

CHAPTER TWENTY
ENVIRONMENT

第二十章 环境

ARTICLE 20.1: LEVELS OF PROTECTION

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

ARTICLE 20.2: ENVIRONMENTAL AGREEMENTS

A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements listed in Annex 20-A (“covered agreements”).^{1 2}

ARTICLE 20.3: APPLICATION AND ENFORCEMENT OF ENVIRONMENTAL LAWS

1. (a) Neither Party shall 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 this Agreement enters into force.
- (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 20.2 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 20.2: (1) “covered agreements” shall encompass those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which both Parties are party; and (2) 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.

第20.1条：保护水平

认识到每一缔约方有权确立其自身的环境保护水平和环境发展优先事项，并据此通过或修改其环境法律和政策，每一缔约方应努力确保这些法律和政策规定并鼓励高水平的环境保护，并应努力持续提高其各自的环境保护水平，包括通过此类环境法律和政策。

第20.2条：环境协议

缔约方应通过、维持和实施法律、规章及所有其他措施，以履行其在附件20-A所列多边环境协议（“涵盖协议”）下的义务。^{1 2}

第20.3条：环境法的适用和执行

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1. (a) 本协议生效后，任一缔约方不得通过持续或反复的行动或不行动，以影响缔约方之间贸易或投资的方式，未能有效执行其环境法，以及其法律、法规和其他措施以履行其在涵盖协议下的义务。

(b) (i) 缔约方认识到，每一缔约方保留行使检察裁量权的权利，并有权就其他被确定为具有更高优先级的环境法作出关于环境执法资源分配的决定。因此，缔约方理解，关于环境法及所有法律、法规和其他措施的执行以履行缔约方在涵盖协议下的义务，如果一项行动或不行动的过程反映了对此类裁量权的合理、明确、善意的行使，或源于关于此类资源分配的合理、明确、善意的决定，则该缔约方即符合(a)项的规定。

¹ 要确立违反第20.2条的行为，一缔约方必须证明另一缔约方未能采取、维持或实施法律、法规或其他措施，以影响缔约方之间贸易或投资的方式履行涵盖协议下的义务。² 就第20.2条而言：(1) “涵盖协议”应包括相关协议下缔约双方均为缔约方的现有或未来议定书、修正案、附件和调整；(2) 一缔约方的“义务”应解释为尤其反映其在相关协议下适用的现有和未来保留、豁免和例外。

- (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 its 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. For greater certainty, 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 20.4: PROCEDURAL MATTERS

1. Each Party shall ensure that interested persons may request the Party’s competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration, in accordance with its law.

2. Each Party shall ensure that judicial, quasi-judicial, or administrative proceedings are available under its law to provide sanctions or remedies for violations of its environmental laws and that persons with a recognized interest under its law in a particular matter have appropriate access to such proceedings.

- (a) Each Party shall ensure in accordance with its law that such proceedings:
 - (i) are fair, equitable, and transparent and, to this end, comply with due process of law; and
 - (ii) are open to the public, except where the administration of justice otherwise requires.
- (b) Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

3. Each Party shall provide persons with a recognized interest under its law in a particular matter effective access to sanctions or remedies for violations of its environmental laws, or for

- (ii) 缔约方认识到涵盖协议的重要性。因此，如果一项行动或不行动的过程涉及履行其在涵盖协议下义务的法律、法规和其他措施，则该情况应作为确定(i)项中关于资源分配是否合理且善意时的相关考量因素。

2. 缔约方认识到，通过削弱或降低其环境法提供的防护来鼓励贸易或投资是不恰当的。因此，任何缔约方均不得放弃或以其他方式减损此类法律，或提议放弃或以其他方式减损此类法律，以致削弱或降低这些法律提供的防护，从而影响缔约方之间的贸易或投资。

3. 第2款不适用于缔约方根据其环境法中关于放弃或减损的条款放弃或减损环境法的情况，前提是该放弃或减损不违反缔约方在涵盖协议下的义务。

4. 为进一步明确，本章节中的任何内容均不得解释为授权一缔约方的主管当局在另一缔约方的领土上开展环境执法活动。

第20.4条：程序事项

1. 每一缔约方应确保利害关系人可请求该缔约方的主管当局调查涉嫌违反其环境法的行为，并应根据其法律对这些请求给予适当考虑。

2. 每一缔约方应确保其法律提供司法、准司法或行政诉讼程序，以对环境法的违规行为实施制裁或补救措施，并确保在其法律中对特定事项具有公认利益的个人能够适当参与此类程序。

