

Chapter Nineteen

Environment

Objectives

The objectives of this Chapter are to contribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive and to collaboratively promote the optimal use of resources in accordance with the objective of sustainable development; and to strive to strengthen the links between the Parties' trade and environment policies and practices to further the trade expanding goals of this Agreement, including through promoting non-discriminatory measures, avoiding disguised barriers to trade, and eliminating trade distortions where the result can directly benefit both trade and the 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 policies and priorities, and to adopt or modify accordingly its environmental laws, each Party shall ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

Article 19.2: 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 19.3: Environment Affairs Council

1. The Parties hereby establish an Environment Affairs Council comprising cabinet-level or equivalent representatives of the Parties, or their designees. The Council shall meet once a year, or more often if the Parties agree, to discuss the implementation of, and progress under, this Chapter. Meetings of the Council shall include a public session, unless the Parties otherwise agree.

2. In order to share innovative approaches for addressing environmental issues of interest to the public, the Council shall ensure a process for promoting public participation in its work, including by seeking advice from the public in developing agendas for Council meetings and by engaging in a dialogue with the public on those issues.

3. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the United States - Chile Environmental Cooperation Agreement, as set out in Annex 19.3.

4. All decisions of the Council shall be taken by mutual agreement and shall be made public, unless the Council decides otherwise, or as otherwise provided in this Agreement.

Article 19.4: 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 respond favorably to requests for consultations by persons or organizations in its territory regarding the Party's implementation of this Chapter.

3. Each Party may convene, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, and other persons, to advise it on the implementation of this Chapter.

Article 19.5: Environmental Cooperation

1. The Parties recognize the importance of strengthening capacity to protect the environment and promote sustainable development in concert with strengthening trade and investment relations between them. The Parties agree to undertake cooperative environmental activities, in particular through:

- (a) pursuing, through their relevant ministries or agencies, the specific cooperative projects that the Parties have identified and set out in Annex 19.3; and
- (b) promptly negotiating a United States – Chile Environmental Cooperation Agreement to establish priorities for further cooperative environmental activities, as elaborated in Annex 19.3,

while recognizing the ongoing importance of environmental cooperation undertaken outside this Agreement.

2. Each Party shall take into account public comments and recommendations it receives regarding cooperative environmental activities the Parties undertake pursuant to this Chapter.

3. The Parties shall, as they deem appropriate, share information on their experiences in assessing and taking into account positive or negative environmental effects of trade agreements and policies.

Article 19.6: 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 Parties shall consult promptly after delivery of the request. The requesting Party shall provide specific and sufficient information in the request for the other Party to respond.

3. 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 in order to fully examine the matter at issue.

4. If the Parties fail to resolve the matter through consultations, either Party may request that the Council be convened to consider the matter by delivering a written request to the other Party.

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the matter concerns whether a Party is conforming to its obligations under Article 19.2(1)(a), and the Parties have failed to resolve the matter within 60 days of a request for consultations under paragraph 1, the complaining Party may request consultations under Article 22.4 (Consultations) or a meeting of the Commission under Article 22.5 (Commission - Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty-Two (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

7. The Council may, where appropriate, provide information to the Commission regarding any consultations held on the matter.

8. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 19.2(1)(a).

9. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 19.2(1)(a) without first pursuing resolution of the matter in accordance with this Article.

10. In cases where the Parties agree that a matter arising under this Chapter is more properly covered by another agreement to which the Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

Article 19.7: Environment Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of at least 12 individuals who are willing and able to serve as panelists in disputes arising under Article 19.2(1)(a). Unless the Parties otherwise agree, four members of the roster shall be selected from among individuals who are non-Party nationals. Environment roster members shall be appointed by mutual agreement of the Parties, and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.

2. Environment roster members shall:

- (a) have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade agreements;

- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
 - (c) be independent of, and not affiliated with or take instructions from, either Party; and
 - (d) comply with a code of conduct to be established by the Commission.
3. Where a Party claims that a dispute arises under Article 19.2(1)(a), Article 22.9 (Panel Selection) shall apply, except that:
- (a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2; and
 - (b) if the Parties cannot so agree, each Party may select panelists meeting the qualifications set out in paragraph 2 or in Article 22.8 (Qualifications of Panelists).

Article 19.8: Procedural Matters

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to sanction or remedy violations of its environmental laws.
- (a) Such proceedings shall be fair, open, and equitable, 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) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:
 - (i) take into consideration 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 compliance agreements, penalties, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.
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 the competent authorities 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 judicial, quasi-judicial, or administrative proceedings for the enforcement of the Party's environmental laws.

4. Each Party shall provide persons appropriate and effective rights of access to remedies in accordance with its laws, which may include the right:

- (a) to sue another person under that Party's jurisdiction for damages under that Party's environmental laws;
- (b) to seek sanctions or remedies such as monetary penalties, emergency closures, or orders to mitigate the consequences of violations of its environmental laws;
- (c) to request the competent authorities to take appropriate action to enforce the Party's 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 under that Party's jurisdiction contrary to that Party's environmental laws or from tortious conduct that harms human health or the environment.

Article 19.9: Relationship to Environmental Agreements

The Parties recognize the importance of multilateral environmental agreements, including the appropriate use of trade measures in such agreements to achieve specific environmental goals. Recognizing that in paragraph 31(i) of the *Ministerial Declaration adopted on November 14, 2001 in Doha*, WTO members have agreed to negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements, the Parties shall consult on the extent to which the outcome of the negotiations applies to this Agreement.

