

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 policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that its 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: Environmental Agreements

Each Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements listed in Annex 17.2 (“covered agreements”).^{1 2}

Article 17.3: Enforcement of Environmental Laws

1. (a) A Party shall not fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.
- (b) (i) The Parties recognize that each Party retains the right to exercise prosecutorial discretion and to make decisions regarding the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws and all laws, regulations, and other measures to fulfill a Party’s obligations under the covered agreements, a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable, articulable, *bona fide* exercise of such discretion, or results from a reasonable, articulable, *bona fide* decision regarding the allocation of such resources.

¹ To establish a violation of Article 17.2 a Party must demonstrate that the other Party has failed to adopt, maintain, or implement laws, regulations, or other measures to fulfill an obligation under a covered agreement in a manner affecting trade or investment between the Parties.

² For purposes of Article 17.2: (i) “covered agreements” shall encompass those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which both Parties are party; and (ii) a Party’s “obligations” shall be interpreted to reflect, *inter alia*, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

- (ii) The Parties recognize the importance of the covered agreements. Accordingly, where a course of action or inaction relates to laws, regulations, and other measures to fulfill its obligations under covered agreements, that shall be relevant to a determination under clause (i) regarding whether an allocation of resources is reasonable and *bona fide*.

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, neither Party shall 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 in a manner affecting trade or investment between the Parties.

3. Paragraph 2 shall not apply where a Party waives or derogates from an environmental law pursuant to a provision in its environmental law providing for waivers or derogations, provided that the waiver or derogation is not inconsistent with the Party's obligations under a covered agreement.

4. 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 17.4: Procedural Matters

1. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings, in accordance with its law, are available 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) The parties to such proceedings shall be entitled to support or defend their respective positions, including by presenting information or evidence.
- (c) Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:
 - (i) take into consideration, as appropriate, 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 criminal and civil remedies and sanctions such as compliance agreements, penalties, fines, injunctions, suspension of activities, and requirements to take remedial action or pay for damage to the environment.

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 each Party's competent authorities shall 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 proceedings referred to in paragraph 1.
4. Each Party shall provide persons with a legally recognized interest under its law in a particular matter appropriate and effective access to sanctions or remedies, in accordance with its law, for violations of the Party's environmental laws, or for violations of a legal duty under the Party's law relating to human health or the environment, which may include rights such as:
 - (a) to sue another person under that Party's jurisdiction for damages under that Party's laws;
 - (b) to seek sanctions or remedies such as monetary penalties, emergency closures or temporary suspension of activities, or orders to mitigate the consequences of violations of its environmental laws;
 - (c) to request that 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 that Party's jurisdiction.
5. Each Party shall ensure that tribunals that conduct or review proceedings referred to in paragraph 1 are impartial and independent and do not have any substantial interest in the outcome of the matter.
6. For greater certainty, decisions or pending decisions by each Party's tribunals, as well as related proceedings, shall not be subject to revision or be reopened under this Chapter.

Article 17.5: 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 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 and use 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 authorities, 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, 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 permits or other instruments to help achieve environmental goals.
- 2. As appropriate and feasible and in accordance with its law, each Party shall encourage:
 - (a) the maintenance, development, or improvement of performance goals and indicators used in measuring environmental performance; and
 - (b) flexibility in the means to achieve such goals and meet such standards, including through mechanisms identified in paragraph 1.

Article 17.6: Environmental Affairs Council

1. The Parties hereby establish an Environmental Affairs Council comprising cabinet-level or equivalent representatives of the Parties, or their designees. Each Party shall designate an office in its appropriate ministry that shall serve as a contact point for carrying out the work of the Council.
2. The Council shall meet within the first year after the date of entry into force of this Agreement, and annually thereafter unless the Parties otherwise agree, to oversee the implementation of and review progress under this Chapter and to consider the status of cooperation activities developed under the Agreement Between the Government of the United States of America and the Government of the Republic of Panama on Environmental Cooperation (“ECA”). Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.
3. The Council shall set its own agenda. In setting the agenda, each Party shall seek views from its public concerning possible issues for discussion.
4. 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 engaging in a dialogue with the public on those issues.
5. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the ECA.