- (a) 每一缔约方应根据其法律确保此类程序：(i) 公平、公正和透明，并为此遵守法律正当程序；及(ii) 向公众开放，除非司法行政另有要求。(b) 每一缔约方应确保主持或审查此类程序的法庭公正和独立，且对事项结果无任何实质性利益。

3. 每一缔约方应为其法律下在特定事项中具有公认利益的人提供有效途径，以获取针对违反其环境法的制裁或补救措施，或针对

violations of a legal duty under its law relating to human health or the environment, which may include rights such as to:

- (a) sue another person subject to its jurisdiction for damages;
- (b) seek injunctive relief where a person suffers, or may suffer, loss, damage, or injury as a result of conduct by another person subject to its jurisdiction;
- (c) seek sanctions or remedies such as monetary penalties, emergency closures, temporary suspension of activities, or orders to mitigate the consequences of such violations; or
- (d) request, or where applicable request a tribunal to order, 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.

4. Each Party shall provide appropriate and effective sanctions or remedies for violations of its environmental laws that:

- (a) 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
- (b) may include administrative, civil, and criminal sanctions and remedies, such as compliance agreements, penalties, fines, imprisonment, injunctions, closure of facilities, and requirements to take remedial action or pay for damage to the environment including the cost of containing or cleaning up pollution.

ARTICLE 20.5: MECHANISMS TO ENHANCE ENVIRONMENTAL PERFORMANCE

1. The Parties recognize that flexible, voluntary, and incentive-based mechanisms can contribute to the achievement and maintenance of high levels of environmental protection, complementing the procedures set out in Article 20.4. 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) voluntary 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

违反其法律中有关人类健康或环境的法定义务的行为， 此类权利可包括：

- (a) 对其管辖范围内的另一人提起损害赔偿诉讼；(b) 当某人因其管辖范围内另一人的行为而遭受或可能遭受损失、损害或伤害时，寻求禁令救济；(c) 寻求制裁或补救措施，例如罚款、紧急关闭、活动暂停或要求减轻此类违规行为后果的命令；或(d) 请求或在适用情况下请求法庭命令该缔约方的主管当局采取适当行动执行其环境法，以保护环境或避免环境损害。

4. 每一缔约方应针对违反其环境法的行为提供适当且有效的制裁或补救措施， 这些措施：

- (a) 酌情考虑违规行为的性质和严重性、违规者从违规行为中获得的任何经济利益、违规者的经济状况以及其他相关因素；以及(b) 可包括行政、民事和刑事制裁及补救措施，例如合规协议、处罚、罚款、监禁、禁令、设施关闭以及要求采取补救行动或支付环境损害赔偿（包括污染控制或清理成本）。

第二十条第五款： 提升环境绩效的机制

1. 缔约方认识到，灵活、自愿和激励性机制有助于实现并维持高水平的环境保护，从而补充第二十条第四款规定的程序。在适当且符合其法律的情况下， 每一缔约方应鼓励开发和利用此类机制， 其中可包括：

- (a) 促进自愿行动以保护或改善环境的机制， 例如：
 - (i) 涉及企业、地方社区、非政府组织、政府机构或科学组织的伙伴关系；
 - (ii) 环境绩效的自愿性指南；或(iii) 主管部门、相关缔约方和公众之间就实现高水平环境保护的方法、自愿环境审计及

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 trading 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 standards used in measuring environmental performance; and
- (b) flexible means to achieve those goals and meet those standards, including through mechanisms identified in paragraph 1.

ARTICLE 20.6: INSTITUTIONAL ARRANGEMENTS

1. The Parties hereby establish an Environmental Affairs Council. The Council shall comprise appropriate senior officials from each Party, including officials with environmental responsibilities.
2. The Council shall meet within one year after the date this Agreement enters into force, and thereafter as necessary, to oversee the implementation of this Chapter. 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 related to the implementation of this Chapter, including views received from the national advisory committees referred to in Article 20.7.3. The Council shall make public a written summary of discussions held during the public session.
3. The Council shall promote public participation in its work, including by seeking advice from the public in developing agendas for Council meetings and by engaging in a dialogue with the public on environmental issues of interest to the public.
4. The Council shall seek appropriate opportunities for the public to participate in the development and implementation of cooperative environmental activities, including through the environmental cooperation mechanism established by the Parties.
5. Formal decisions of the Council shall be made public, unless the Council decides otherwise.

