

CHAPTER SEVENTEEN

ENVIRONMENT

第十七章

环境

Article 17.1: Context and Objectives

1. Recalling *Agenda 21 on Environment and Development of 1992*, and the *Johannesburg Plan of Implementation on Sustainable Development of 2002*, the Parties affirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development.
2. The Parties recognise that economic development and environmental protection are interdependent and mutually reinforcing components of sustainable development, and underline the benefit of cooperation on trade-related environmental issues as part of a global approach to trade and sustainable development.
3. The Parties recognise that it is inappropriate to set or use their environmental law in a manner that would constitute a disguised restriction on trade or investment between the Parties.

Article 17.2: Right to Regulate and Levels of Protection

Recognising the right of each Party to establish that Party’s own levels of environmental protection, and to adopt or modify accordingly that Party’s relevant laws and policies, each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental protection, and where relevant, are consistent with the agreements referred to in Article 17.3, and shall strive to continue to improve those laws and policies.

Article 17.3: 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 commit to consulting and cooperating as appropriate with respect to trade-related environmental issues of mutual interest.

第十七条第1条：背景与目标

1. 回顾环境与发展1992年议程和约翰内斯堡可持续发展实施计划2002年，
缔约方重申其致力于促进国际贸易发展的承诺， 以有助于实现可持续发展的目标。
2. 缔约方认识到经济发展与环境保护是可持续发展的相互依存、相互促进的组成部分，并强调在贸易与可持续发展全球方法中合作处理与贸易相关的环境问题的益处。
3. 缔约方认识到， 以构成对缔约方之间贸易或投资的伪装限制的方式制定或使用其环境法是不适当的。

第十七条第2款：规范权与保护水平

承认每一缔约方有权建立本缔约方的环境保护水平，并相应地制定或修改其相关法律法规和政策， 每一缔约方应努力确保这些法律法规和政策提供并鼓励高水平的环境保护， 在相关情况下， 应与第十七条第3款所述协定保持一致， 并应继续努力改进这些法律法规和政策。

第十七条第3款：多边环境协定

1. 缔约方承认国际环境治理和协定是国际社会对全球或区域性环境问题作出的回应， 并承诺就相互利益相关的贸易环境问题进行适当磋商与合作。

2. The Parties affirm their commitments to the effective implementation in their respective laws and practices of the multilateral environmental agreements to which both Parties are party.

Article 17.4: Trade Favouring Environmental Protection

The Parties shall strive to facilitate and promote trade and investment in environmental goods and services, including through addressing related non-tariff barriers.

Article 17.5: Upholding Levels of Protection in the Application and Enforcement of Laws

1. A Party shall not fail to effectively enforce its environmental law, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties.
2. The Parties recognise that a Party has not failed to effectively enforce its environmental law in a particular case if the action or inaction in question by agencies or officials of that Party reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory, or compliance matters, or results from *bona fide* decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities.
3. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party’s respective environmental law. Accordingly, each Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from environmental law in a manner that weakens or reduces the protections afforded in that law to encourage trade or investment between the Parties.

2. 缔约方重申其致力于在其各自的法律和实践中对双方均为缔约方的多边环境协定进行有效实施。

第十七条第4条：有利于环境保护的贸易

缔约方应当努力促进和便利环境货物和服务的贸易与投资，包括通过解决相关的非关税壁垒。

第十七条第5条：在法律适用和执行中维护保护水平

1. 任何缔约方不得通过持续或反复的行动或不作为，以影响缔约方之间的贸易或投资的方式，未能有效执行其环境法。
2. 缔约方承认，如果某缔约方的机构或官员所采取的行动或不作为，反映了在调查、起诉、监管或合规事项上对其自由裁量权的合理行使，或源于真诚决定将资源分配给在确定具有更高优先级的其他环境事务上的执法，则该缔约方在特定情况下并未未能有效执行其环境法。
3. 缔约方认识到，通过削弱或减少各缔约方法律所提供的保护来鼓励贸易或投资是不适当的。因此，每一缔约方不得放弃或以其他方式损害，或提议放弃或以其他方式损害其环境法，以削弱或减少该法律所提供的保护，从而鼓励缔约方之间的贸易或投资。

Article 17.6: Scientific Information

The Parties recognise the importance, when preparing and implementing measures aimed at protecting the environment that affect trade between the Parties, of taking account of scientific and technical information, and relevant international standards, guidelines, or recommendations.