6. All decisions of the Council shall be taken by mutual agreement, except as provided in Article 17.9. All decisions of the Council shall be made public, unless otherwise provided in this Agreement, or unless the Council otherwise decides.

Article 17.7: 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 accommodate requests by persons of that Party to exchange views with that Party regarding that Party's implementation of this Chapter.

3. Each Party shall convene a new, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, to provide views on matters related to the implementation of this Chapter.

4. The Parties shall take into account public comments and recommendations regarding cooperative environmental activities undertaken pursuant to Article 17.10 and the ECA.

Article 17.8: Submissions on Enforcement Matters

1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body ("secretariat") that the Parties designate.³

2. The secretariat may consider a submission under this Article if the secretariat finds that the submission:

- (a) is in writing in either English or Spanish;
- (b) clearly identifies the person making the submission;
- (c) provides sufficient information to allow the secretariat to review the submission, including any documentary evidence on which the submission may be based;
- (d) appears to be aimed at promoting enforcement rather than at harassing industry;
- (e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any; and

³ The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or other form of agreement.

(f) is filed by a person of a Party.

3. The Parties recognize that the *North American Agreement on Environmental Cooperation* (“NAAEC”) provides that a person or organization residing or established in the territory of the United States may file a submission under that agreement with the Secretariat of the NAAEC Commission for Environmental Cooperation asserting that the United States is failing to effectively enforce its environmental laws.⁴ In light of the availability of that procedure, a person of the United States who considers that the United States is failing to effectively enforce its environmental laws may not file a submission under this Article. For greater certainty, a person of Panama who considers that the United States is failing to effectively enforce its environmental laws may file a submission with the secretariat.

4. Where the secretariat determines that a submission meets the criteria set out in paragraph 2, the secretariat shall determine whether the submission merits requesting a response from the Party. In deciding whether to request a response, the secretariat shall be guided by whether:

- (a) the submission is not frivolous and alleges harm to the person making the submission;
- (b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Chapter and the ECA, taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;
- (c) private remedies available under the Party’s law have been pursued; and
- (d) the submission is drawn exclusively from mass media reports.

Where the secretariat makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

5. The Party shall advise the secretariat within 45 days or, in exceptional circumstances and on notification to the secretariat, within 60 days of delivery of the request:

- (a) whether the precise matter at issue is the subject of a pending judicial or administrative proceeding, in which case the secretariat shall proceed no further; and
- (b) of any other information the Party wishes to submit, such as:

⁴ Arrangements will be made for the United States to make available in a timely manner to Panama all such submissions, U.S. written responses, and factual records developed in connection with those submissions. Panama may provide comments to the United States about the submissions and at the request of either Party the Council shall discuss such documents.

- (i) whether the matter was previously the subject of a judicial or administrative proceeding;
- (ii) whether private remedies in connection with the matter are available to the person making the submission and whether they have been pursued; or
- (iii) information concerning relevant capacity-building activities under the ECA.

Article 17.9: Factual Records and Related Cooperation

1. If the secretariat considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the secretariat shall so inform the Council and provide its reasons.
2. The secretariat shall prepare a factual record if the Council, by a vote of either Party, instructs it to do so.
3. The preparation of a factual record by the secretariat pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.
4. In preparing a factual record, the secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific, or other information:
 - (a) that is publicly available;
 - (b) submitted by interested persons;
 - (c) submitted by national advisory or consultative committees;
 - (d) developed by independent experts; or
 - (e) developed under the ECA.
5. The secretariat shall submit a draft factual record to the Council. Each Party may provide comments on the accuracy of the draft within 45 days thereafter.
6. The secretariat shall incorporate, as appropriate, any such comments in the final factual record and submit it to the Council.
7. The Council may, by a vote of either Party, make the final factual record publicly available, normally within 60 days following its submission.
8. The Council shall consider the final factual record in light of the objectives of this Chapter and the ECA. The Council shall, as appropriate, provide recommendations to the Environmental Cooperation Commission related to matters addressed in the factual record,

including recommendations related to the further development of the Party's mechanisms for monitoring its environmental enforcement.

