

CHAPTER SEVENTEEN

ENVIRONMENT

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.

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.

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.

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.

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 Article 17.5.1 are restricted to those matters with merit where trade or investment effect can be established.

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.

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.

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.

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.

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.