Article 17.7: Access to Remedies and Procedural Guarantees

1. Each Party shall, in accordance with that Party’s domestic law, ensure that its authorities competent to enforce environmental law give due consideration to alleged violations of that law brought to their attention by interested persons residing or established in its territory.
2. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings for the enforcement of its environmental law are available under its law, and are fair, equitable, transparent, and comply with due process of law. Hearings in those proceedings shall be open to the public, in accordance with that Party’s applicable law, except if the administration of justice otherwise requires.
3. Each Party shall ensure that persons with a legally recognised interest under that Party’s law in a particular matter have appropriate access to proceedings referred to in paragraph 2 for the enforcement of that Party’s environmental law and to seek remedies for violation of that law.
4. Each Party shall provide that final decisions on the merits of a case in the proceedings referred to in paragraph 2 are in writing, preferably state the reasons on which the decisions are based, and are made available to the parties to the proceedings in a timely manner and, in accordance with that Party’s domestic law, to the public.
5. Each Party shall provide that parties to the proceedings referred to in paragraph 2 have the right, as appropriate, and in accordance with applicable law, to seek review in accordance with due process and, where warranted, correction of decisions issued in those proceedings.
6. Articles 19.3 (Administrative Proceedings) and 19.4 (Review and Appeal) do not apply to this Chapter.

第十七条第6条：科学信息

缔约方认识到，在制定和实施旨在保护影响缔约方之间贸易的环境措施时，考虑科学和技术信息以及相关的国际标准、指南或建议的重要性。

第十七条第7条：救济措施和程序保障

1. 每个缔约方应根据其国内法，确保其执行环境法的机构对其境内居住或设立的利益相关者提出的所谓违反该法的行为予以充分考虑。
2. 每个缔约方应确保其环境法在法律上具有可供执行的司法、准司法或行政程序，并且这些程序是公平、公正、透明的，并符合法律正当程序。这些程序中的听证会应根据该缔约方适用的法律向公众开放，除非司法管理另有要求。
3. 每个缔约方应确保在该缔约方法律下对特定事项具有法律承认的利益的人能够适当获得第2段所述的执行该缔约方环境法的程序，并寻求对该法违反的救济。
4. 每个缔约方应规定，在第2段所述的程序中，案件实体问题的最终决定应以书面形式作出，最好说明决定所依据的理由，并及时向程序当事人提供，并根据该缔约方法律，向公众提供。
5. 每一缔约方应当确保，根据第2段所述的诉讼程序的相关方，在适当的情况下，并依照适用法律，有权依照正当程序寻求审查，并在必要时纠正该诉讼程序中作出的决定。
6. 第十九条第3条（行政程序）和第十九条第4条（审查和上诉）不适用于本章。

Article 17.8: Transparency

1. Each Party shall ensure that its laws respecting any matter covered by this Chapter are promptly published or otherwise made available so that interested persons and the other Party can become acquainted with them.
2. Each Party shall publish or otherwise make available in advance, to the extent possible, any such law that it proposes to adopt, so that the other Party or interested persons may provide comments.
3. Article 19.1 (Publication) does not apply to this Chapter.

Article 17.9: Public Information

1. Each Party shall promote public awareness of that Party’s environmental law by ensuring the availability of information relating to such law to the public.
2. Each Party shall provide for the receipt and the consideration of enquiries from persons residing or established in that Party’s territory on matters related to the implementation of this Chapter.

Article 17.10: Cooperation

Recognising the importance of cooperating on trade-related aspects of environmental issues in order to achieve the objectives of this Agreement, the Parties commit to cooperate on matters of mutual interest, subject to the availability of resources. The Parties may involve the public and interested stakeholders in the development and implementation, as appropriate, of cooperative activities. The areas of cooperation shall be determined and their implementation shall be monitored by the Environmental Affairs Council.

Article 17.11: Institutional Mechanism

1. Each Party shall designate an official within that Party’s administration who shall serve as a contact point for the purpose of implementing this Chapter.

第17.8条：透明度

1. 每个缔约方应确保其涉及本章任何事项的法律得到及时公布或以其他方式提供，以便利益相关者和另一方能够了解这些法律。
2. 每个缔约方应当提前，在可能范围内，公布或以其他方式使任何其拟采用的此类法律可供获取，以便另一方或利益相关者可以提出意见。
3. 第19.1条（公布）不适用于本章。

第17.9条：公共信息

1. 每个缔约方应当通过确保与该缔约方的环境法相关的信息的可获得性，以促进公众对该缔约方环境法的公众意识。
2. 每个缔约方应当规定接收和考虑居住或设立在该缔约方领土内就本章的实施相关事项提出的查询。

第17.10条：合作

认识到为达成本协议的目标，就环境问题的贸易相关方面进行合作的重要性，缔约方承诺在资源可用的情况下，就共同利益的事项进行合作。缔约方可以根据适当情况，让公众和利益相关者参与合作活动的制定和实施。合作领域应由环境事务委员会确定，并对其实施情况进行监督。

第17.11条：制度机制

1. 每个缔约方应指定其行政机构内的官员，作为实施本章的联系点。

2. The Parties hereby establish an Environmental Affairs Council. The Council shall be composed of senior representatives responsible for environmental matters from within the administration of each Party.
3. The Council shall meet within the first year of the entry into force of this Agreement, and thereafter as necessary, to discuss matters of common interest, to oversee the implementation of this Chapter, and to review, as appropriate, progress under this Chapter.

