

CHAPTER SEVENTEEN ENVIRONMENT

ARTICLE 17.1: 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 policies, each Party shall ensure that those 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 priority. 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.

ARTICLE 17.3: 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 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 recognized interest under its law in a particular matter have appropriate access to the 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 rights such as:

- (a) the right to sue another person under that Party's jurisdiction for damages under that Party's environmental laws;
- (b) the right to seek sanctions or remedies such as monetary penalties, emergency closures, or orders to mitigate the consequences of violations of its environmental laws;
- (c) the right 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) the right 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 17.4: VOLUNTARY 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 forth in Article 17.3. As appropriate and in accordance with its law, each Party shall encourage the development of such incentives and voluntary 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; or ways to use resources more efficiently or reduce environmental impacts, environmental monitoring, and collection of baseline data; or
- (b) incentives, including market-based mechanisms 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 17.5: INSTITUTIONAL ARRANGEMENTS

1. In addition to discussions of matters related to the operation of this Chapter that may take place in the Joint Committee established under Chapter Nineteen (Administration of the Agreement), the Joint Committee shall, at the request of either Party, establish a Subcommittee on Environmental Affairs comprising government officials of each Party to discuss matters related to the operation of this Chapter. Meetings of the Subcommittee shall include, unless the Parties agree otherwise, a session where members of the Subcommittee have an opportunity to meet with the public to discuss matters related to the operation of this Chapter.
2. The Parties, when they consider appropriate, shall jointly prepare reports on matters related to the implementation of this Chapter, and shall make such reports public.
3. Any formal decision of the Parties concerning the implementation of this Chapter shall be made public, unless the Parties agree otherwise.

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 develop or maintain procedures 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 17.5, 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 with 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 in its territory 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 the Parties undertake pursuant to the United States – Oman Memorandum of Understanding on Environmental Cooperation.

ARTICLE 17.7: 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. The Parties are committed to undertaking cooperative environmental activities pursuant to a United States – Oman Memorandum of Understanding on Environmental Cooperation developed by the Parties, and in other fora.

2. Each Party shall seek opportunities for its citizens to participate in the development and implementation of cooperative environmental activities, such as through the use of public-private partnerships.
3. The Parties also recognize the ongoing importance of current and future environmental cooperation that may be undertaken outside this Agreement.
4. Each Party shall, as it deems 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.

ARTICLE 17.8: 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. Unless the Parties agree otherwise, consultations shall commence within 30 days after a Party delivers a 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, either Party may request that the Subcommittee on Environmental Affairs be convened to consider the matter. The Subcommittee shall convene within 30 days after a Party delivers a written request to the other Party's contact point designated pursuant to paragraph 1, unless the Parties agree otherwise. If the Joint Committee has not established the Subcommittee as of the date a Party delivers a request, 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 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 paragraph 1(a) of Article 17.2, 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 (Consultations) 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 (Consultations), no consultations on the same matter may be entered into under this Article.
 - (b) If a Party requests consultations pursuant to Article 20.5 (Consultations) 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 paragraph 1(a) of Article 17.2.

ARTICLE 17.9: RELATIONSHIP TO ENVIRONMENTAL AGREEMENTS

1. The Parties recognize that the 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 the multilateral environmental agreements to which they are both party and the international trade agreements to which they are both party. To this end, the Parties shall consult, as appropriate, with respect to negotiations on environmental issues of mutual interest.

ARTICLE 17.10: DEFINITIONS

For purposes of this Chapter:

environmental law means any law 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 and 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

law means:

- (a) for the United States, a statute that is an act of Congress or a regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.
- (b) for Oman, a Sultani Decree or Decision, or a regulation, ministerial decision, local order, local circular, or other legislation promulgated pursuant to a Sultani Decree or Decision.

January 19, 2006

H.E. Maqbool Bin Ali Sultan
Minister of Commerce and Industry
Ministry of Commerce and Industry
Sultanate of Oman

Dear Mr. Minister:

In connection with the signing on this date of the United States-Oman Free Trade Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and the Sultanate of Oman regarding the Agreement:

For greater certainty, the list of incentives in subparagraph (b) of Article 17.4.1, including the development of programs for exchanging or trading permits, credits, or other instruments, is illustrative. The encouragement of the development of such incentives is at the discretion of each Party, as appropriate and in accordance with its law.

I would be grateful if you would confirm that your Government shares this understanding.

Sincerely,

Rob Portman

*Sultanate of Oman
Ministry of Commerce and Industry
Muscat*



سُلْطَنَةُ عُومَانِ
وَزَارَةُ التِّجَارَةِ وَالصَّنَاعَةِ
مَسْفَط

January 19, 2006

The Honorable Robert J. Portman
United States Trade Representative

Dear Ambassador Portman:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

"In connection with the signing on this date of the United States-Oman Free Trade Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and the Sultanate of Oman regarding the Agreement:

For greater certainty, the list of incentives in subparagraph (b) of Article 17.4.1, including the development of programs for exchanging or trading permits, credits, or other instruments, is illustrative. The encouragement of the development of such incentives is at the discretion of each Party, as appropriate and in accordance with its law.

I would be grateful if you would confirm that your Government shares this understanding."

I have the honor to confirm that my Government shares the understanding referred to in your letter.

Sincerely,

Maqbool Bin Ali Sultan