Article 17.10: Environmental Cooperation

1. The Parties recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening trade and investment relations.
2. The Parties are committed to expanding their cooperative relationship, recognizing that cooperation is important for achieving their shared environmental goals and objectives, including the development and improvement of environmental protection, as set out in this Chapter.
3. The Parties recognize that strengthening their cooperative relationship on environmental matters can enhance environmental protection in their territories and may encourage increased trade and investment in environmental goods and services.
4. The Parties have concluded an ECA. The Parties have identified certain environmental cooperation activities that may be included in a work program, as reflected in Annex 17.10 and as set out in the ECA. The Parties also have established an Environmental Cooperation Commission ("ECC") through the ECA that is responsible for developing a work program that reflects each Party's priorities for cooperative environmental programs, projects, and activities.
5. The Parties also recognize the continuing importance of current and future environmental cooperation activities in other fora.

Article 17.11: Collaborative Environmental Consultations and Panel Procedure

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to a contact point that the other Party has designated for this purpose.
2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.
3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter and information exchanged by the Parties, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue. If the matter arises under Article 17.2, or under both that Article and another provision of this Chapter, and involves an issue related to a Party's obligations under a covered agreement, the Parties shall endeavor to address the matter through a mutually agreeable consultative or other procedure, if any, under the relevant agreement, unless the procedure could result in unreasonable delay.⁵

⁵ The Parties understand that for purposes of paragraph 3, where a covered agreement requires a decision to be taken by consensus, such a requirement could create an unreasonable delay.

4. If the Parties fail to resolve the matter pursuant to paragraph 3, a Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of the other Party.

5. (a) The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.
- (b) When the matter arises under Article 17.2, or under both that Article and another provision of this Chapter, and involves an issue relating to a Party's obligations under a covered agreement, the Council shall:
- (i) through a mechanism that the Council establishes, consult fully with any entity authorized to address the issue under the relevant agreement; and
 - (ii) defer to interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement.

6. If the Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may, as appropriate, provide information to the Commission regarding any consultations held on the matter.

7. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first pursuing resolution of the matter in accordance with paragraphs 1 through 5.

8. In a dispute arising under Article 17.2, or under both that Article and another provision of this Chapter, that involves an issue relating to a Party's obligations under a covered agreement, a panel convened under Chapter Twenty (Dispute Settlement) shall in making its findings and determination under Articles 20.12 (Initial Report) and 20.13 (Final Report):⁶

- (a) consult fully, through a mechanism that the Council establishes, concerning that issue with any entity authorized to address the issue under the relevant environmental agreement;
- (b) defer to any interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant

⁶ For greater certainty, the consultations and guidance in this paragraph are without prejudice to a panel's ability to seek information and technical guidance from any person or body consistent with Article 20.11 (Role of Experts).

laws, regulations, and other measures are in accordance with its obligations under the agreement; and

- (c) where the agreement admits of more than one permissible interpretation relevant to an issue in the dispute and the Party complained against relies on one such interpretation, accept that interpretation for purposes of its findings and determination under Articles 20.12 (Initial Report) and 20.13 (Final Report).⁷

Article 17.12: Environmental Roster

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to ten individuals who are willing and able to serve as panelists in disputes arising under this Chapter. Unless the Parties otherwise agree, the roster shall include up to three individuals who are nationals of each Party and up to four individuals who are not nationals of either Party. 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. The Parties may appoint a replacement where a roster member is no longer available to serve.

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 or environmental 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 this Chapter, Article 20.9 (Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

Article 17.13: Relationship to Environmental Agreements

1. The Parties recognize that multilateral environmental agreements to which they are both party 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. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of those agreements. Accordingly, the Parties shall continue to

⁷ The guidance in subparagraph (c) shall prevail over any other interpretative guidance.

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.

2. The Parties may consult, as appropriate, with respect to ongoing negotiations in the WTO regarding multilateral environmental agreements.

3. In the event of any inconsistency between a Party's obligations under this Agreement and a covered agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade.⁸

Article 17.14: Definitions

1. 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 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.

