b) Integrated water management;
- (c) Conservation *in situ* and *ex situ* of biodiversity;
- (d) Sustainable use of natural resources;
- (e) Restoration of degraded ecosystems;
- (f) Promotion of production and trade of environmental-friendly goods and services;
- (g) Air, soil and waters pollution prevention management and control;
- (h) Integrated solid waste management;
- (i) Integrated chemical contaminants and hazardous wastes management;
- (j) Systematizing of environmental information;
- (k) Environmental citizenship and education;

- (l) National institutional strengthening including:
 - (i) surveillance program of living natural resources;
 - (ii) Information system of living natural resources;
 - (iii) Information system on the environment;
 - (iv) Surveillance program for the monitoring and tracking of genetic resources;
 - (v) Monitoring and alert system of genetically modified organisms;
- m) Harmonization and rationalization of the knowledge and information management, including coastal desert ecosystems and Andean grassland ecosystems;
- n) Forests management; and
- o) Use and development of clean technologies.

Annex II

Application to the Provinces of Canada

1. Following the entry into force of this Agreement, Canada shall provide to the Republic of Peru a written declaration indicating any provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration shall be effective on delivery to the Republic of Peru.
2. Canada shall use its best efforts to make this Agreement applicable to as many provinces as possible.
3. Canada shall notify the Republic of Peru six months in advance of any modification to its declaration.