

AGREEMENT ON THE ENVIRONMENT

BETWEEN

CANADA

AND

THE REPUBLIC OF PANAMA

PREAMBLE

CANADA and **THE REPUBLIC OF PANAMA** (“Panama”), hereinafter referred to as “the Parties”:

NOTING their resolve to enter into the *Free Trade Agreement between Canada and the Republic of Panama* (“Canada-Panama FTA”) in a manner that is consistent with environmental protection and conservation;

NOTING FURTHER their resolve to enhance and enforce environmental laws and regulations, strengthen their cooperation on environmental matters, and promote sustainable development;

CONVINCED of the importance of the conservation, protection and enhancement of the environment in their territories;

AFFIRMING the *Rio Declaration on Environment and Development* of 1992, the *Johannesburg Declaration on Sustainable Development*, and the United Nations Millennium Development Goals;

AFFIRMING the Parties’ objective to pursue policies that promote sustainable development and sound environmental management and the need for the mutual reinforcement of trade and environmental policies;

AFFIRMING the sovereign right of States to exploit their own resources in accordance with their own environmental and development policies and their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

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

ACKNOWLEDGING that it is inappropriate to relax environmental laws in order to encourage trade and investment;

RECOGNIZING the importance of encouraging voluntary practices of corporate social responsibility within their territories or jurisdictions to advance coherence between environmental and economic objectives;

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

RECOGNIZING that enhanced cooperation amongst the Parties brings benefits which can promote sustainable development, strengthen the environmental governance of the Parties and build on international environmental agreements;

AGREE as follows:

PART ONE

DEFINITIONS

Article 1: Definitions

1. For purposes of this Agreement:

“administrative ruling of general application” means an administrative ruling or interpretation applying to all persons and fact situations falling generally within its ambit and establishing a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice;

“environmental laws” means statutory or regulatory provisions of a Party, including legally binding instruments made pursuant to such provisions, 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,
- (c) the conservation and protection of wild flora or wildlife, including endangered species, their habitat, and specially protected natural areas in the Party’s territory, and

(d) for the Republic of Panama, 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, and does not include any statute or regulation, or provisions thereof, for which the primary purpose is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources;

“**persistent pattern**” means a sustained or recurring course of action or inaction beginning after the date of entry into force of this Agreement;

“**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 Yukon, the Northwest Territories and Nunavut;

“**territory**” means:

(a) with respect to Canada,

- (i) the land territory, air space, internal waters and territorial sea of Canada,
- (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 Panama, the land, maritime, and air space under its sovereignty; the exclusive economic zone, and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with its domestic law and international law.

2. It is understood that a Party has not failed to “**effectively enforce its environmental laws**” in a particular case where the action or inaction in question by agencies or officials of that Party:

(a) reflects a reasonable exercise of 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 priority.

PART TWO

OBJECTIVES

Article 2: Objectives

The objectives of this Agreement are to:

- (a) foster conservation, protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
- (b) promote sustainable development through environmental and economic policies that are mutually supportive;
- (c) promote cooperation between the Parties on the development and improvement of environmental governance;
- (d) enhance compliance with, and enforcement of, environmental laws;
- (e) complement and support the environment-related provisions of the Canada-Panama FTA;
- (f) promote transparency and public participation in the conservation, protection and improvement of the environment, including in the development of environmental laws and policies;
- (g) encourage public participation in the implementation of this Agreement;
and
- (h) promote economically efficient and effective environmental measures.

PART THREE

DOMESTIC OBLIGATIONS

Article 3: Levels of Protection

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 and the environmental governance that supports them.

Article 4: Compliance with and Enforcement of Environmental Laws

1. With the aim of achieving high levels of environmental protection, each Party shall effectively enforce, through government action, its environmental laws.
2. Each Party shall ensure that violations of its environmental laws can be remedied or sanctioned under its law through judicial, quasi-judicial or administrative proceedings.

Article 5: Non-derogation

A Party shall not waive, or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protections afforded in those laws to encourage trade or investment.

Article 6: Environmental Assessment

1. Each Party shall ensure that it maintains appropriate procedures for assessing the environmental impact of proposed projects which may cause significant adverse effects on the environment with a view to avoiding or minimizing such adverse effects.

2. Each Party shall ensure that its environmental assessment procedures provide for the disclosure of information to the public concerning proposed projects subject to assessment and, in accordance with its laws, shall allow for public participation in such procedures.

Article 7: Public Information

1. 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 so that interested persons can become acquainted with them.

2. Each Party shall publish or otherwise make available in advance, to the extent possible, any such law or regulation that it proposes to adopt, so that the other Party or interested persons can provide comments.

Article 8: Private Access to Remedies

1. 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 laws and shall give such requests due consideration, in accordance with its domestic law.

