

CHAPTER 22

ENVIRONMENT

Article 22.1 Definitions

For the purposes of this Chapter:

“environmental law” means a law or regulation of a Party, or provision thereof, including any that implements the Party’s obligations under a multilateral environmental agreement, 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 including greenhouse gases;
- (b) the control of environmentally hazardous or toxic chemicals, substances, materials or 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,^{1, 2}

but does not include a law or regulation, or provision thereof, directly related to worker safety or health, nor any law or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources;

For Australia, “law or regulation” means an Act of the Commonwealth Parliament, or a regulation made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament, that is enforceable at the central level of government; and

¹ For the purposes of this Chapter, the term “specially protected natural areas” means those areas as defined by the Party in its laws and regulations.

² The Parties recognise that such protection or conservation may include the protection or conservation of biological diversity.

Article 22.2 Objectives

1. The objectives of this Chapter are to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.
2. Taking account of their respective domestic priorities and circumstances, the Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance, and complement the objectives of this Agreement.
3. The Parties further recognise that it is inappropriate to establish or use their environmental laws or other environmental measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

Article 22.3 General Commitments

1. The Parties recognise the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in the furtherance of sustainable development.
2. The Parties recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own priorities relating to the environment, including climate change, and to establish, adopt or modify its environmental laws and policies accordingly.
3. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection.
4. Neither Party shall fail to effectively enforce its environmental laws 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.
5. The Parties recognise that each Party retains the right to exercise discretion and to make decisions regarding:

- (a) investigatory, prosecutorial, regulatory, and compliance matters; and
- (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have a higher priority.

Accordingly, the Parties understand that with respect to the enforcement of environmental laws, a Party is in compliance with paragraph 4 if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

- 6. Without prejudice to paragraph 2, the Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.
- 7. Where a Party has defined environmental law under Article 22.1 (Definitions) to include only laws and regulations at the central level of government (first Party) and where the other Party (second Party) considers that an environmental law at the sub-central level of government of the first Party is not being effectively enforced by the relevant sub-central level of government through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, the second Party may request a dialogue with the first Party. The request shall contain information that is specific and sufficient to enable the first Party to evaluate the matter at issue, and an indication of how the matter is negatively affecting trade or investment of the second Party.
- 8. 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 22.4 **Multilateral Environmental Agreements**

- 1. The Parties recognise that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protecting the environment, and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its

commitment to implement the multilateral environmental agreements to which it is a party.

2. The Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.

Article 22.5 Climate Change

1. Each Party affirms its commitment to address climate change, including under the *United Nations Framework Convention on Climate Change* done at New York on 9 May 1992 and the *Paris Agreement* done at Paris on 12 December 2015 (“Paris Agreement”), to which both Parties are party, and recognises the importance of achieving their goals.
2. The Parties emphasise that efforts to address climate change require collective and urgent action, and acknowledge the role of global trade and investment in these efforts.
3. The Parties recognise the important role that cooperation can play in addressing climate change. Consistent with Article 22.20 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest which may include:
 - (a) emission reduction opportunities across all sectors and greenhouse gases;
 - (b) exchange on policies, laws, and measures that can contribute to a reduction in greenhouse gas emissions;
 - (c) development and acceleration of cost-effective, low, and zero emissions technologies;
 - (d) clean and renewable energy sources and supporting infrastructure and enabling technologies;
 - (e) energy efficiency;
 - (f) sustainable transport and sustainable urban infrastructure development;
 - (g) addressing deforestation and forest degradation;

- (h) emissions measurement, reporting, and verification;
- (i) climate change adaptation and resilience;
- (j) nature-based solutions to mitigate and adapt to the impacts of climate change; and
- (k) capacity building and development assistance for climate vulnerable countries.

