

CHAPTER SEVENTEEN ENVIRONMENT

Objectives

The objectives of this Chapter are to contribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive, to 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 environmental policies and practices, including through environmental cooperation activities aimed at capacity building.

ARTICLE 17.1: LEVELS OF PROTECTION

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

ARTICLE 17.2: 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. Each Party recognizes 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 17.3: ENVIRONMENTAL COOPERATION

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

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

3. The Parties are committed to undertaking cooperative environmental activities, in particular those involving their relevant government agencies, pursuant to a United States-Morocco Joint Statement on Environmental Cooperation ("Joint Statement") developed by the Parties, and in other fora. Activities undertaken pursuant to the Joint Statement shall be coordinated and reviewed by the Working Group on Environmental Cooperation or any other such entity established thereunder for this purpose, in accordance with the Joint Statement.

4. The Parties shall consider establishing additional cooperative mechanisms, as appropriate, including an agreement on environmental cooperation, taking into account relevant regional cooperative initiatives.

5. The Parties recognize the continuing importance of environmental cooperation in other fora.

6. Each Party shall, as appropriate, share information with the other Party and the public regarding its experience in assessing and taking into account the positive and negative environmental effects of trade agreements and policies. In addition, each Party may share its experience related to the implementation of this Chapter, including experience related to incentives and voluntary mechanisms set out in Article 17.5.

7. The Parties recognize that strengthening their cooperative relationship on environmental matters can encourage increased bilateral trade and investment in environmental goods and services.

ARTICLE 17.4: 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, equitable, and transparent and, to this end, shall be open to the public, except where the administration of justice otherwise requires, and shall comply with due process of law.
 - (b) Each Party shall provide appropriate and effective sanctions or remedies 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, 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 its competent authorities give such requests due consideration in accordance with its law.
3. Each Party shall provide for appropriate access by persons with a legally recognized interest under its law in a particular matter 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 the right:
 - (a) to sue a person subject to the Party's jurisdiction for damages under its 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 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 the Party's jurisdiction that is contrary to the Party's environmental laws or that constitutes tortious conduct that harms human health or the environment.

ARTICLE 17.5: COMPLEMENTARY 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 high levels of environmental protection, complementing the procedures set out in Article 17.4. As appropriate and in accordance with its law, each Party shall encourage the development 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 government agencies, 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, enhancement, 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 or trading permits, credits, or other instruments to help achieve environmental goals efficiently.

2. As appropriate, and in accordance with its law, each Party shall encourage:
 - (a) the development and improvement of performance goals and standards used in measuring environmental performance; and
 - (b) flexible means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

ARTICLE 17.6: OPPORTUNITIES FOR PUBLIC PARTICIPATION

1. Recognizing that opportunities for public participation can facilitate the sharing of best practices and the development of innovative approaches to issues of interest to the public, each Party shall ensure that procedures exist for dialogue with its public concerning the implementation of this Chapter, including opportunities for its public to:

- (a) suggest matters to be discussed at the meetings of the Joint Committee or, if a subcommittee on environmental affairs has been established pursuant to Article 19.2 (Joint Committee), meetings of the subcommittee; and
- (b) provide, on an ongoing basis, views, recommendations, or advice on matters related to the implementation of this Chapter. Each Party shall make these views, recommendations, or advice available to the other Party and the public.

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

3. Each Party shall make best efforts to respond favorably to requests for discussions by persons of the Party regarding its implementation of this Chapter.

4. Each Party shall take into account, as appropriate, public comments and recommendations it receives regarding cooperative environmental activities undertaken pursuant to the Joint Statement.

ARTICLE 17.7: 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 contact point designated by the other Party for this purpose. The Parties shall begin consultations promptly after delivery of the request.

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, and if a subcommittee on environmental affairs has been established pursuant to Article 19.2 (Joint Committee), either Party may refer the matter to the subcommittee by delivering a written notification to the other Party's contact point. The subcommittee shall convene within 30 days after a Party delivers a notification, unless the Parties agree otherwise. If the Joint Committee has not established the subcommittee by the date a Party delivers a notification, it shall do so during the 30-day period described in this paragraph. The subcommittee shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or non-governmental experts and by 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 17.2.1(a), the Party may request consultations under paragraph 1 or pursuant to Article 20.5 (Consultations).

(a) If a Party requests consultations pursuant to Article 20.5 at a time when the Parties are engaged in consultations on the same matter under paragraph 1 or the subcommittee is endeavoring 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 20.5, no consultations on the same matter may be entered into under this Article.

(b) If a Party requests consultations pursuant to Article 20.5 more than 60 days after delivery of a request for consultations under paragraph 1, the Parties may agree at any time to refer the matter to the Joint Committee pursuant to Article 20.6 (Referral to the Joint Committee).

5. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 17.2.1(a).

ARTICLE 17.8: RELATIONSHIP TO ENVIRONMENTAL AGREEMENTS

1. The Parties recognize that multilateral environmental agreements to which they are both party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements.

2. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are both party and trade agreements to which they are both party. The Parties shall consult regularly with respect to negotiations in the WTO regarding multilateral environmental agreements and on the extent to which the outcome of those negotiations may affect this Agreement.

ARTICLE 17.9: 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 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; and

statute or regulation means:

- (a) for Morocco, *dahir*, an act of the Moroccan Parliament, decree, or administrative regulation; and
- (b) for the United States, an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.