2. Each Party shall ensure that persons with a legally recognized interest in a particular matter under its environmental laws have appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws, and to remedies for violations of those laws.

Article 9: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in Article 8(2) are fair, equitable and transparent and to this end shall provide that such proceedings:

- (a) are conducted by impartial and independent persons who do not have an interest in the outcome of the matter, 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 this information or evidence;
- (b) are open to the public, except where the administration of justice otherwise requires;
- (c) entitle the parties to the proceedings to support or defend their respective positions and to present information or evidence; and
- (d) are not unnecessarily complicated and do not entail unreasonable fees or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in these proceedings are:

- (a) in writing and preferably state the reasons on which the decisions are based;
- (b) made available without undue delay to the parties to the proceedings and, in accordance with its domestic law, to the public; and
- (c) based on information or evidence presented by the parties.

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

4. 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 10: 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 biodiversity, 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 use 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 shall endeavour to cooperate on the conservation and sustainable use of biological diversity as identified in Annex II.

6. The Parties shall also endeavour to cooperate in exchanging 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 benefits arising from the use of genetic resources and associated knowledge, innovations and practices.

Article 11: 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 environmental objectives.

Article 12: Measures to Enhance Environmental Performance

1. The Parties recognize that voluntary and incentive-based measures can enhance environmental performance and contribute in achieving and maintaining environmental protection, complementing regulatory measures under environmental laws. In accordance with its law and policy, each Party shall promote the development and use of such measures.
2. In accordance with its law and policy, each Party shall promote the development, establishment, maintenance or improvement of performance goals and standards used in measuring environmental performance.

Article 13: National Coordinating Officer

Each Party shall designate an official within the appropriate agency or ministry to serve as the National Coordinating Officer. The Parties shall inform each other by diplomatic note of such designation within six months of the entry into force of this Agreement and shall make such information available to the public.

PART FOUR

ACCOUNTABILITY

Article 14: Public Information and Accountability

1. A person residing or established in the territory of either Party may submit a written question to either Party through the National Coordinating Officer, indicating that the question is being submitted pursuant to this Article regarding a Party's obligations under Part Three of this Agreement or cooperative activities developed pursuant to this Agreement.
2. The Party receiving the question shall acknowledge the question in writing, forward the question to the appropriate authority and provide a response in a timely manner.
3. Where the question is submitted to the Party that is not the Party of the person's residence or establishment, the responding Party shall in a timely manner provide to the other Party copies of the question and its response.
4. Each Party shall in a timely manner make publicly available all of the questions it receives and its responses to those questions.

Article 15: Party-to-Party Information Exchange

1. On the request of the other Party, a Party shall promptly provide information on any proposed or actual environmental measure and, as promptly as is reasonably possible, shall respond to any questions of the other Party pertaining to any such environmental measure.
2. A Party may notify the other Party of, and provide to that Party, any credible information regarding possible violations of, or failures to effectively enforce its environmental laws. This information should be specific and sufficient to allow the other Party to inquire into the matter. The notified Party shall take appropriate steps to inquire and to respond to the other Party, in accordance with its laws.

PART FIVE

ENVIRONMENTAL COOPERATION

Article 16: Cooperative Activities

1. The Parties recognize that cooperation is an effective way to achieve the objectives and fulfill the obligations under this Agreement. Accordingly, and subject to the availability of appropriate financial resources, the Parties may develop programs of cooperative activities based on regional and national priorities.
2. The Parties agree to strive to strengthen their cooperation on environmental issues in other bilateral, regional and multilateral for a in which they participate.
3. The Parties may involve the public and interested stakeholders or any other entity that 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 without delay after the entry into force of this Agreement. The priority areas listed in Annex II to this Agreement shall be considered 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 may be implemented:
 - (a) through technical cooperation programs in accordance with terms decided by the Parties, including information sharing, exchange of experts and training; and

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

The resources may 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. When 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 decided to review progress on cooperative activities. These meetings shall be organized by the National Coordinating Officer.

PART SIX

IMPLEMENTATION

Article 17: Management of this Agreement

1. The Parties hereby establish a Committee on the Environment, composed of representatives of each Party. The Committee shall be responsible for the implementation of this Agreement.
2. The Committee shall meet for the first time no later than one year after the entry into force of this Agreement and subsequently as mutually decided.
3. The Committee shall consider and discuss progress on the implementation of this Agreement. Canada shall notify the Committee of any declaration provided to Panama under paragraph 1 of Annex III of this Agreement.
4. The Committee shall prepare a summary record of the meetings unless otherwise decided and shall prepare reports and recommendations on the activities related to the implementation of this Agreement as appropriate. Copies of the reports and any recommendations will be submitted to the Joint Commission, established under the Canada-Panama FTA, for its consideration. Such reports may address, among other things:
 - (a) actions taken by a Party further to its obligations under this Agreement;
 - (b) cooperative activities undertaken in accordance with this Agreement;
 - (c) recommendations to update Annex 1.06 – Multilateral Environmental Agreements of the Canada – Panama FTA.
5. Summary records and reports of the Committee meetings shall be made public, unless otherwise decided by the Parties.