Article 22.6 **Environmental Goods and Services**

1. The Parties recognise the importance of trade and investment in environmental goods and services as a means of improving environmental and economic performance, contributing to clean growth, and addressing global environmental challenges.
2. Accordingly, each Party shall facilitate and promote, as appropriate, trade and investment in environmental goods and services, including environmental and low emissions technologies, clean and renewable energy and enabling infrastructure, and energy efficient goods and services.
3. The Environment Working Group shall consider issues identified by a Party or the Parties related to trade in environmental goods and services, including issues identified as potential non-tariff barriers to that trade. The Parties shall endeavour to address any potential barrier to trade in environmental goods and services that may be identified by a Party, including by working through the Environment Working Group and in conjunction with other relevant committees established under this Agreement, as appropriate.
4. The Parties shall cooperate bilaterally and in international fora, as appropriate, on ways to enhance trade and investment in environmental goods and services.

Article 22.7 **Circular Economy**

1. The Parties recognise the importance of a transition towards a circular economy and the role that waste avoidance and greater resource efficiency can play in reducing pressure on the natural environment, improving resource security, and reducing other associated negative environmental effects arising from the use of materials throughout their

lifecycle. The Parties further recognise the role that trade can play in achieving these goals through trade in second-hand goods, end-of-life products, secondary materials, processed waste, as well as trade in related services.

2. The Parties recognise the importance of avoiding the generation of waste and encouraging the reuse of products and resource efficient product design, including the designing of products to be easier to reuse, dismantle, or recycle at end of life. The Parties also recognise the importance of encouraging environmental labelling, including eco-labelling, to make it easier for consumers to make more sustainable choices.
3. Consistent with Article 22.20 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest related to the transition towards a circular economy. Areas of cooperation may include:
 - (a) barriers to trade in relation to the circular economy;
 - (b) environmental labelling, including eco-labelling;
 - (c) sustainable supply chain management, including enhanced reverse logistics;
 - (d) investment in, and financing of, circular economy projects;
 - (e) reuse, repair, remanufacture, and recycling;
 - (f) resource efficient product design that makes products more durable and easier to repair, recycle, and reuse;
 - (g) extended producer responsibility;
 - (h) technological innovation related to the circular economy including innovative approaches to recycling and litter reduction, processing waste, waste tracking mechanisms, data collection, sustainable plastic packaging, and alternative materials;
 - (i) best practice in resource efficiency in key fields such as industrial symbiosis, sustainable use of chemicals and plastics, and new business models such as product service systems;
 - (j) approaches to reducing the amount of waste sent to landfill and accelerating the movement of waste further up the waste hierarchy; and
 - (k) best practice on sustainable management of hazardous wastes.

Article 22.8
Ozone Depleting Substances and Hydrofluorocarbons

1. The Parties recognise that emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment, and that the reduction of certain substances can address global environmental challenges, including climate change. Accordingly, each Party shall take measures to control the production and consumption of, and trade in, substances controlled by the Montreal Protocol.^{3, 4, 5}
2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the protection of the ozone layer. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to ozone depleting substances and hydrofluorocarbons.
3. Consistent with 22.20 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest related to ozone-depleting substances and hydrofluorocarbons. Cooperation may include exchanging information and experiences in areas related to:
 - (a) environmentally friendly alternatives to ozone-depleting substances and hydrofluorocarbons, as well as emerging technologies for sustainable cooling and refrigeration;
 - (b) refrigerant management practices, policies, and programmes including lifecycle management of coolants and refrigerants;
 - (c) methodologies for stratospheric ozone measurements;

³ For greater certainty, this provision pertains to substances controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal on 16 September 1987 (“Montreal Protocol”), and any existing amendments or adjustments to the Montreal Protocol, including the *Kigali Amendment* done at Kigali on 15 October 2016, and any future amendments or adjustments to which the Parties are parties.

⁴ A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 22A, implementing its obligations under the Montreal Protocol, or any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

⁵ If compliance with this provision is not established pursuant to footnote 4, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to control the production and consumption of, and trade in, substances controlled by the Montreal Protocol in a manner that is likely to result in adverse effects on human health and the environment, in a manner affecting trade or investment between the Parties.

- (d) combating illegal trade in ozone-depleting substances and hydrofluorocarbons; and
- (e) barriers to trade in, and uptake of, sustainable cooling and refrigeration technologies.