Article 17.12: Government Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter through dialogue, consultations, and cooperation.
2. 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.¹ The request shall identify the matter at issue and shall provide the other Party with sufficient information for a full examination of the matter raised. Consultations shall commence promptly after a Party delivers a request for consultations.
3. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.
4. If a Party considers that the matter needs further discussion, that 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. The Council shall convene promptly and endeavour to agree on a resolution of the matter. The resolution of the Council shall be made public unless the Council otherwise decides.
5. If the consultations under paragraph 4 fail to resolve the matter, a Party may request higher level consultations by delivering a written request to the contact point of the other Party. Such consultations shall proceed within 30 days of the request for such consultations unless the Parties agree otherwise.

¹ Consultations for Article17.5.1 are restricted to those matters with merit where trade or investment effect can be established.

2. 缔约方 **hereby** 设立环境事务委员会。该委员会应由各缔约方行政机构中负责环境事务的高级代表组成。

3. 理事会应当在本协议生效后的第一年内召开会议，此后根据需要召开会议，以讨论共同关心的事项，监督本章的实施，并适当审查本章的进展。

第17.12条：政府磋商

1. 缔约方应始终通过对话、磋商和合作，努力就本章的解释和适用达成一致。
2. 缔约方可通过向另一方的联系点递交书面请求，就本章下出现的任何事项与另一方进行磋商。¹ 该请求应说明相关事项，并应向另一方提供足够的信息以便对提出的事项进行全面审查。磋商应在缔约方递交磋商请求后立即开始。
3. 缔约方应尽一切努力就相关事项达成相互可接受的解决方案。
4. 如果缔约方认为相关事项需要进一步讨论，该缔约方可通过向另一方的联系点递交书面请求，请求理事会考虑该事项。理事会应立即召开会议，并努力就相关事项达成解决方案。除非理事会另行决定，否则理事会的解决方案应予公布。
5. 如果根据第4段进行的磋商未能解决该事项，缔约方可以通过向另一方的联系点提交书面请求来请求高级别磋商。此类磋商应在磋商请求之日起30天内进行，除非缔约方另有约定。

¹ **Article17.12**的磋商仅限于那些具有实质性且能够证明贸易或投资影响的议题。

Article 17.13: Panel of Experts²

1. If the matter is not satisfactorily addressed through consultations under Article 17.12, a Party may, 120 days after the delivery of a request for consultations under Article 17.12.2, request that a Panel of Experts be convened to examine the matter. Unless the Parties agree otherwise, the terms of reference of the Panel of Experts shall be “to examine the matter referred to in the request for the establishment of a Panel of Experts in light of the relevant provisions of the Environment Chapter and to issue a report making recommendations for the resolution of the matter”.³ The procedures set out in Annex 17-A apply to the selection of panellists.
2. If in the final report, the Panel of Experts determines that a Party has not complied with that Party’s obligations under this Chapter, the Parties shall, within 90 days from the issuance of the final report, endeavour to agree on the implementation of the recommendations of the report in a mutually satisfactory manner. The agreed outcome by the Parties on the recommendations shall be made public promptly. The implementation of the recommendations of the Panel of Experts shall be monitored by the Council.
3. Subject to the provisions of this Chapter, Annexes 21-B (Code of Conduct for Members of Panel) and 21-C (Model Rules of Procedure) apply, *mutatis mutandis*, unless the Parties otherwise agree.

Article 17.14: Protection of Information

This Chapter is not to be construed to require a Party to release information that would be otherwise prohibited or exempt from disclosure under that Party’s laws and regulations, including those concerning access to information and privacy.

² Prior to the request for a Panel of Experts, a Party should consider whether that Party maintains environmental law that is substantially equivalent in scope to those that would be the subject of the panel review.

³ For greater clarity, a report shall include recommendations only, and shall not address the issue of remedy, such as trade sanctions or fines.