Article 19.10: 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 19.11: 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 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 the Party's territory, 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.

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.

For the United States, **territory** means its territory as set out in Annex 2.1 as well as other areas with respect to which it exercises sovereignty, sovereign rights, or jurisdiction.

Annex 19.3

Environmental Cooperation

1. Recognizing that cooperation on environmental matters provides enhanced opportunities to improve the environment and to advance common commitments on sustainable development, the Parties agree, pursuant to Article 19.5(1)(a) of this Agreement, to pursue, through their relevant ministries or agencies, the following cooperative projects identified during the negotiation of this Agreement:

- (a) *Developing a Pollutant Release and Transfer Register (PRTR) in Chile.* The PRTR is a publicly available database of chemicals that have been released to air, water and land or transferred off-site for further waste management. In developing the register, the Parties will cooperate and draw on lessons learned from other PRTR projects. Industrial facilities will report annually on the amounts of chemicals they have released or transferred and the final destination of those chemicals. Reported data will be made publicly available;
- (b) *Reducing Mining Pollution.* The United States will assist Chile in reducing contamination and pollution resulting from past mining practices by working with Chile to identify sources of pollution and explore cost-effective remediation methods;
- (c) *Improving Environmental Enforcement and Compliance Assurance.* The Parties will provide training and exchange of information to enhance each Party's capacity to enforce its environmental laws and regulations, and will develop and strengthen their cooperative relationships to promote compliance, enforcement, and environmental performance;
- (d) *Sharing Private Sector Expertise.* The Parties will seek to increase environmental stewardship by inviting enterprises of each Party to share their experiences in developing and implementing programs that have reduced pollution, including, where appropriate, demonstrating the financial benefits of these measures;
- (e) *Improving Agricultural Practices.* To help reduce pollution from agricultural practices in Chile, the Parties will adapt and implement a training program for Chilean farmers and other workers to promote appropriate handling of chemical pesticides and fertilizers, and to promote sustainable agriculture practices. The Parties will work jointly to modify existing training programs to fit Chilean agricultural practices and customs;

- (f) *Reducing Methyl Bromide Emissions.* To mitigate methyl bromide emissions the Parties will seek to develop effective alternatives to that chemical, which Chile and the United States have committed to phase out under the *Montreal Protocol on Substances That Deplete the Ozone Layer*;
- (g) *Improving Wildlife Protection and Management.* To protect wildlife in Chile and the Latin American region, the Parties will work together to build capacity to promote the management and protection of biological resources in the region, such as by collaborating with universities and providing programs for wildlife managers, other professionals and local communities in Chile and the region;
- (h) *Increasing the use of cleaner fuels.* The Parties will work to improve the environmental quality of fuels, especially diesel fuel and gasoline, used in their territories by providing joint training and technical assistance on a variety of fuels-related environmental issues. The Parties will publicize the benefits of this work.

2. The Parties shall pursue additional cooperative environmental activities under a United States – Chile Environmental Cooperation Agreement, as set out in Article 19.5(1)(b), and in other fora.

- (a) In negotiating the Cooperation Agreement, the Parties have agreed to take into account public input regarding priority areas for bilateral cooperation;
- (b) The Cooperation Agreement will, *inter alia*:
 - (i) establish any institutional framework needed to coordinate the various elements of the Cooperation Agreement;
 - (ii) establish procedures for the development of periodic work programs that set priorities for cooperative activities;
 - (iii) provide for consultation and review, at regular intervals, of the work program for those cooperative activities;
 - (iv) create appropriate opportunities for the public to participate in the development of new cooperative activities and the implementation of agreed activities;
 - (v) encourage the exchange of information on the Parties' environmental policies, laws, and practices;

- (vi) promote the understanding and effective implementation of multilateral environmental agreements to which both Parties are party;
- (vii) promote the collection and publication of comparable information on the Parties' environmental regulations, indicators, and enforcement activities; and
- (viii) provide for regular consultation with the Environment Affairs Council established in Article 19.3 (Environment Affairs Council) regarding the priorities that the Parties identify, as well as future cooperative work.

3. Cooperation under the Cooperation Agreement may include work in the following fields of activity:

- (a) improving capacity to achieve environmental compliance assurance, including enforcement and voluntary environmental stewardship;
- (b) encouraging small- and medium-size enterprises to adopt sound environmental practices and technologies;
- (c) developing public-private partnerships to achieve environmental objectives;
- (d) promoting sustainable management of environmental resources, including wild fauna and flora, and protected wild areas;
- (e) exploring environmental activities pertinent to trade and investment and the improvement of environmental performance;
- (f) developing and implementing economic instruments for environmental management.

4. The Parties may implement cooperative activities under the Cooperation Agreement by:

- (a) exchanging professionals, technicians, and specialists, including through study visits, to promote the development of environmental policies and standards;
- (b) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

- (c) supporting, developing, and implementing collaborative projects and demonstrations, including joint research projects, studies, and reports;
- (d) facilitating linkages among representatives from academia, industry, and government to promote exchange of scientific and technical information and best practices, and the development and implementation of cooperative projects; and
- (e) engaging in other activities, that the Parties may undertake pursuant to the Cooperation Agreement.

5. The Parties recognize that the funding, scope, and duration of the projects listed in paragraph 1 and cooperative activities pursued under the Cooperation Agreement will be undertaken in accordance with the Parties' personnel and financial resources.

6. The Parties shall make publicly available information regarding the projects and activities they undertake pursuant to this Annex.