Article 22.9
Air Quality

1. The Parties acknowledge that trade involving production, consumption, and transportation of goods across air, sea and land can cause air pollution and that air pollution can travel long distances and recognise the importance of reducing domestic and transboundary air pollution, and that cooperation can be beneficial in achieving these objectives.
2. The Parties recognise the importance of public participation and consultation in accordance with their respective law or policy in the development and implementation of measures to reduce domestic and transboundary air pollution and in ensuring access to air quality data.
3. Consistent with Article 22.20 (Cooperation Frameworks) the Parties shall cooperate to address matters of mutual interest with respect to air quality, which may include:
 - (a) ambient air quality planning;
 - (b) modelling and monitoring, including spatial distribution of main sources and their emissions;
 - (c) measurement and inventory methodologies for air quality and emissions measurements; and
 - (d) reduction, control, and prevention technologies and practices.

Article 22.10
Protection of the Marine Environment from Ship Pollution

1. The Parties recognise the importance of protecting and preserving the marine environment. To that end, each Party shall take measures to prevent the pollution of the marine environment from ships.^{6,7,8}
2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures to prevent the pollution of the marine environment from ships. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to the prevention of pollution of the marine environment from ships.
3. Consistent with Article 22.20 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest with respect to pollution of the marine environment from ships. Areas of cooperation may include:
 - (a) accidental pollution from ships;
 - (b) pollution from routine operations of ships;
 - (c) deliberate pollution from ships;
 - (d) development of technologies to minimise ship-generated waste;
 - (e) emissions from ships;
 - (f) adequacy of port waste reception facilities;
 - (g) increased protection in special geographic areas; and
 - (h) enforcement measures including notifications to flag States and, as appropriate, by port States.

⁶ For greater certainty, this provision pertains to pollution regulated by the *International Convention for the Prevention of Pollution from Ships*, done at London on 2 November 1973, as modified by the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships*, done at London on 17 February 1978, and the *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships 1973*, as Modified by the *Protocol of 1978 relating thereto*, done at London on 26 September 1997 (“MARPOL Convention”), and any existing and future amendments to the MARPOL Convention to which the Parties are parties.

⁷ A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 22B implementing its obligations under MARPOL, or any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

⁸ If compliance with this provision is not established pursuant to footnote 7, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to prevent the pollution of the marine environment from ships, in a manner affecting trade or investment between the Parties.

Article 22.11
Marine Litter

1. The Parties acknowledge that trade is a source of marine litter and the importance of taking action to prevent and reduce marine litter, including plastics and microplastics, in order to preserve marine and coastal ecosystems, prevent the loss of biodiversity, and mitigate marine litter's costs and impacts.
2. Recognising the global nature of the challenge of marine litter, the Parties acknowledge the importance of maintaining measures under their environmental laws and policies to prevent and reduce marine litter and taking action to address marine litter in other fora.
3. Accordingly, the Parties shall cooperate to address matters of mutual interest with respect to combatting marine litter, which may include:
 - (a) addressing land and sea based pollution;
 - (b) promoting waste management infrastructure;
 - (c) advancing efforts related to abandoned, lost, or otherwise discarded fishing gear; and
 - (d) circular economy and waste management hierarchy measures relevant to addressing marine litter.

Article 22.12
Marine Wild Capture Fisheries⁹

1. The Parties acknowledge their role as major consumers, producers and traders of fisheries products, and the importance of the marine fisheries sector to their development and to the livelihoods of their fishing communities, including artisanal or small-scale fisheries. The Parties also acknowledge that the fate of marine capture fisheries is an urgent resource problem facing the international community. Accordingly, the Parties recognise the importance of taking measures aimed at the conservation and the sustainable management of fisheries.
2. In this regard, the Parties acknowledge that inadequate fisheries management, fisheries subsidies that contribute to overfishing and overcapacity, and illegal, unreported, and unregulated (“IUU”) fishing¹⁰ can have significant negative impacts on trade, development

⁹ For greater certainty, this Article does not apply with respect to aquaculture.

¹⁰ The term “illegal, unreported and unregulated fishing” is to be understood to have the same meaning as paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate*

and the environment, and recognise the need for individual and collective action to address the problems of overfishing and unsustainable utilisation of fisheries resources, with appropriate consideration of the rights of coastal States to fisheries resources and the obligations of coastal States, flag States and port States in managing fishing activity.