第17.13条：专家小组²

1. 如果该事项未通过根据第17.12条进行的磋商得到令人满意的处理，缔约方可以在根据第17.12.2条提交磋商请求之日起120天后，请求召集专家小组来审查该事项。除非缔约方另有约定，专家小组的工作范围应为“根据环境章节的相关规定审查根据建立专家小组的请求中所述的事项，并发布一份就解决该事项提出建议的报告”。³ 附件17-A中规定的手续适用于小组成员的选定。
2. 如果在最终报告中，专家小组认定缔约方未履行其在本章项下的义务，缔约方应自最终报告发布之日起90天内，努力以双方均满意的方式就报告的建议的实施达成一致。缔约方就建议达成的结果应迅速公布。专家小组的建议的实施应由理事会监督。’s，专家小组的建议的实施应由理事会监督。
3. 除非缔约方另有约定，否则除本章规定外，附件21-B（专家组成员行为准则）和21-C（程序示范规则）应适用，作相应调整。

第17.14条：信息保护

本章不得解释为要求缔约方披露根据该缔约方法律法规本应禁止或免于披露的信息，包括有关信息获取和隐私的规定。

² 在请求专家小组之前，缔约方应考虑其是否维持着与环境法范围实质性相当的法律，这些法律将是专家小组审查的主题。³ 为更清晰起见，报告应仅包括建议，不应涉及补救措施问题，如贸易制裁或罚款。

Article 17.15: Dispute Settlement

A Party shall not have recourse to Chapter Twenty-One (Dispute Settlement) for any matter arising under this Chapter, except as otherwise provided in this Chapter.

Article 17.16: Application to the Provinces of Canada

Notwithstanding Article 1.4 (Extent of Obligations), the application of this Chapter to the provinces of Canada is subject to Annex 17-B.

Article 17.17: Definitions

For the purposes of this Chapter:

environmental law means any law, statutory or regulatory provision, or other legally binding measure, of a Party, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

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

but does not include any measure directly related to worker health and safety, nor a measure the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

第17.15条：争端解决

缔约方不得援引第二十一章（争端解决）处理根据本章发生的事项，除非本章另有规定。

第17.16条：适用于加拿大的省份

尽管有第1.4条（义务范围）的规定，本章适用于加拿大的省份受附件17-B约束。

第17.17条：定义

本章规定中，

环境法是指任何缔约方的法律、法规或监管规定或其他具有法律约束力的措施，其主要目的是通过以下方式保护环境或防止对人类生命或健康的危险：

- (a) 防止、减轻或控制污染物或环境有害物质的排放、排放或排放；(b) 化学品和废物的管理及相关信息的传播；或(c) 野生动物植物或野生动物的保护和保护，包括濒危物种、它们的栖息地以及受保护的天然区域，

但不包括任何直接与工人健康和安全相关的措施，也不包括主要目的是管理商业捕捞或开发的措施，或自然资源的自给自足或土著捕捞。

Annex 17-A

Procedures Related to Panel of Experts

1. For the purposes of selecting the panellists, the following procedures shall apply:
 - (a) the Panel of Experts shall be composed of three panel members;
 - (b) within 30 days of receiving the request to establish a Panel of Experts, each Party shall select one panellist; and
 - (c) if a Party fails to select that Party’s panellist within such period, the other Party shall select, within a further seven days, the panellist from among qualified individuals who are nationals of the Party that failed to select its panellist.
2. For the purposes of selecting the chair, the following procedures apply:
 - (a) the Party that is subject to a request shall provide the requesting Party with the names of three qualified candidates who are not nationals of either Party. The names shall be provided within 30 days of receiving the request to establish a Panel of Experts;
 - (b) the requesting Party may choose one of the candidates to be the chair or if the names were not provided or none of the candidates are acceptable, provide the Party that is subject to the request with the names of three candidates who are not nationals of either Party and who are qualified to be the chair. Those names shall be provided no later than seven days after receiving the names under subparagraph (a) or 37 days after the receipt of the request for the establishment of the Panel of Experts; and
 - (c) the Party that is subject to the request may choose one of the three candidates to be the chair within seven days of receiving the names under subparagraph (b), failing which the chair shall be selected by lot from the candidates proposed by the Parties pursuant to subparagraphs (a) and (b) within a further seven days.

