

**FTAA – Free Trade Area of the Americas**

**Draft Agreement**

**[Chapter VI Environment Provisions]**

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**[Environmental Issues**

[1. Environmental issues are not contemplated in the TCI mandate or in the FTAA negotiation mandate. Therefore, no provisions on this issue should exist in the FTAA Agreement.]

[2. Environmental issues shall not be utilized as conditionalities or subject to disciplines, the non-compliance of which can be subject to trade restrictions or sanctions.]]

**[CHAPTER VI Environment Provisions**

**Article 1. Levels of Protection**

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

**Article 2. Application and Enforcement of Environmental Laws**

2.1. A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

2.2 The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with Article 2.1, where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

2.3. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

**Article 3. Opportunities for Public Participation**

3.1. 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 Parties and to its public those communications it receives and shall review and respond to them in accordance with its domestic procedures.

3.2. Each Party shall make best efforts to respond favorably to requests for consultations by persons or organizations in its territory regarding the Party's implementation of this Chapter.

3.3. Each Party may convene, or consult an existing, national consultative or advisory committee, comprising members of its public, including representatives of business and environmental organizations, and other persons, to advise it on the implementation of this Chapter.

#### **Article 4. Environmental Cooperation**

4.1. The Parties recognize the importance of strengthening capacity to protect the environment and promote sustainable development in concert with strengthening trade and investment relations among them as well as the importance of supporting ongoing bilateral, regional, and hemispheric efforts and further cooperative activities to accomplish this goal.

4.2. The Parties shall, as they deem appropriate, share information with each other and the public on their experiences in assessing and taking into account positive or negative environmental effects of trade agreements and policies.

#### **Article 5. Environmental Consultations**

5.1. A Party may request consultations with another Party regarding any matter arising under this Chapter. Unless the Parties otherwise agree, consultations shall commence within thirty (30) days of a Party's delivery of a request for consultations to the other Party.

5.2. 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.

5.3. If a Party considers that the other Party has failed to carry out its obligations under Article 2.1 (Application and Enforcement of Environmental Laws) of this Chapter, the Party may request consultations pursuant to Chapter XX (Dispute Settlement) or under Article 5.1.

5.4. If a Party requests consultations pursuant to Chapter XX (Dispute Settlement) at a time when the Parties are engaged in consultations on the same matter under Article 5.1., the Parties shall discontinue their efforts to resolve the matter under this Chapter. Once consultations have begun under Chapter XX (Dispute Settlement), no consultations may be entered into under this Chapter.

5.5. Chapter XX (Dispute Settlement) shall not apply to a matter arising under any provision of this Chapter other than Article 2.1 (Application and Enforcement of Environmental Law).

#### **Article 6. Procedural Matters**

6.1. Each Party shall ensure that judicial, quasi-judicial or administrative proceedings are available under its law to sanction or remedy violations of its environmental laws. Such proceedings shall be fair, open, and equitable, 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.

6.2. Each Party shall provide appropriate and effective remedies or sanctions for a violation of its environmental laws that:

- a) take into consideration the nature and gravity of the violation, any economic benefit the violator has derived from the violation, the economic condition of the violator, and other relevant factors; and
- b) may include compliance agreements, penalties, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.

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

6.4. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial, quasi-judicial, or administrative proceedings for the enforcement of the Party's environmental laws.

6.5 Each Party shall provide persons appropriate and effective rights of access to remedies in accordance with its laws, which may include the right:

- a) to sue another person under that Party's jurisdiction for damages under that Party's environmental laws;
- b) to seek sanctions or remedies such as monetary penalties, emergency closures or orders to mitigate the consequences of violations of its environmental laws;
- c) to request the competent authorities to take appropriate action to enforce the Party's environmental laws in order to protect the environment or to avoid environmental harm; or
- d) to seek injunctions where a person suffers, or may suffer, loss, damage or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws or from tortious conduct that harms human health or the environment.

## **Article 7. Measures to Enhance Environmental Performance**

7.1. The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of high levels of environmental protection, complementing the procedures set forth in Article 6.1.-6.5. (Procedural Matters) of this Chapter. As appropriate and in accordance with its law, each Party shall encourage the development of incentives and voluntary mechanisms, which may include:

- a) Mechanisms that facilitate voluntary action to protect or enhance the environment, such as partnerships involving businesses, local communities, non-governmental organizations, government agencies, or scientific organizations, or voluntary guidelines for environmental performance.
- b) Sharing of information and expertise among authorities, interested parties and the public, concerning: methods for achieving high levels of environmental protection; initiatives such as voluntary environmental auditing and reporting; methods for improving

efficiency of resource use or reducing environmental impacts; environmental monitoring; and collection of baseline data.

- c) Incentives to encourage protection of natural resources and the environment, including market-based mechanisms where appropriate, such as: financial incentives for conserving, restoring, or enhancing the environment; incentives for the exchange or trade of environment-related permits, credits, or other instruments that facilitate efficient achievement of environmental goals; and public recognition of facilities or companies that are superior environmental performers.

7.2. As appropriate and in accordance with its law, each Party shall encourage:

- a) the development and improvement of performance goals and standards used in measuring environmental performance; and
- b) shall encourage flexibility in the means by which such goals are achieved and standards are met, including through measures identified in Article 7.1.

#### **Article 8. Relationship to Environmental Agreements**

8.1. The Parties recognize that multilateral environmental agreements to which they are all parties play an important role in protecting the environment globally and domestically and that implementation of these agreements at the national level is critical to achieving the environmental objectives of these agreements. In this regard, the Parties shall continue to seek means to enhance the mutual supportiveness of multilateral environmental agreements to which they are all parties and international trade agreements to which they are all parties. In particular, the Parties will consult regularly with respect to negotiations in the WTO regarding multilateral environmental agreements.

#### **Article 9. Definitions**

9.1. 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.

9.2. For:

- a) Country XX, **statute or regulation** means...

- b) Country XX, **statute or regulation** means...
- c) Country XX, **statute or regulation** means...
- d) the United States, **statute or regulation** means an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal government.]