

CHAPTER TWENTY-FOUR

Trade and environment

Article 24.1

Definition

For the purposes of this Chapter:

environmental law means a law, including a statutory or regulatory provision, or other legally binding measure of a Party, the purpose of which is the protection of the environment, including the prevention of a danger to human life or health from environmental impacts, such as those that aim at:

- (a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,
- (b) the management of chemicals and waste or the dissemination of information related thereto, or
- (c) the conservation and protection of wild flora or fauna, including endangered species and their habitats, as well as protected areas,

but does not include a measure of a Party solely related to worker health and safety, which is subject to Chapter Twenty-Three (Trade and Labour), or a measure of a Party the purpose of which is to manage the subsistence or aboriginal harvesting of natural resources.

Article 24.2

Context and objectives

The Parties recognise that the environment is a fundamental pillar of sustainable development and recognise the contribution that trade could make to sustainable development. The Parties stress that enhanced cooperation to protect and conserve the environment brings benefits that will:

- (a) promote sustainable development;
- (b) strengthen the environmental governance of the Parties;
- (c) build upon international environmental agreements to which they are party; and
- (d) complement the objectives of this Agreement.

Article 24.3

Right to regulate and levels of protection

The Parties recognise the right of each Party to set its environmental priorities, to establish its levels of environmental protection, and to adopt or modify its laws and policies accordingly and in a manner consistent with the multilateral environmental agreements to which it is party and with this Agreement. Each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve such laws and policies and their underlying levels of protection.

Article 24.4

Multilateral environmental agreements

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment policies, rules, and measures.

2. Each Party reaffirms its commitment to effectively implement in its law and practices, in its whole territory, the multilateral environmental agreements to which it is party.
3. The Parties commit to consult and cooperate as appropriate with respect to environmental issues of mutual interest related to multilateral environmental agreements, and in particular, trade-related issues. This commitment includes exchanging information on:
 - (a) the implementation of multilateral environmental agreements, to which a Party is party;
 - (b) on-going negotiations of new multilateral environmental agreements; and
 - (c) each Party's respective views on becoming a party to additional multilateral environmental agreements.
4. The Parties acknowledge their right to use Article 28.3 (General exceptions) in relation to environmental measures, including those taken pursuant to multilateral environmental agreements to which they are party.

Article 24.5

Upholding levels of protection

1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in their environmental law.
2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental law, to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory.
3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental law to encourage trade or investment.

Article 24.6

Access to remedies and procedural guarantees

1. Pursuant to the obligations in Article 24.5:
 - (a) each Party shall, in accordance with its law, ensure that its authorities competent to enforce environmental law give due consideration to alleged violations of environmental law brought to its attention by any interested persons residing or established in its territory; and
 - (b) each Party shall ensure that administrative or judicial proceedings are available to persons with a legally recognised interest in a particular matter or who maintain that a right is infringed under its law, in order to permit effective action against infringements of its environmental law, including appropriate remedies for violations of such law.
2. Each Party shall, in accordance with its domestic law, ensure that the proceedings referred to in subparagraph 1(b) are not unnecessarily complicated or prohibitively costly, do not entail unreasonable time limits or unwarranted delays, provide injunctive relief if appropriate, and are fair, equitable and transparent, including by:
 - (a) providing defendants with reasonable notice when a proceeding is initiated, including a description of the nature of the proceeding and the basis of the claim;
 - (b) providing the parties to the proceeding with a reasonable opportunity to support or defend their respective positions, including by presenting information or evidence, prior to a final decision;

- (c) providing that final decisions are made in writing and give reasons as appropriate to the case and based on information or evidence in respect of which the parties to the proceeding were offered the opportunity to be heard; and
- (d) allowing the parties to administrative proceedings an opportunity for review and, if warranted, correction of final administrative decisions within a reasonable period of time by a tribunal established by law, with appropriate guarantees of tribunal independence and impartiality.