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;

laws, regulations, and all other measures to fulfill its obligations under a covered agreement means a Party's laws, regulations, and other measures at the central level of government; and

⁸ For greater certainty, paragraph 3 is without prejudice to multilateral environmental agreements other than covered agreements.

statute or regulation means:

- (a) for Panama, a law promulgated by its legislature or a regulation promulgated pursuant to such a law that is enforceable by the executive branch or regulations issued by the Panama Canal Authority.
- (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.

2. For purposes of Article 17.7.5, **judicial or administrative proceeding** means:

- (a) a domestic judicial, quasi-judicial, or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and
- (b) an international dispute resolution proceeding to which the Party is a party.

Annex 17.2

Covered Agreements

1. For purposes of this Chapter, **covered agreement** means a multilateral environmental agreement listed below to which both Parties are party:

- (a) the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington, March 3, 1973, as amended;
- (b) the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, September 16, 1987, as adjusted and amended;
- (c) the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973*, done at London, February 17, 1978, as amended;
- (d) the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, done at Ramsar, February 2, 1971, as amended;
- (e) the *Convention on the Conservation of Antarctic Marine Living Resources*, done at Canberra, May 20, 1980;
- (f) the *International Convention for the Regulation of Whaling*, done at Washington, December 2, 1946; and
- (g) the *Convention for the Establishment of an Inter-American Tropical Tuna Commission*, done at Washington, May 31, 1949.

2. The Parties may agree in writing to modify the list in paragraph 1 to include any other multilateral environmental agreement.

Annex 17.10

Environmental Cooperation

1. The Parties recognize the importance of protecting, improving, and conserving the environment, including natural resources, in their territories. The Parties underscore the importance of promoting all possible forms of cooperation and reaffirm that cooperation on environmental matters provides enhanced opportunities to advance common commitments to achieve sustainable development for the well-being of present and future generations.
2. Recognizing the benefits that would be derived from a framework to facilitate effective cooperation, the Parties concluded the ECA. The Parties expect that the ECA will enhance their cooperative relationship, noting the existence of differences in the Parties' respective natural endowments, climatic and geographical conditions, and economic, technological, and infrastructure capabilities.
3. Article IV of the ECA provides that the work program developed by the ECC shall reflect national priorities and may include environmental cooperation activities related to:
 - (a) strengthening each Party's environmental management systems, including reinforcing institutional and legal frameworks and the capacity to develop, implement, administer, and enforce environmental laws, regulations, standards, and policies;
 - (b) developing and promoting incentives and other flexible and voluntary mechanisms in order to encourage environmental protection, including the development of market-based initiatives and economic incentives for environmental management;
 - (c) fostering partnerships to address current or emerging conservation and management issues, including personnel training and capacity building;
 - (d) conserving and managing species that are shared, migratory, endangered, or subject to international commercial trade, as well as marine and terrestrial parks and other protected areas;
 - (e) exchanging information on domestic implementation of multilateral environmental agreements to which both Parties are party;
 - (f) promoting best practices of environmental management leading to sustainable management;
 - (g) facilitating technology development and transfer and training to promote the use, proper operation, and maintenance of clean production technologies;
 - (h) developing and promoting environmentally beneficial goods and services;

- (i) building capacity to promote public participation in the process of environmental decision-making;
 - (j) exchanging information and experiences between the Parties, including environmental reviews of trade agreements, at the national level; and
 - (k) any other areas for environmental cooperation on which the Parties may agree.
4. Article VI of the ECA addresses funding mechanisms for environmental cooperation activities undertaken pursuant to the ECA.

**AGREEMENT ESTABLISHING A SECRETARIAT FOR
ENVIRONMENTAL ENFORCEMENT MATTERS UNDER THE
UNITED STATES- PANAMA TRADE PROMOTION AGREEMENT**

The Government of Panama and the Government of the United States of America ("the Parties"):

COMMITTED TO implementing Articles 17.8 (Submissions on Enforcement Matters) and 17.9 (Factual Records and Related Cooperation) of the Environment Chapter of the United States - Panama Trade Promotion Agreement ("TPA");

SEEKING to establish the Secretariat for Environmental Enforcement Matters ("Secretariat") and provide for its operation;

ANTICIPATING that they will conclude an agreement with Water Center for the Humid Tropics of Latin America and the Caribbean (CATHALAC) to house the Secretariat and provide facilities and administrative support for the Secretariat;

HAVE AGREED AS FOLLOWS:

Article 1: Establishment

The Parties hereby establish the Secretariat and designate it to carry out the functions prescribed for the Secretariat in Articles 17.8 and 17.9 of the TPA.