ARTICLE 20.7: OPPORTUNITIES FOR PUBLIC PARTICIPATION

1. Each Party shall promote public awareness of its environmental laws by ensuring that information is available to the public regarding its environmental laws and environmental law

报告、更高效利用资源或减少环境影响的方法、环境监测以及基线数据收集的自愿信息共享；或

- (b) 激励措施，包括酌情采用市场激励，以鼓励对自然资源 and 环境的保护、恢复与防护，例如对环保表现优异者设施或企业给予公众认可，或实施交易许可计划及其他工具以助力实现环境目标。

2. 各缔约方应根据其法律，在适当且可行的情况下鼓励：

- (a) 维护、制定或完善用于衡量环境绩效的绩效目标与标准；及 (b) 通过灵活手段实现这些目标并满足相关标准，包括采用第1款所述机制。

第二十条第六款：机构安排

1. 缔约方特此设立 环境事务委员会。该委员会应由各缔约方相关高级官员组成，包括负责环境事务的官员。
2. 委员会应于本协议生效之日起一年内召开会议，此后视需要召开会议以监督本章节的实施。除非缔约方另有约定，每次委员会会议均应包含公开会议环节，委员会成员须在此期间与公众会面，讨论与本章节实施相关的事项，包括从第二十条第七款第三项所述国家咨询委员会收到的意见。委员会应公开书面总结公开会议期间的讨论内容。
3. 理事会应促进公众参与其工作，包括通过征求公众意见制定理事会会议议程，并就公众关注的环境问题与公众进行对话。
4. 理事会应寻求适当机会让公众参与合作环境活动的制定和实施，包括通过缔约方建立的环境合作机制。
5. 理事会的正式决定应公开，除非理事会另有决定。

第二十条第七款：公众参与机会

1. 每一缔约方均应通过确保公众能够获取有关其环境法及环境法的信息，提升公众对其环境法的意识。

enforcement and compliance procedures, including procedures for its interested persons to request the Party’s competent authorities to investigate alleged violations of its environmental laws.

2. 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:

- (a) seek to accommodate requests from persons of either Party for information or to exchange views regarding either Party’s implementation of this Chapter; and
- (b) provide for the receipt of written submissions from persons of either Party that concern matters related to the implementation of specific provisions of this Chapter. Each Party shall respond to these submissions in accordance with domestic procedures and make the submissions and its responses easily accessible to the public in a timely manner.

3. Each Party shall convene a new, or consult an existing, national advisory committee, comprising persons of the Party with relevant experience, which may include experience in business or environmental matters, to solicit its views on matters related to the implementation of this Chapter. Each time it meets, the Council shall consider views that each Party has received from its national advisory committee on matters related to the implementation of this Chapter.

4. The Parties recognize the importance of public participation in the implementation of this Chapter and that effectively implementing this Article will assist the Parties in implementing the other provisions of this Chapter. Accordingly, the Council shall review the implementation of this Article and prepare and submit to the Joint Committee a written report on the results of that review no later than 180 days after the first anniversary date of entry into force of this Agreement, and thereafter on the request of either Party. The Council shall make each such report public at the time the Council submits the report to the Joint Committee.

ARTICLE 20.8: ENVIRONMENTAL COOPERATION

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

2. The Parties are committed to expanding their cooperative relationship in bilateral, regional, and multilateral fora on environmental matters, recognizing that such cooperation will help them achieve their shared environmental goals and objectives, including the development and improvement of environmental protection, practices, and technologies.