Article 24.7

Public information and awareness

1. In addition to Article 27.1 (Publication), each Party shall encourage public debate with and among non-state actors as regards the development and definition of policies that may lead to the adoption of environmental law by its public authorities.
2. Each Party shall promote public awareness of its environmental law, as well as enforcement and compliance procedures, by ensuring the availability of information to stakeholders.
3. Each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns. Each Party shall inform its respective civil society organisations of those communications through the consultative mechanisms referred to in Article 24.13.5.

Article 24.8

Scientific and technical information

1. When preparing and implementing measures aimed at environmental protection that may affect trade or investment between the Parties, each Party shall take into account relevant scientific and technical information and related international standards, guidelines, or recommendations.
2. The Parties acknowledge that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Article 24.9

Trade favouring environmental protection

1. The Parties are resolved to make efforts to facilitate and promote trade and investment in environmental goods and services, including through addressing the reduction of non-tariff barriers related to these goods and services.
2. The Parties shall, consistent with their international obligations, pay special attention to facilitating the removal of obstacles to trade or investment in goods and services of particular relevance for climate change mitigation and in particular trade or investment in renewable energy goods and related services.

Article 24.10

Trade in forest products

1. The Parties recognise the importance of the conservation and sustainable management of forests for providing environmental functions and economic and social opportunities for present and future generations, and of market access for forest products harvested in accordance with the law of the country of harvest and from sustainably managed forests.

2. To this end, and in a manner consistent with their international obligations, the Parties undertake to:
 - (a) encourage trade in forest products from sustainably managed forests and harvested in accordance with the law of the country of harvest;
 - (b) exchange information, and if appropriate, cooperate on initiatives to promote sustainable forest management, including initiatives designed to combat illegal logging and related trade;
 - (c) promote the effective use of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington on 3 March 1973, with regard to timber species considered at risk; and
 - (d) cooperate, where appropriate, in international *fora* that deal with the conservation and sustainable management of forests.
3. The Parties shall discuss the subjects referred to in paragraph 2, in the Committee on Trade and Sustainable Development or in the Bilateral Dialogue on Forest Products referred to in Chapter Twenty-Five (Bilateral Dialogues and Cooperation), in accordance with their respective spheres of competence.

Article 24.11

Trade in fisheries and aquaculture products

1. The Parties recognise the importance of the conservation and the sustainable and responsible management of fisheries and aquaculture and their contribution to providing environmental, economic and social opportunities for present and future generations.
2. To this end, and in a manner consistent with their international obligations, the Parties undertake to:
 - (a) adopt or maintain effective monitoring, control and surveillance measures, such as observer schemes, vessel monitoring schemes, transshipment control, inspections at sea, port state control, and associated sanctions, aimed at the conservation of fish stocks and the prevention of overfishing;
 - (b) adopt or maintain actions and cooperate to combat illegal, unreported and unregulated ('IUU') fishing, including, where appropriate, the exchange of information on IUU activities in their waters and the implementation of policies and measures to exclude IUU products from trade flows and fish farming operations;
 - (c) cooperate with, and where appropriate in, regional fisheries management organisations in which the Parties are either members, observers, or cooperating non-contracting parties, with the aim of achieving good governance, including by advocating for science-based decisions and for compliance with those decisions in these organisations; and
 - (d) promote the development of an environmentally responsible and economically competitive aquaculture industry.

Article 24.12

Cooperation on environment issues

1. The Parties recognise that enhanced cooperation is an important element to advance the objectives of this Chapter, and commit to cooperate on trade-related environmental issues of common interest, in areas such as:
 - (a) the potential impact of this Agreement on the environment and ways to enhance, prevent, or mitigate such impact, taking into account any impact assessment carried out by the Parties;
 - (b) activity in international *fora* dealing with issues relevant for both trade and environmental policies, including in particular the WTO, the OECD, the United Nations Environment Programme, and multilateral environmental agreements;
 - (c) the environmental dimension of corporate social responsibility and accountability, including the implementation and follow-up of internationally recognised guidelines;

