

CHAPTER NINETEEN
ENVIRONMENT

ARTICLE 19.1 : LEVELS OF PROTECTION

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

ARTICLE 19.2 : 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 their respective 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.

ARTICLE 19.3 : PROCEDURAL GUARANTEES AND PUBLIC AWARENESS

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings for the enforcement of its environmental laws are fair, equitable, transparent, and provide for appropriate administrative and procedural protections in accordance with its laws.
2. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial, quasi-judicial, or administrative proceedings for the enforcement of the Party's environmental laws.

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3. Each Party shall provide remedies to ensure the effective enforcement of its environmental laws. The Parties recognize a variety of activities can contribute to enforcement of environmental laws.
4. Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws and enforcement and compliance procedures, including procedures for interested persons to request the Party's competent authorities to investigate alleged violations of its environmental laws. A Party may use a variety of means available for this purpose, such as publishing information and notices in official bulletins and the mass media, publishing and distributing information manuals, undertaking compliance assistance programs, conducting meetings, and making information available through the Internet.
5. For greater certainty, nothing in this Chapter shall be construed as calling for the examination, under this Agreement, of whether a Party's court has appropriately applied that Party's environmental laws.

ARTICLE 19.4 : MEASURES TO ENHANCE ENVIRONMENTAL PERFORMANCE

The Parties recognize that flexible, voluntary and market-based mechanisms can contribute to the achievement and maintenance of high levels of environmental protection. As appropriate and in accordance with its law, each Party shall encourage the development of such mechanisms, which may include partnerships, sharing of information, and market-based mechanisms that encourage the protection of natural resources and the environment.

ARTICLE 19.5 : INSTITUTIONAL ARRANGEMENTS

1. The role of the Joint Committee established under Chapter 21 (Institutional Arrangements and Dispute Settlement) shall include discussion of matters related to the operation of this Chapter and the pursuit of the environmental objectives of this Agreement. The Joint Committee may establish a subcommittee on environmental affairs comprising government officials of each Party to meet at such times as such officials deem appropriate to discuss matters related to the operation of this Chapter. Meetings of the subcommittee shall normally include a public session.
2. Each Party shall provide an opportunity for its public to advise on the implementation of this Chapter, which may include national advisory committees, and shall make available related views, recommendations or advice it receives to the other Party and, as appropriate, the public in accordance with its domestic procedures.
3. All formal decisions of the Parties concerning the operation of this Chapter shall be made public, unless the Joint Committee decides otherwise.

ARTICLE 19.6 : ENVIRONMENTAL COOPERATION

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with the strengthening of bilateral trade and investment relations. Toward this end, the Parties acknowledge the importance of ongoing joint bilateral, regional, and multilateral environmental

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activities. The Parties agree to negotiate a United States–Australia Joint Statement on Environmental Cooperation under which the Parties will explore ways to support further these ongoing activities.

2. The Parties shall, as appropriate, share information with each other and the public on their experiences in assessing and taking into account positive or negative environmental effects of trade agreements and policies.

3. Each Party shall take into account, as appropriate, public comments and recommendations it receives regarding ongoing cooperative environmental activities being undertaken by the Parties.

ARTICLE 19.7 : ENVIRONMENTAL CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. Unless the Parties agree otherwise, consultations shall commence within 30 days of a Party's delivery of a request for consultations to the contact point designated by the other Party for this purpose.

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 subcommittee described in Article 19.5 be convened to consider the matter. If the subcommittee has not yet been established, the Parties shall establish it expeditiously. The subcommittee shall convene within 30 days of a Party's delivery of a written request to the other Party's contact point, unless the Parties agree otherwise. The subcommittee shall endeavour to resolve the matter expeditiously, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

4. If a Party considers that the other Party has failed to carry out its obligations under Article 19.2.1(a), the Party may request consultations pursuant to Article 21.5 (Consultations) or under paragraph 1 of this Article.

(a) If a Party requests consultations pursuant to Article 21.5 at a time when the Parties are engaged in consultations on the same matter under paragraph 1 of this Article or the subcommittee is endeavouring to resolve the matter under paragraph 3, the Parties shall discontinue their efforts to resolve the matter under this Article. Once consultations have begun under Article 21.5, no consultations may be entered into under this Article on the same matter.

(b) If a Party requests consultations pursuant to Article 21.5 more than 60 days after the delivery of a request for consultations under paragraph 1, the Parties may at any time agree to refer the matter to the Joint Committee pursuant to Article 21.6 (Referral of Matters to the Joint Committee).

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5. Articles 21.2 (Scope of Application) and 21.5 (Consultations) shall not apply to a matter arising under any provision of this Chapter other than Article 19.2.1(a).

ARTICLE 19.8 : RELATIONSHIP TO ENVIRONMENTAL AGREEMENTS

The Parties recognize that multilateral environmental agreements to which they are both parties 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. Having regard to this, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are both parties and international trade agreements to which they are both parties. In particular, the Parties shall consult regularly with respect to negotiations in the WTO regarding multilateral environmental agreements.

ARTICLE 19.9 : DEFINITIONS

For the purposes of this Chapter:

1. **environmental law** means any statute or regulation of a Party, or provision thereof, the primary purpose¹⁹⁻¹ 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.

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

¹⁹⁻¹ For the purposes of this Article, 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. A particular provision whose primary purpose is not the protection of the environment or the prevention of a danger to human, animal, or plant life or health is not an environmental law as defined by this Article.