3. The Parties are committed to undertaking cooperative environmental activities pursuant to the *Agreement between the Government of the United States of America and the Government of the Republic of Korea on Environmental Cooperation* (ECA), including activities related to implementation of this Chapter. Activities that the Parties undertake pursuant to the ECA will be

执法和合规程序，包括利害关系人请求缔约方主管当局调查涉嫌违反其环境法的程序。

2. 认识到公众参与机会有助于分享最佳实践并开发针对公众关注问题的创新方法，每一缔约方应：

- (a) 尽力满足任一缔约方人士提出的关于本章节实施情况的信息请求或意见交流要求；以及 (b) 建立接收任一缔约方人士就本章节具体条款实施相关事项提交的书面意见机制。每一缔约方应依据国内程序对这些意见作出回应，并及时将意见及其回应以易于获取的方式向公众公开。

3. 每一缔约方应组建新的或咨询现有的国家咨询委员会，其成员由具有相关经验（可包括商业或环境事务经验）的缔约方人士组成，以征求其对本章节实施相关事项的意见。理事会每次召开会议时，均应审议各缔约方从其国家咨询委员会获得的关于本章节实施相关事项的意见。

4. 缔约方认识到公众参与对本章节实施的重要性，并有效实施本条将有助于缔约方实施本章节的其他条款。因此，理事会应审查本条的实施情况，并在本协议生效一周年纪念日后的180天内，以及此后任一缔约方提出请求时，向联合委员会提交一份关于审查结果的书面报告。理事会向联合委员会提交报告时，应将每份报告公开。

第20.8条：环境合作

1. 缔约方认识到在加强贸易和投资关系的同时，增强环境保护能力和促进可持续发展的重要性。

2. 缔约方致力于在双边、区域和多边论坛上扩大在环境事务上的合作关系，认识到此类合作将有助于实现共同的环境目标和宗旨，包括发展和改进环境保护、实践和技术。

3. 缔约方承诺根据《美利坚合众国政府与大韩民国政府关于环境合作的协定》（《环境合作协定》）开展合作环境活动，包括与实施本《章节》相关的活动。缔约方根据《环境合作协定》开展的活动将由

coordinated and reviewed by the implementation body established under the ECA. The Parties also acknowledge the importance of cooperative environmental activities in other fora.

4. Each Party shall consider public comments and recommendations it receives regarding cooperative environmental activities undertaken pursuant to this Chapter and the ECA.

5. Each Party shall, as appropriate, share information with the other Party and the public regarding its experiences in assessing and addressing the positive and negative environmental effects of trade agreements and policies.

ARTICLE 20.9: 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 the contact point that the other Party has designated for purposes of this Article. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond. Unless the Parties otherwise agree, consultations shall commence promptly after a Party delivers a request for consultations to the other Party’s contact point.

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. If the matter arises under Article 20.2 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.³

3. If the consultations fail to resolve the matter, either Party may request that the Council be convened to consider the matter by delivering a written request to the other Party’s contact point referred to in paragraph 1. The Council shall convene promptly and endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or other experts and having recourse to such procedures as good offices, conciliation, or mediation. When the matter arises under Article 20.2 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:

- (a) through a mechanism that the Council establishes, consult fully with any entity authorized to address the issue under the relevant agreement; and
- (b) 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.

³ The Parties understand that for purposes of paragraph 2, where a covered agreement requires a decision to be taken by consensus, such a requirement could create an unreasonable delay.

《环境合作协定》下设的实施机构进行协调和审议。缔约方还认识到在其他论坛开展合作环境活动的重要性。

4. 各缔约方应考虑其收到的关于根据本章及《环境合作协定》开展的合作环境活动的公众意见与建议。

5. 各缔约方应酌情与另一缔约方及公众分享其在评估和应对贸易协定与政策对环境产生的积极与消极影响方面的经验信息。

第20.9条：环境磋商与专家组程序

1. 缔约方可就本章项下产生的任何事项，通过向另一缔约方为本条目的指定的联络点提交书面请求，要求与该缔约方进行磋商。请求应包含具体且充分的信息，以使接收请求的缔约方能够作出回应。除非缔约方另有约定，磋商应在请求方向另一缔约方联络点提交磋商请求后立即开始。

2. 缔约方应尽一切努力达成双方满意的解决方案，并可寻求其认为适当的任何个人或机构的建议或协助。若事项涉及第20.2条或同时涉及该条与本章其他条款，且与缔约方在涵盖协议下的义务相关，则缔约方应努力通过相关协议中双方同意的磋商或其他程序（如有）处理该事项，除非该程序可能导致不合理延误。³

3. 若磋商未能解决该事项，任一缔约方可依据第1款所述联络点向另一缔约方提交书面请求，要求召开理事会审议该事项。理事会应立即召开会议，并努力迅速解决该事项，包括在适当时咨询政府或其他专家，并诉诸斡旋、调解或调停等程序。若该事项涉及第20.2条或同时涉及该条与本章其他条款，且关系到缔约方在涵盖协议下的义务时，理事会应：