Article 18: Review

1. The Committee shall consider undertaking a review of the implementation of this Agreement with a view to improving its operation and effectiveness within five years of the date of its entry into force.
2. The Committee may provide for the participation of the public and independent experts 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.
4. The Parties shall make the results of the review public.

Article 19: Public Engagement

1. Each Party shall inform the public of activities, including meetings of the Parties and cooperative activities, undertaken to implement this Agreement.
2. Each Party shall endeavour to engage the public in activities undertaken to implement this Agreement.

PART SEVEN

GENERAL PROVISIONS

Article 20: Enforcement

This Agreement shall not be construed to empower a Party's authorities to undertake enforcement activities under its environmental laws in the territory of another Party.

Article 21: Private Rights

A Party shall not provide for a right of action under its domestic law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement.

Article 22: Protection of Information

This Agreement shall not 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 23: Relation to Other Environmental Agreements

This Agreement shall not 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 24: Dispute Resolution

1. The Parties shall at all times endeavour to concur 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 operation of this Agreement.

3. A Party may request consultations with the other Party through the Committee on the Environment regarding any matter arising under this Agreement by delivering a request in writing to the National Coordinating Officer of the other Party. Upon receipt, the National Coordinating Officer shall forward the request for consultations to the Committee.

4. If the Parties fail to resolve the matter through the Committee, the requesting Party may request in writing consultations with the other Party at a Ministerial level regarding any obligation under this Agreement. The Party receiving the request shall respond expeditiously. Ministerial consultations shall be concluded within 120 days of receiving the request unless the Parties decide otherwise.

5. Following the conclusion of the Ministerial consultations, the requesting Party may request that a Review Panel be convened if it considers the consultations have not satisfactorily addressed the matter and that:

(a) there is a persistent pattern of failure by the other Party to effectively enforce its environmental laws; or

(b) there is a breach of Article 5.

6. A Party shall not request a Review Panel in the three-year period following the date of entry into force of this Agreement.

7. The Review Panel shall be established with specific terms of reference provided by the Parties, and function in accordance with Annex I and the Model Rules of Procedure.

8. If the Review Panel determines that there has been a persistent pattern of failure by the Party that was the object of the request to effectively enforce its environmental laws or that there has been a breach of the obligation set out in Article 5, the Parties may decide on a mutually satisfactory action plan to implement the Panel's recommendations. Any action plan decided by the Parties shall be made public without delay.

Article 25: Application to the Provinces

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

Article 26: Annexes

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

PART EIGHT

FINAL PROVISIONS

Article 27: Entry into Force

Each Party shall notify the other Party in writing when the domestic procedures required for the entry into force of this Agreement have been completed. This Agreement shall enter into force on the date of the second of these notifications or the date that the Canada-Panama FTA enters into force, whichever is later.

Article 28: Amendments

The Parties may amend this Agreement in writing at any time. Such amendment shall come into force following the procedure for entry into force of this Agreement in Article 27.

Article 29: Termination

1. The Parties may terminate this Agreement by mutual consent in writing.
2. In the event of the termination of the Canada-Panama FTA, a Party may terminate this Agreement by written notice to the other Party. This Agreement shall terminate 60 days following the date of this notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

DONE in duplicate at _____, this _____ day of _____ 2010,
in the English, French and Spanish languages, each version being equally authentic.

FOR CANADA

**FOR THE REPUBLIC
OF PANAMA**

ANNEX I

DISPUTE RESOLUTION

Review Panel Process

Initial Report

1. The Review Panel shall submit to the Parties an initial report within 120 days of the date the last panellist is selected, or as otherwise decided by the Parties.
2. Such report shall contain:
 - (a) findings of fact;
 - (b) the Review Panel's determination as to whether there has been a persistent pattern of failure by the Party to effectively enforce its environmental laws or whether there has been a breach of Article 5; and
 - (c) in the event of a positive determination under subparagraph (b), its recommendations to resolve the matter.

Final Report

3. The Parties may provide comments on the report within 60 days of the presentation of the initial report.
4. The Review Panel shall submit the final report to the Ministers within 30 days of receiving comments from the Parties.
5. Each Party shall publish the final report within 60 days after it is submitted to the Ministers.