附件17-A

与专家小组相关的程序

1. 在选择小组成员的目的下， 应适用以下程序：
 - (a) 专家小组应由三名专家组成员组成；(b) 在收到设立专家小组的请求之日起30天内， 每一缔约方应选定一名专家组成员； 以及(c) 如果某一缔约方在该期限内未能选定其专家组成员， 则另一方应在额外7天内， 从未能选定其专家组成员的缔约方的合格个人中选定该专家组成员。
2. 选举主席的程序如下：
 - (a) 被请求的缔约方应在收到设立专家小组的请求之日起30天内， 向请求方提供三名非任何一方国籍的合格候选人名单。 名单应在收到设立专家小组的请求之日起30天内提供；
 - (b) 请求方可以从候选人中选定一名主席， 或者如果名单未提供或候选人均不可接受， 则应向被请求方提供三名非任何一方国籍且具有担任主席资格的候选人名单。 这些名单应在收到(a)段项下名单之日起7天内或收到设立专家小组请求之日起37天内提供； 以及
 - (c) 接收根据第(b)项下提交的姓名后七天内， 受请求影响的缔约方可以选择其中一名候选人担任主席， 否则应在进一步七天内， 根据第(a)项和第(b)项， 从缔约方提出的候选人中抽签选出主席。

3. The experts proposed as panellists must be individuals with specialised knowledge or expertise in environmental law, or issues addressed in this Chapter and, to the extent possible, the resolution of disputes arising under international agreements. The panellists must be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of either Party.

4. Unless the Parties otherwise decide, the Panel of Experts shall perform its functions according to Annexes 21-B (Code of Conduct for Members of Panel) and 21-C (Model Rules of Procedure), which apply *mutatis mutandis*, and shall ensure, in particular, that:

- (a) each Party has the opportunity to provide written and oral submissions to the Panel of Experts;
- (b) non-governmental organisations, institutions, and persons with relevant information or expertise in the Parties’ territories have the opportunity to provide written submissions to the Panel of Experts; and
- (c) at least one hearing is held before the Panel of Experts for each panel proceeding, which shall be open to the public, subject to domestic legislation regarding access to information and privacy.

5. Unless the Parties otherwise agree, the Panel of Experts shall, within 120 days of the last expert being selected, present to the Parties an interim report, setting out the findings of fact as well as any determinations the Panel of Experts has made and containing recommendations on the matter. Each Party may provide comments to the Panel of Experts on the interim report within 45 days of its issuance. After considering any such comments, the Panel of Experts may reconsider its report or make any further examination as appropriate. The Panel of Experts shall issue the final report to the Parties within 60 days of the issuance of the interim report. Each Party shall make the final report publicly available within 30 days of its issuance.

3. 作为小组成员提名的专家必须具备环境法方面的专门知识或专长，或本章所述问题的知识，并在可能的情况下，解决根据国际协议产生的争端。小组成员必须是独立的，以个人身份任职，不得就所涉事项接受任何组织或政府的指示，也不得与任何一方的政府有关联。

4. 除非缔约方另有决定，专家小组应根据附件21-B《专家组成员行为准则》和21-C《程序示范规则》履行其职能，这些附件作相应调整，并确保，特别是：

- (a) 每个缔约方都有机会向专家小组提供书面和口头陈述；(b) 非政府组织、机构以及在其领土内拥有相关信息或专业知识的个人都有机会向专家小组提供书面陈述；以及 (c) 每个小组程序至少应在专家小组举行一次听证会，该听证会应向公众开放，但需遵守有关信息获取和隐私的国内立法。

5. 除非缔约方另有约定，专家小组应在最后一名专家被选定之日起120天内，向缔约方提交中期报告，报告应列明事实调查结果以及专家小组作出的任何决定，并包含对该事项的建议。每一缔约方应在中期报告发布之日起45天内，就中期报告向专家小组提供意见。在考虑任何此类意见后，专家小组可以重新考虑其报告或根据需要进行进一步调查。专家小组应在中期报告发布之日起60天内，向缔约方发布最终报告。每一缔约方应在最终报告发布之日起30天内，将该最终报告向公众公开。

Annex 17-B

Application to Provinces of Canada

1. Following the entry into force of this Agreement, Canada shall provide to Korea through diplomatic channels a written declaration indicating the provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration becomes effective on the date of receipt by Korea.
2. Canada shall use its best efforts to make this Chapter applicable to as many provinces as possible.
3. Canada shall notify Korea six months in advance of any modification to its declaration.
4. Canada shall not request consultations under Article 17.12, at the instance of the government of a province not included in the declaration noted above.

附件17-B

适用加拿大各省

1. 本协议生效后，加拿大应通过外交渠道向韩国提供书面声明，声明加拿大应受其管辖范围内的事务约束的省份。该声明在韩国收到之日起生效。
2. 加拿大应尽其最大努力使本章适用于尽可能多的省份。
3. 加拿大应在对其声明进行任何修改前的六个月内通知韩国。
4. 加拿大不得在上述声明中未包含的省份政府的要求下，根据第17.12条进行磋商。