Article 2: Location

The Secretariat shall be housed in CATHALAC, unless the Parties decide otherwise.

Article 3: Direction and Supervision

1. The Secretariat shall function independently from the entity in which it is housed. The Secretariat shall carry out its functions under the sole direction and supervision of the Environmental Affairs Council ("Council") established under Article 17.6 of the TPA and shall report exclusively to the Council with respect to those functions. The Secretariat shall not receive or act on instructions from the entity in which it is housed or any authority other than the Council, except as provided in paragraph 2. The Secretariat may not hold itself out as a representative of the Parties or the Council.

2. The Secretariat shall comply with any rules and procedures specified by the entity in which it is housed in connection with housing the Secretariat and the provision of administrative and technical support.

Article 4: Staff

1. The Secretariat shall comprise an Executive Director and, as appropriate to carry out its functions, professional, technical-support, and administrative staff. The Executive Director may make recommendations to the Council about the number and type of staff that in his or her opinion would be appropriate to carry out the Secretariat's functions. The Executive Director shall report to the Council, and the Secretariat staff shall report to the Executive Director.

2. The Council shall select the Executive Director and the Executive Director shall select any professional, technical-support, administrative staff, or consultants according to procedures the Council shall establish, with due regard to the importance of recruiting an equitable proportion of professional staff from among the nationals of each Party. The Executive Director shall communicate via the points of contact designated by the Council pursuant to Article 17.6.1 of the TPA. The Council may decide to remove the Executive Director or any staff at any time for cause or other appropriate reason.

Article 5: Functions

1. The Secretariat shall perform the functions established for it under Articles 17.8 and 17.9 of the TPA and may take such additional actions as are appropriate to carry out the functions established in Articles 17.8 and 17.9 of the TPA.

2. The Secretariat shall apply working and other procedures that the Council establishes for considering public submissions, preparing factual records, engaging experts, preparing reports to the Council, protecting confidential information, making documents publicly available, or other matters related to the Secretariat's functions.

3. In furtherance of Articles 17.8 and 17.9 of the TPA and this Agreement, the Secretariat shall take such further actions as the Council may direct and shall promote public awareness and understanding of the public submissions and factual record process by, *inter alia*, developing an outreach plan, and publishing guides, explanatory documents and other relevant information, unless the Council decides otherwise. The Secretariat shall consult with the Council, via the points of contact designated by the Council pursuant to Article 17.6.1 of the TPA, on the development of an outreach plan and any associated materials.

Article 6: Funds and Budget

1. Each Party shall contribute an equal share of the Secretariat's budget, subject to the availability of appropriated funds in accordance with the Party's legal procedures.

2. If a Party fails to contribute its share of the Secretariat's budget, the other Party may refer the matter to the Council for discussion.

Article 7: Transparency

1. The Parties are committed to ensuring that the Secretariat and the public submissions process operate in a transparent manner. To this end, in accordance with procedures the Council may establish and subject to Article 8 of this Agreement, the Secretariat shall make publicly available documents and communications referred to in Articles 17.8 and 17.9 of the TPA and other submissions-related documents, including any Council decision. The Secretariat shall make a factual record publicly available only if instructed to do so by a member of the Council in accordance with paragraph 7 of Article 17.9 of the TPA.

2. The Secretariat shall maintain a Secretariat website that includes *inter alia* the documents and communications referred to in paragraph 1, information on how to contact the Secretariat, any working procedures the Council establishes regarding the public submissions process, and a procedure to submit, via the internet, public submissions, Party responses, and views that other persons may submit to the Secretariat regarding a submission or the submissions process.

Article 8: Confidentiality

1. The Secretariat shall not furnish to the public or allow public access to any information it may receive from a submitter, where the submitter has identified the information as confidential, the information is not otherwise publicly available and the disclosure of which could reveal:

- (i) the submitter's identity and subject the submitter to serious reprisal, or
- (ii) business or proprietary information; or

2. The Secretariat shall not furnish to the public or allow public access to any information it may receive from a Party, where the Party has determined that disclosure of the information would impede law enforcement, compromise personal privacy, or reveal confidential business or proprietary information or governmental decision-making.