Criteria for Selecting Panel Review

6. A Review Panel shall be composed of three panellists to be appointed by the Parties.

7. Panellists shall:
 - (a) be chosen based on their expertise in environmental matters or other appropriate disciplines, as well as on their objectivity, reliability and sound judgment;
 - (b) be independent of, and not be affiliated with or take instructions from, either Party; and
 - (c) comply with a code of conduct to be established by the Parties.
8. If either Party believes that a panellist has violated the code of conduct, the Parties shall consult and, if they so decide, the panellist shall be removed and a new panellist shall be selected in accordance with the procedures set out below. The time limit listed in paragraph 1 shall run from the date of their decision to remove the panellist.
9. Individuals may not serve as panellists for a review in which they have, or a person or organization with which they are affiliated has an interest.
10. The chair shall not be a national of either Party.

Panel Selection Procedures

11. For purposes of selecting a Review Panel, the following procedures shall apply:
 - (a) within 20 days of receiving the request to establish a Review Panel, each Party shall select one panellist;
 - (b) if one Party fails to select its panellist within such period, the other Party shall select the panellist from among qualified individuals who are nationals of the Party that failed to select its panellist;

- (c) the following procedures shall apply to the selection of the chair:
 - (i) the Party that is the subject of the request shall provide the requesting Party with the names of three qualified candidates. The names shall be provided within 20 days of receiving the request to establish the Review Panel,
 - (ii) the requesting Party may choose one of the individuals to be the chair or, if the names were not provided or none of the individuals are acceptable, provide the Party that is the subject of the request with the names of three individuals who are qualified to be the chair. Those names shall be provided no later than five days after receiving the names under subparagraph (i) or 25 days after the receipt of the request for the establishment of the Review Panel,
 - (iii) the Party that is the subject of the request may choose one of the three individuals to be the chair within five days of receiving the names under subparagraph (ii), failing which the Parties shall immediately request the President of the International Court of Justice to appoint a chairperson within 25 days.

Model Rules of Procedure

12. The Parties shall, no later than one year after the entry into force of this Agreement, establish Model Rules of Procedure, which shall be used to establish and conduct proceedings under Article 24. Unless the Parties otherwise decide, the Panel shall perform its functions according to the Model Rules of Procedure and shall ensure that:

- (a) each Party has the opportunity to provide written and oral submissions to the Review Panel;

- (b) non-governmental organizations, institutions, and persons with relevant information or expertise in the Parties' territories have the opportunity to provide written submissions to the Review Panel; and
- (c) at least one hearing is held before the panel for each set of Review Panel proceedings, which shall be open to the public, subject to Article 22.

13. The Parties shall establish a separate budget for each set of panel proceedings under Article 24.

ANNEX II

ENVIRONMENTAL COOPERATION

Modalities and Forms of Cooperation

Cooperation developed under this Agreement may occur through bilateral and regional capacity building activities and related instruments, on the basis of technical and financial assistance programs, including:

- (a) the exchange of delegations, professionals, technicians and specialists from the academic sector, non-governmental organizations, and public and private sectors; and the facilitation of partnerships for the development and transfer of knowledge and technologies to promote the development of environmental best practices;
- (b) the joint development of programs, conferences, seminars, workshops and actions to strengthen environmental policies;
- (c) the exchange of information on environmental policies, laws, standards, regulations, indicators, national environmental programs, environmental reviews of trade agreements, compliance and enforcement mechanisms; and
- (d) any other form of environmental cooperation that may be decided by the Parties.

Work Program and Priority Cooperation Areas

The work program developed by the Committee on the Environment shall reflect national priorities of the Parties, and may include:

- (a) strengthening each Party's capacity building and environmental management systems, including reinforcing institutional and legal frameworks;

- (b) developing and promoting 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) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;
- (d) conserving and managing species that are shared, migratory, endangered, or subject to international commercial trade;
- (e) managing marine and terrestrial parks and other protected areas;
- (f) conserving *in situ* and *ex situ* biodiversity at the national level;
- (g) promoting best practices leading to sustainable development;
- (h) facilitating technology development, transfer and training to promote the use, proper operation and maintenance of cleaner production technologies;
- (i) promoting environmentally beneficial goods and services;
- (j) strengthening each Party's capacity to implement and enforce obligations under the agreements listed in Annex 1.06 – Multilateral Environmental Agreement of the Canada –Panama FTA; and
- (k) any other areas for environmental cooperation on which the Parties may concur.

ANNEX III

APPLICATION TO THE PROVINCES OF CANADA

1. Following the entry into force of this Agreement, Canada shall provide to Panama through diplomatic channels a written declaration indicating any Provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration shall become effective on the date of receipt by Panama.
2. Canada shall endeavour to make this Agreement applicable to as many provinces as possible.
3. Canada shall notify Panama six months in advance of any modification to its declaration.
4. Canada may not request information or send a notification under Article 15, or request consultations under Article 24, at the instance of the government of a province not included in the declaration made under paragraph 1.