- (d) the trade impact of environmental regulations and standards as well as the environmental impact of trade and investment rules including on the development of environmental regulations and policy;
 - (e) trade-related aspects of the current and future international climate change regime, as well as domestic climate policies and programmes relating to mitigation and adaptation, including issues relating to carbon markets, ways to address adverse effects of trade on climate, as well as means to promote energy efficiency and the development and deployment of low-carbon and other climate-friendly technologies;
 - (f) trade and investment in environmental goods and services, including environmental and green technologies and practices; renewable energy; energy efficiency; and water use, conservation and treatment;
 - (g) cooperation on trade-related aspects of the conservation and sustainable use of biological diversity;
 - (h) promotion of life-cycle management of goods, including carbon accounting and end-of-life management, extended producer-responsibility, recycling and reduction of waste, and other best practices;
 - (i) improved understanding of the effects of economic activity and market forces on the environment; and
 - (j) exchange of views on the relationship between multilateral environmental agreements and international trade rules.
2. Cooperation further to paragraph 1 shall take place through actions and instruments that may include technical exchanges, exchanges of information and best practices, research projects, studies, reports, conferences and workshops.
3. The Parties will consider views or input from the public and interested stakeholders for the definition and implementation of their cooperation activities, and they may involve such stakeholders further in those activities, as appropriate.

Article 24.13

Institutional mechanisms

1. Each Party shall designate an office to serve as contact point with the other Party for the implementation of this Chapter, including with regard to:
- (a) cooperative programmes and activities in accordance with Article 24.12;
 - (b) the receipt of submissions and communications under Article 24.7.3; and
 - (c) information to be provided to the other Party, the Panel of Experts, and the public.
2. Each Party shall inform the other Party, in writing, of the contact point referred to in paragraph 1.
3. The Committee on Trade and Sustainable Development established under Article 26.2.1(g) (Specialised committees) shall, through its regular meetings or dedicated sessions comprising participants responsible for matters covered under this Chapter:
- (a) oversee the implementation of this Chapter and review the progress achieved under it;
 - (b) discuss matters of common interest; and
 - (c) discuss any other matter within the scope of this Chapter as the Parties jointly decide.
4. The Parties shall take into account the activities of relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations or bodies.

5. Each Party shall make use of existing, or establish new, consultative mechanisms, such as domestic advisory groups, to seek views and advice on issues relating to this Chapter. These consultative mechanisms shall comprise independent representative organisations of civil society in a balanced representation of environmental groups, business organisations, as well as other relevant stakeholders as appropriate. Through such consultative mechanisms, stakeholders may submit opinions and make recommendations on any matter related to this Chapter on their own initiative.

Article 24.14

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 of the other Party. The Party shall present the matter clearly in the request, identify the questions at issue, and provide a brief summary of any claims under this Chapter. Consultations must commence promptly after a Party delivers a request for consultations.

2. During consultations, each Party shall provide the other Party with sufficient information in its possession to allow a full examination of the matters raised, subject to its law regarding the protection of confidential or proprietary information.

3. If relevant, and if both Parties consent, the Parties shall seek the information or views of any person, organisation, or body, including the relevant international organisation or body, that may contribute to the examination of the matter at issue.

4. If a Party considers that further discussion of the matter is required, that Party may request that the Committee on Trade and Sustainable Development be convened to consider the matter by delivering a written request to the contact point of the other Party. The Committee on Trade and Sustainable Development shall convene promptly and endeavour to resolve the matter. If appropriate, it shall seek the advice of the Parties' civil society organisations through the consultative mechanisms referred to in Article 24.13.5.

5. Each Party shall make publicly available any solution or decision on a matter discussed under this Article.

Article 24.15

Panel of Experts

1. For any matter that is not satisfactorily addressed through consultations under Article 24.14, a Party may, 90 days after the receipt of the request for consultations under Article 24.14.1, request that a Panel of Experts be convened to examine that matter, by delivering a written request to the contact point of the other Party.

2. Subject to the provisions of this Chapter, the Parties shall apply the Rules of Procedure and Code of Conduct set out in Annexes 29-A and 29-B, unless the Parties decide otherwise.