3. The Secretariat and submitters shall comply with any procedures the Council establishes concerning the submission and protection of confidential information.

Article 9: Official Languages

1. The Secretariat's official languages shall be English and Spanish.

2. The Secretariat shall submit all formal written communications and factual records to the Council in both official languages, unless the Council decides otherwise.

3. The Secretariat shall provide English and Spanish language versions of all documents and communications that it makes publicly available, except that the Secretariat may make voluminous exhibits or other appendices, for which a member of the Council has not requested a translation, available solely in the language in which they were submitted or prepared.

Article 10: Amendments

1. The Parties may agree on any amendment of this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement to take effect on such date as the Parties may agree.

Article 11: Entry into Force

This Agreement shall enter into force thirty days following the date on which the Parties exchange written notifications certifying that they have completed their respective legal requirements for its entry into force or such other date as the Parties may agree.

Article 12: Termination

This Agreement shall terminate on the date the TPA terminates, a date on which the Parties mutually agree or upon 90 days prior written notice of one of the Parties, whichever occurs earlier.

Article 13: Authentic Texts

The English and Spanish language texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

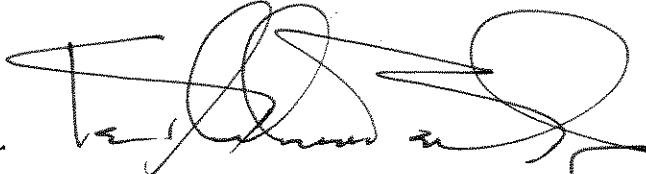
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:



Office of the United States
Trade Representative

21 DEC 2015

___ day of ___ 2015

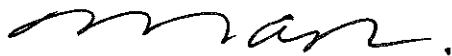


United States Department of State

21 DEC 2015

___ day of ___ 2015

FOR THE GOVERNMENT OF PANAMA:



Ministry of Trade and Industry

21 DEC 2015

___ day of ___ 2015



Ministry of Environment

21 DEC 2015

___ day of ___ 2015

**ACUERDO PARA EL ESTABLECIMIENTO DE LA SECRETARÍA PARA LA
APLICACIÓN DE LA LEGISLACIÓN AMBIENTAL BAJO EL TRATADO DE
PROMOCIÓN COMERCIAL PANAMÁ- ESTADOS UNIDOS.**

El Gobierno de los Estados Unidos de América y el Gobierno de Panamá ("las Partes"):

COMPROMETIDOS con la implementación de los artículos 17.8 (Comunicaciones relativas a la aplicación de la Legislación Ambiental) y 17.9 (Expediente de Hechos y Cooperación Relacionada) del capítulo ambiental del Tratado de Promoción Comercial Panamá- Estados Unidos ("TPC");

BUSCANDO establecer la Secretaría para la aplicación de la legislación ambiental ("Secretaría") y proveer para su funcionamiento;

ANTICIPANDO que llegarán a la conclusión de un acuerdo con el Centro del Agua del Trópico Húmedo para América Latina y el Caribe (CATHALAC) para albergar la Secretaría y proporcionar instalaciones y apoyo administrativo para la misma;

HAN ACORDADO LO SIGUIENTE:

Artículo 1: Establecimiento

Las Partes por este medio establecen la Secretaría, y la designan para que lleve a cabo las funciones previstas para la Secretaría en los artículos 17.8 y 17.9 del TPC.

Artículo 2: Ubicación

La Secretaría estará ubicada en CATHALAC, a menos que las Partes decidan lo contrario.

Artículo 3: Dirección y Supervisión

1. La Secretaría deberá funcionar independientemente de la entidad en la cual la Secretaría esté ubicada. La Secretaría deberá desempeñar sus funciones bajo la dirección y supervisión exclusiva del Consejo de Asuntos Ambientales ("Consejo"), establecido bajo el artículo 17.6 del TPC y deberá reportar exclusivamente al Consejo, en relación a dichas funciones. La Secretaría no deberá recibir o actuar por instrucciones de la entidad en la cual la Secretaría esté ubicada o cualquier otra autoridad que no sea el Consejo, excepto lo previsto en el parágrafo 2. La Secretaría no se representará como un representante de las Partes o del Consejo.