- (a) 通过理事会建立的机制，与任何实体进行充分协商根据相关协议授权处理该问题；且
- (b) 在协议范围内就该问题遵从解释性指导鉴于其性质和状态（包括该缔约方相关法律、法规和其他措施是否符合协议项下义务）而采取适当行动。

³ 缔约方理解，就第2款而言，当某一涵盖协议要求以协商一致方式作出决定时，此类要求可能导致不合理的延误。

4. If the Parties have failed to resolve the matter within 60 days of the delivery of a request for consultations under paragraph 1, the complaining Party may request consultations under Article 22.7 (Consultations) or refer the matter to the Joint Committee pursuant to Article 22.8 (Referral to the Joint Committee) and, as provided in Chapter Twenty-Two (Institutional Provisions and Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

5. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with paragraphs 1 through 3.

6. In a dispute arising under Article 20.2, 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-Two (Dispute Settlement) shall in making its findings and determination under Article 22.11 (Panel Report):⁴

- (a) consult fully, through a mechanism that the Environmental Affairs 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 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 Article 22.11.⁵

ARTICLE 20.10: RELATION TO MULTILATERAL ENVIRONMENTAL AGREEMENTS

1. The Parties recognize that certain multilateral environmental agreements play an important role globally and domestically in protecting the environment. The Parties further recognize that this Chapter and the ECA can contribute to realizing the goals of such agreements. Accordingly, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are both party and trade agreements to which they are both party.

2. To this end, the Parties shall consult, as appropriate, with respect to negotiations on environmental issues of mutual interest.

⁴ 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 22.10.4 (Rules of Procedure).

⁵ The guidance in subparagraph (c) shall prevail over any other interpretative guidance.

4. 若缔约方未能在根据第1款提交磋商请求后60天内解决该事项，申诉方可根据第22.7条（磋商）请求磋商，或依据第22.8条（提交联合委员会）将该事项提交联合委员会，并如第二十二章（机构条款和争端解决）所规定，此后可援引该章其他条款。

5. 任何缔约方不得在未首先尝试根据第1至第3段解决事项的情况下，就本章节下产生的事项援引本协议的争端解决机制。

6. 对于涉及缔约方在涵盖协议下义务问题的、依据第20.2条或同时依据该条款及本章其他条款产生的争端，根据第二十二章（争端解决）召集的专家组在依据第22.11条（专家组报告）作出认定和裁决时：⁴

- (a) 应通过环境事务委员会建立的机制，就该问题与相关环境协议下获授权处理该问题的实体进行充分磋商；(b) 在考虑问题性质及状态（包括该缔约方相关法律、法规和其他措施是否符合协议义务）的基础上，适当遵从协议下对该问题的解释性指导；(c) 若协议允许对争端中相关问题存在多种合理解释且被诉缔约方依赖其中一种解释时，应为第22.11条下的认定和裁决目的接受该解释。⁵

第20.10条：与多边环境协定的关系

1. 缔约方认识到某些多边环境协议在全球和国内环境保护方面发挥着重要作用。缔约方进一步认识到本章节及《环境合作协定》有助于实现此类协议的目标。因此，缔约方应继续寻求方法，以增强双方均为缔约方的多边环境协议与双方均为缔约方的贸易协定之间的相互支持性。

2. 为此，缔约方应酌情就共同关心的环境问题进行谈判协商。

⁴ 为更加明确起见，本款规定的磋商和指导不影响专家组根据第22.10.4条（程序规则）向任何个人或机构寻求信息和技术指导的能力。⁵ (c)项规定的指导应优先于任何其他解释性指导。

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.⁶

ARTICLE 20.11: DEFINITIONS

For purposes of this Chapter:

environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

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

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health;

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

statute or regulation means:

- (a) for Korea, an act of the National Assembly or a regulation promulgated pursuant to an act of the National Assembly that is enforceable by action of the central level of government; and
- (b) for the United States, an act of Congress or a regulation promulgated pursuant to an act of Congress that is enforceable by action of the central level of government.

⁶ For greater certainty, paragraph 3 is without prejudice to multilateral environmental agreements other than covered agreements.