3. Accordingly, each Party shall operate a fisheries management system that regulates marine wild capture fishing and that is designed to:
 - (a) prevent overfishing and overcapacity;
 - (b) reduce bycatch of non-target species and juveniles, including through the regulation of fishing gear that results in bycatch and the regulation of fishing in areas where bycatch is likely to occur; and
 - (c) promote the recovery of overfished stocks for all marine fisheries in which that Party's persons conduct fishing activities.

Such a management system shall be based on the best scientific evidence available and on internationally recognised best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species.¹¹

4. Each Party shall promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals, through the implementation and effective enforcement of conservation and management measures. Those measures should include, as appropriate:
 - (a) for sharks, the collection of species-specific data, fisheries bycatch mitigation measures, catch limits, and finning prohibitions; and
 - (b) for marine turtles, seabirds, and marine mammals: fisheries bycatch mitigation measures, conservation and relevant

Illegal, Unreported and Unregulated Fishing ("2001 IUU Fishing Plan of Action") of the UN Food and Agricultural Organisation ("FAO"), adopted at Rome in 2001.

¹¹ These instruments include, among others, and as they may apply, *United Nations Convention on the Law of the Sea* done at Montego Bay on 10 December 1982 ("UNCLOS"), the *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, done at New York on 4 December 1995 ("UN Fish Stocks Agreement"), the *FAO Code of Conduct for Responsible Fisheries*, the 1993 *FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* done at Rome on 24 November 1993 ("Compliance Agreement") and the 2001 IUU Fishing Plan of Action.

management measures, prohibitions, and other measures in accordance with relevant international agreements to which the Party is party.

5. The Parties recognise that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity and to promote the recovery of overfished stocks must include the control, reduction, and eventual elimination of all subsidies that contribute to overfishing and overcapacity. To that end, neither Party shall grant or maintain any of the following subsidies¹² within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement:
 - (a) subsidies for fishing¹³ that negatively affect¹⁴ fish stocks that are in an overfished¹⁵ condition; and
 - (b) subsidies provided to any fishing vessel¹⁶ while listed by the flag State or a relevant Regional Fisheries Management Organisation or Arrangement for IUU fishing in accordance with the rules and procedures of that organisation or arrangement and in conformity with international law.
6. Subsidy programmes that are established by a Party before the date of entry into force of this Agreement for that Party and which are inconsistent with paragraph 5(a) shall be brought into conformity with that paragraph as soon as possible and no later than three years of the date of entry into force of this Agreement for that Party.
7. In relation to subsidies that are not prohibited by paragraph 5(a) or 5(b), and taking into consideration a Party's social and developmental priorities, including food security concerns, each Party shall make best efforts to refrain from introducing new, or extending, or enhancing existing subsidies within the meaning of Article 1.1 of the SCM Agreement, to the extent they are specific within the meaning of Article

¹² For the purposes of this Article, a subsidy shall be attributable to the Party conferring it, regardless of the flag of the vessel involved or the application of rules of origin to the fish involved.

¹³ For the purposes of this paragraph, "fishing" means searching for, attracting, locating, catching, taking, or harvesting fish, or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.

¹⁴ The negative effect of those subsidies shall be determined based on the best scientific evidence available.

¹⁵ For the purposes of this Article, a fish stock is overfished if the stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available. Fish stocks that are recognised as overfished by the domestic jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation shall also be considered overfished for the purposes of this paragraph.

¹⁶ The term "fishing vessels" refers to any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.

2 of the SCM Agreement, that contribute to overfishing or overcapacity.