2. La Secretaría deberá cumplir con cualquier regla y procedimiento especificado por la entidad en la cual la Secretaría esté ubicada en relación a la sede de la Secretaría y la prestación de apoyo administrativo y técnico.

Artículo 4: Personal

1. La Secretaría estará integrada por un Director Ejecutivo y, en la medida de lo apropiado para desarrollar sus funciones, por personal profesional, de soporte técnico y administrativo. El Director Ejecutivo podrá hacer recomendaciones al Consejo sobre el número y el tipo de personal que, en su opinión, sería apropiado para llevar a cabo las funciones de la Secretaría. El Director Ejecutivo deberá reportar al Consejo, y el personal de la Secretaría deberá reportar al Director Ejecutivo.

2. El Consejo deberá seleccionar al Director Ejecutivo, y el Director Ejecutivo deberá seleccionar cualquier personal profesional, de soporte técnico, personal administrativo, o consultores de acuerdo con los procedimientos que establezca el Consejo, teniendo en cuenta la debida importancia de reclutar una proporción equitativa del personal profesional entre los nacionales de cada Parte. El Director Ejecutivo se comunicará a través de los puntos de contacto designados por el Consejo de conformidad con el artículo 17.6.1 del TPC. El Consejo podrá decidir remover al Director Ejecutivo o cualquier miembro del personal en cualquier momento por causa u otro motivo apropiado.

Artículo 5: Funciones

1. La Secretaría ejercerá las funciones establecidas bajo los artículos 17.8 y 17.9 del TPC y podrá tomar las medidas adicionales que sean apropiadas para llevar a cabo las funciones establecidas en los artículos 17.8 y 17.9 del TPC.

2. La Secretaría aplicará los procedimientos de trabajo y otros procedimientos que el Consejo establezca para considerar las comunicaciones del público, elaboración de expedientes de hechos, la participación de expertos, la preparación de informes para el Consejo, la protección de información confidencial, asegurando que los documentos estén disponibles al público, y otros asuntos relacionados con las funciones de la Secretaría.

3. En cumplimiento de los artículos 17.8 y 17.9 del TPC y del presente Acuerdo, la Secretaría deberá tomar todas las medidas adicionales que el Consejo disponga y promoverá la conciencia pública y el entendimiento de las comunicaciones del público y el proceso del expediente de hechos, entre otras cosas, mediante el desarrollo de un plan de participación, y publicación de guías, documentos explicativos y otra información pertinente, a menos que el Consejo decida otra cosa. La Secretaría consultará con el Consejo, a través de los puntos de contacto designados por el Consejo de conformidad con el artículo 17.6.1 del TPC, en el desarrollo de un plan de divulgación y sus materiales afines.

Artículo 6: Fondos y Presupuestos

1. Cada Parte deberá contribuir en partes iguales al presupuesto de la Secretaría, sujeto a la disponibilidad de fondos asignados conforme a los procedimientos legales de cada Parte.
2. Si una Parte deja de aportar su cuota del presupuesto de la Secretaría, la otra Parte podrá remitir el asunto al Consejo para su discusión.

Artículo 7: Transparencia

1. Las Partes se comprometen a velar que la Secretaría y el proceso de comunicaciones del público operen de manera transparente. Con este fin, de conformidad con los procedimientos que el Consejo pueda establecer y sujeto al artículo 8 del presente acuerdo, la Secretaría deberá poner a disposición del público documentos y comunicaciones contemplados en los artículos 17.8 y 17.9 del TPC y otros documentos relacionados con comunicaciones, incluyendo cualquier decisión del Consejo. La Secretaría deberá poner a disposición del público un expediente de hechos solamente si se le instruye por un miembro del Consejo de conformidad con el párrafo 7 del artículo 17.9 del TPC.
2. La Secretaría deberá mantener una página web de la Secretaría que incluye, entre otras cosas, los documentos y comunicaciones contempladas en el apartado 1, información sobre cómo ponerse en contacto con la Secretaría, los procedimientos de trabajo que el Consejo establezca en relación con el proceso de las comunicaciones del público y un procedimiento para la presentación a través de Internet, comunicaciones del público, respuestas de las Partes, y las opiniones que otras personas pueden presentar a la Secretaría, con respecto a una presentación o el proceso de comunicaciones.