3. The Panel of Experts is composed of three panellists.

4. The Parties shall consult with a view to reaching an agreement on the composition of the Panel of Experts within 10 working days of the receipt by the responding Party of a request for the establishment of a Panel of Experts. Due attention shall be paid to ensuring that proposed panellists meet the requirements set out in paragraph 7 and have the expertise appropriate to the particular matter.

5. If the Parties are unable to decide on the composition of the Panel of Experts within the period of time specified in paragraph 4, the selection procedure set out in paragraphs 3 through 7 of Article 29.7 (Composition of the arbitration panel) applies in respect of the list established in paragraph 6.

6. The Committee on Trade and Sustainable Development shall, at its first meeting after the entry into force of this Agreement, establish a list of at least nine individuals chosen for their objectivity, reliability, and sound judgment, who are willing and able to serve as panellists. Each Party shall name at least three individuals to the list to serve as panellists. The Parties shall also name at least three individuals who are not nationals of either Party and who are willing and able to serve as chairperson of a Panel of Experts. The Committee on Trade and Sustainable Development shall ensure that the list is always maintained at this level.

7. The experts proposed as panellists must have specialised knowledge or expertise in environmental law, issues addressed in this Chapter, or in the resolution of disputes arising under international agreements. They must be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to the matter in issue. They must not be affiliated with the governments of either Party, and must comply with the Code of Conduct referred to in paragraph 2.

8. Unless the Parties otherwise decide, within five working days of the date of the selection of the panellists, the terms of reference of the Panel of Experts are as follows:

‘to examine, in the light of the relevant provisions of Chapter Twenty-Four (Trade and Environment), the matter referred to in the request for the establishment of the Panel of Experts, and to deliver a report in accordance with Article 24.15 (Panel of Experts) of Chapter Twenty-Four (Trade and Environment), that makes recommendations for the resolution of the matter’.

9. In respect of matters related to multilateral environmental agreements as set out in Article 24.4, the Panel of Experts should seek views and information from relevant bodies established under these agreements, including any pertinent available interpretative guidance, findings, or decisions adopted by those bodies ⁽¹⁾.

10. The Panel of Experts shall issue to the Parties an interim report and a final report setting out the findings of fact, its determinations on the matter, including as to whether the responding Party has conformed with its obligations under this Chapter and the rationale behind any findings, determinations and recommendations that it makes. The Panel of Experts shall deliver to the Parties the interim report within 120 days after the last panellist is selected, or as otherwise decided by the Parties. The Parties may provide comments to the Panel of Experts on the interim report within 45 days of its delivery. After considering these comments, the Panel of Experts may reconsider its report or carry out any further examination that it considers appropriate. The Panel of Experts shall deliver the final report to the Parties within 60 days of the submission of the interim report. Each Party shall make the final report publicly available within 30 days of its delivery.

11. If the final report of the Panel of Experts determines that a Party has not conformed with its obligations under this Chapter, the Parties shall engage in discussions and shall endeavour, within three months of the delivery of the final report, to identify an appropriate measure or, if appropriate, to decide upon a mutually satisfactory action plan. In these discussions, the Parties shall take into account the final report. The responding Party shall inform, in a timely manner, its civil society organisations, through the consultative mechanisms referred to in Article 24.13.5, and the requesting Party of its decision on any action or measure to be implemented. The Committee on Trade and Sustainable Development shall monitor the follow-up to the final report and the recommendations of the Panel of Experts. The civil society organisations, through the consultative mechanisms referred to in Article 24.13.5, and the Civil Society Forum may submit observations to the Committee on Trade and Sustainable Development in this regard.

12. If the Parties reach a mutually agreed solution to the matter following the establishment of a Panel of Experts, they shall notify the Committee on Trade and Sustainable Development and the Panel of Experts of that solution. Upon that notification, the panel procedure shall be terminated.

Article 24.16

Dispute resolution

1. For any dispute that arises under this Chapter, the Parties shall only have recourse to the rules and procedures provided for in this Chapter.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of a dispute. At any time, the Parties may have recourse to good offices, conciliation, or mediation to resolve that dispute.

⁽¹⁾ The Parties shall apply this provision in accordance with rule 42 of the Rules of Procedure for Arbitration set out in Annex 29-A.