3. 若缔约方在本协议项下的义务与某一涵盖协议存在不一致，该缔约方应寻求平衡两项协议下的义务，但此举不妨碍其采取特定措施以履行涵盖协议义务，前提是该措施的主要目的并非实施变相贸易限制。⁶

第20.11条：定义

就本章节而言：

环境法指一缔约方的任何法规或规章或其条款，其主要目的是通过以下方式保护环境，或防止对人类、动物或植物的生命或健康构成危险：

- (a) 预防、减少或控制污染物或环境污染物的释放、排放或泄漏；(b) 控制环境有害或有毒化学品、物质、材料和废物，并传播相关信息；或(c) 保护或保育野生植物或动物，包括濒危物种、其栖息地和特别保护的自然区域，

在缔约方行使主权、主权权利或管辖权的区域内，但不包括直接与工人安全或健康相关的任何法规或规章或其条款；

履行涵盖协议下义务的法律、法规 and 所有其他措施指缔约方在中央政府层面的法律、法规和其他措施；且

法规或规章指：

- (a) 对韩国而言，指国民议会通过的法案或根据国民议会法案颁布的规章，且可由中央政府层面采取行动强制执行；以及 (b) 对美国而言，指国会通过的法案或根据国会法案颁布的规章，且可由中央政府层面采取行动强制执行。

⁶ 为进一步明确，第3款不影响涵盖协议以外的多边环境协议。

ANNEX 20-A
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.

附件20-A 涵盖协议

1. 就本《章节》而言，涵盖协议指以下所列的多边环境协议，且两个缔约方均为其缔约方：
- (a) 1973年3月3日在华盛顿签署的《濒危野生动植物种国际贸易公约》及其修正案；(b) 1987年9月16日在蒙特利尔签署的《关于消耗臭氧层物质的蒙特利尔议定书》及其调整和修正案；(c) 1978年2月17日在伦敦签署的《1973年国际防止船舶造成污染公约的1978年议定书》及其修正案；(d) 1971年2月2日在拉姆萨尔签署的《关于特别是作为水禽栖息地的国际重要湿地公约》及其修正案；(e) 1980年5月20日在堪培拉签署的《南极海洋生物资源养护公约》；(f) 1946年12月2日在华盛顿签署的《国际捕鲸管制公约》；以及(g) 1949年5月31日在华盛顿签署的《建立美洲间热带金枪鱼委员会公约》。
2. 缔约方可书面同意修改第1款中的清单，以纳入任何其他多边环境协议。

June 30, 2007

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Article 20.7.2(b) (Opportunities for Public Participation) of the Free Trade Agreement between our two Governments signed this day:

For greater certainty:

With respect to providing for the receipt of submissions from persons of either Party, Article 20.7.2(b) shall not be construed to require a Party to establish procedures that duplicate existing channels for the receipt of submissions from persons of a Party.

With respect to providing for the receipt of submissions from persons of the other Party, a Party may establish appropriate criteria, consistent with Article 20.7.2(b), for accepting such submissions. These criteria may include that such a submission shall be transmitted to it by the other Party and that the other Party shall transmit such a submission only if it has reason to believe that the submission is submitted by a person of the other Party and the submission concerns matters related to the implementation of specific provisions of Chapter Twenty (Environment). If a Party receives a submission that has been transmitted to it by the other Party, it shall provide its response directly to the person of the other Party.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

2007年6月30日

尊敬的玄桎濬阁下 贸易部长
首尔，大韩民国

尊敬的金部长：

我荣幸地确认，美利坚合众国与大韩民国代表团在关于今日签署的两国政府间《自由贸易协定》第**20.7.2(b)**条（公众参与机会）的谈判过程中达成如下谅解：

为进一步明确：

关于接收任一缔约方人士提交的材料，第**20.7.2(b)**条不得解释为要求缔约方建立与现有接收该缔约方人士材料的渠道相重复的程序。

关于接收另一缔约方人士提交的材料，缔约方可依据第**20.7.2(b)**条制定接受此类材料的适当标准。这些标准可包括：该材料须经另一缔约方转交，且另一缔约方仅在有理由相信该材料由该缔约方人士提交且涉及第二十章（环境）具体条款实施相关事项时方可转交。若缔约方收到经另一缔约方转交的材料，应直接向该另一缔约方人士提供答复。

我荣幸地提议，本函及贵方复函确认贵国政府认同此理解，将构成该自由贸易协定的组成部分。

此致，

苏珊·C·施瓦布

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

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

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Article 20.7.2(b) (Opportunities for Public Participation) of the Free Trade Agreement between our two Governments signed this day:

For greater certainty:

With respect to providing for the receipt of submissions from persons of either Party, Article 20.7.2(b) shall not be construed to require a Party to establish procedures that duplicate existing channels for the receipt of submissions from persons of a Party.