Artículo 8: Confidencialidad

1. La Secretaría no deberá entregar al público o permitir el acceso del público a cualquier información que pueda recibir de un remitente, si el remitente ha identificado la información como confidencial, si la información no está disponible públicamente, y si su divulgación revelara:

- (i) la identidad del remitente y someter al remitente a graves represalias, o
- (ii) información de negocios o información de dominio privado.

2. La Secretaría no deberá entregar al público o permitir el acceso del público a información que pueda recibir de una de las Partes, donde la Parte ha determinado que la divulgación de la información impediría la aplicación de la ley, comprometería la privacidad personal, o revelaría información confidencial de negocios o información de dominio privado o de toma de decisiones a nivel gubernamental.

3. La Secretaría y los remitentes deberán cumplir con cualquier procedimiento que el Consejo establezca relativo a la presentación y la protección de la información confidencial.

Artículo 9: Idioma Oficial

1. Los idiomas oficiales de la Secretaría serán inglés y español.
2. La Secretaría deberá presentar todas las comunicaciones escritas formales y expedientes de hechos al Consejo en los dos idiomas oficiales, a menos que el Consejo decida otra cosa.
3. La Secretaría deberá proporcionar las versiones en inglés y español de todos los documentos y comunicaciones que hace disponible al público, excepto que la Secretaría puede hacer que exposiciones voluminosas u otros apéndices, para el cual un miembro del Consejo no ha solicitado una traducción, estén disponibles únicamente en el idioma en el que fueron presentados o preparados.

Artículo 10: Enmiendas

1. Las Partes podrán acordar cualquier enmienda al presente Acuerdo.
2. Cuando así lo acuerden y se apruebe, según los procedimientos jurídicos correspondientes de cada Parte, una enmienda deberá constituir parte integrante del presente Acuerdo y deberá entrar en vigor en la fecha que las Partes acuerden.

Artículo 11: Entrada en Vigor

El presente Acuerdo entrará en vigor treinta días después de la fecha que las Partes intercambien notificaciones escritas, que certifiquen que han completado sus respectivos requisitos legales para su entrada en vigor o en cualquier otra fecha que las Partes acuerden.

Artículo 12: Terminación

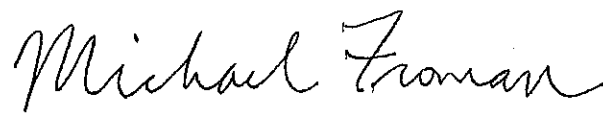
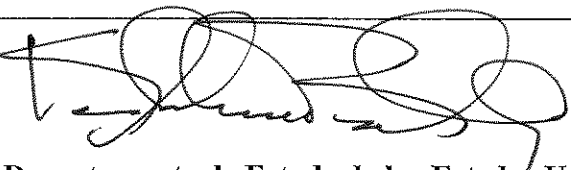
El presente Acuerdo deberá terminar en la fecha que el TPC termine, una fecha en que las Partes acuerden mutuamente o con 90 días de aviso previo por escrito de una de las partes, lo que ocurra antes.

Artículo 13: Textos Auténticos

Los textos de idioma inglés y español de este acuerdo son igualmente auténticos.

EN FE DE LO CUAL, los abajo firmantes, debidamente autorizados, firman el presente Acuerdo.

POR EL GOBIERNO DE LOS ESTADOS UNIDOS DE AMÉRICA:

 Oficina de los Estados Unidos Representación Comercial 21 DIC 2015 ____ día de ____ 2015	 Departamento de Estado de los Estados Unidos 21 DIC 2015 ____ día de ____ 2015
POR EL GOBIERNO DE PANAMÁ:  Ministerio de Comercio e Industrias 21 DIC 2015 ____ día de ____ 2015	 Ministerio de Ambiente 21 DIC 2015 ____ día de ____ 2015