With respect to providing for the receipt of submissions from persons of the other Party, a Party may establish appropriate criteria, consistent with Article 20.7.2(b), for accepting such submissions. These criteria may include that such a submission shall be transmitted to it by the other Party and that the other Party shall transmit such a submission only if it has reason to believe that the submission is submitted by a person of the other Party and the submission concerns matters related to the implementation of specific provisions of Chapter Twenty (Environment). If a Party receives a submission that has been transmitted to it by the other Party, it shall provide its response directly to the person of the other Party.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]
Hyun Chong Kim

[翻译]

2007年6月30日

尊敬的苏珊·C·施瓦布 美国贸易
代表 华盛顿特区

尊敬的施瓦布大使：

我荣幸地确认收到您今日的来信，内容如下：

我荣幸地确认美利坚合众国与大韩民国代表团在谈判过程中就今日签署的两国政府间《自由贸易协定》第20.7.2(b)条（公众参与机会）达成的以下谅解：

为进一步明确：

关于接收任一缔约方人士提交的材料，第20.7.2(b)条不得解释为要求缔约方建立与现有接收该缔约方人士材料的渠道相重复的程序。

关于接收另一缔约方人士提交的材料，缔约方可依据第20.7.2(b)条制定适当的接收标准。此类标准可包括：该材料须经另一缔约方转交，且另一缔约方仅在合理认为该材料由其境内人士提交并涉及第二十章（环境）具体条款实施相关事项时予以转交。若缔约方收到另一缔约方转交的材料，应直接向该另一缔约方人士作出回应。

我谨提议，本函及贵方确认贵国政府认同此理解的复函应构成《自由贸易协定》的组成部分。

我谨进一步确认，我国政府认同这一理解，并同意贵方来函及本复函将构成《自由贸易协定》的组成部分。

此致，

SGN/]
金玄钟

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapter Twenty (Environment) of the Free Trade Agreement between our two Governments signed this day:

Before initiating dispute settlement under the Agreement for a matter arising under Article 20.3.1(a), a Party should consider whether it maintains environmental laws that are substantially equivalent in scope to those that would be the subject of the dispute.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]
Hyun Chong Kim

[翻译]

2007年6月30日

尊敬的苏珊·C·施瓦布 美国贸易
代表 华盛顿特区

尊敬的施瓦布大使：

我荣幸地确认，大韩民国与美利坚合众国代表团在关于今日签署的两国政府间《自由贸易协定》第二十章（环境）的谈判过程中达成如下谅解：

在根据《协议》就第20.3.1(a)条项下事项启动争端解决程序前，缔约方应考虑其是否维持了与争议事项范围基本等同的环境法。

我谨提议，本函及贵方确认贵国政府认同此谅解的复函应构成《自由贸易协定》的组成部分。

此致，

[SGN/]金玄钟

June 30, 2007

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

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

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Chapter Twenty (Environment) of the Free Trade Agreement between our two Governments signed this day:

Before initiating dispute settlement under the Agreement for a matter arising under Article 20.3.1(a), a Party should consider whether it maintains environmental laws that are substantially equivalent in scope to those that would be the subject of the dispute.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

2007年6月30日

尊敬的玄怔濬阁下 贸易部长
首尔, 大韩民国

尊敬的金部长:

我荣幸地确认收到您今日的来信, 内容如下:

我荣幸地确认大韩民国与美利坚合众国代表团在关于我们两国政府今日签署的自由贸易协定第二十章 (环境) 的谈判过程中达成的以下谅解:

在根据协议就第20.3.1(a)条项下产生的事项启动争端解决之前, 缔约方应考虑其是否维持了与争端主题在范围上基本相当的环境法。

我荣幸地提议, 本函及贵方回函确认贵国政府认同此谅解, 应构成自由贸易协定的组成部分。

我谨进一步确认, 我国政府认同这一理解, 并同意贵方来函及本复函将构成《自由贸易协定》的组成部分。

此致

Susan C. Schwab