8. With a view to achieving the objective of eliminating subsidies that contribute to overfishing and overcapacity, the Parties shall review the disciplines in paragraph 5 through existing channels, as appropriate.
9. Each Party shall also provide, to the extent possible, information in relation to other fisheries subsidies that the Party grants or maintains that are not covered by paragraph 5, in particular fuel subsidies.
10. A Party may request information from the other Party regarding fisheries subsidies notifications provided in accordance with WTO data reporting requirements. The notifying Party shall respond to that request as quickly as possible and in a comprehensive manner.
11. The Parties recognise the importance of concerted international action to address IUU fishing as reflected in regional and international instruments¹⁷ and shall endeavour to improve cooperation internationally in this regard, including with and through competent international organisations.
12. In support of efforts to combat IUU fishing practices and to help deter trade in products from species harvested from those practices, each Party shall:
 - (a) cooperate with the other Party to identify needs and to build capacity to support the implementation of this Article;
 - (b) support monitoring, control, surveillance, compliance, and enforcement systems, including by adopting, reviewing, or revising, as appropriate, measures to:
 - (i) deter vessels that are flying its flag¹⁸ and its nationals from engaging in IUU fishing activities; and
 - (ii) address the transshipment at sea of fish or fish products caught through IUU fishing activities; and

¹⁷ Regional and international instruments include, among others, and as they may apply, the 2001 IUU Fishing Plan of Action, the *2005 Rome Declaration on IUU Fishing* adopted in Rome on 12 March 2005, the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* done at Rome on 22 November 2009, as well as instruments establishing and adopted by Regional Fisheries Management Organisations, which are defined as intergovernmental fisheries organisations or arrangements, as appropriate, that have the competence to establish conservation and management measures.

¹⁸ For the purposes of this paragraph, for the United Kingdom, “vessels that are flying its flag” is to be understood to mean vessels that are both flying the United Kingdom flag and registered on the United Kingdom register of British ships.

- (c) implement port State measures, including through actions consistent with the Port State Measures Agreement;¹⁹
 - (d) strive to act consistently with relevant conservation and management measures adopted by Regional Fisheries Management Organisations of which it is not a member so as not to undermine those measures; and
 - (e) endeavour not to undermine catch or trade documentation schemes operated by Regional Fisheries Management Organisations or Arrangements or an intergovernmental organisation whose scope includes the management of shared fisheries resources, including straddling and highly migratory species, where that Party is not a member of those organisations or arrangements.
13. Consistent with Article 28.2 (Publication – Transparency and Anti-Corruption), a Party shall, to the extent possible, provide the other Party with the opportunity to comment on proposed measures that are designed to prevent trade in fisheries products that result from IUU fishing.

Article 22.13

Sustainable Forest Management and Trade

1. The Parties recognise the importance of conservation and sustainable forest management, including in relation to addressing climate change and reducing biodiversity loss, and the role of trade in pursuing this objective. The Parties acknowledge their role as major consumers, producers, and traders of forest products and the importance of the forest sector to the development and livelihood of communities and indigenous peoples.
2. The Parties recognise the importance of:
 - (a) the sustainable management of forests for providing environmental, economic, and social benefits for present and future generations;
 - (b) halting deforestation and forest degradation, including with respect to trade in commodities related to those activities;

¹⁹ *Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing* done at the Food and Agriculture Organization of the United Nations at Rome on 22 November 2009 (“Port State Measures Agreement”).

- (c) trade in forest products harvested from sustainably managed forests and in accordance with the law of the country of harvest; and
 - (d) taking measures that contribute to combatting illegal logging and related trade and to promoting trade in legally harvested forest products.
- 3. Accordingly, each Party shall take measures to combat illegal logging and related trade.
- 4. The Parties recognise that some forest products, when sourced from sustainably managed forests and used appropriately, can store carbon and avoid greenhouse gas emissions in other sectors and thus contribute toward achieving global environmental objectives.
- 5. Each Party shall:
 - (a) cooperate and exchange information, as appropriate, on the implementation of measures that contribute to combatting illegal logging and related trade, including with respect to third countries; and
 - (b) cooperate bilaterally and in multilateral fora, as appropriate, on opportunities to halt deforestation and forest degradation, and the trade in commodities related to those activities, to reduce biodiversity loss, and to address other sustainable forest management and trade matters.

Article 22.14
Trade and Biodiversity

- 1. The Parties recognise the importance of conservation and sustainable use of biodiversity, including marine biodiversity, and their key role in achieving sustainable development.
- 2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law and policy.
- 3. The Parties recognise the importance of respecting, preserving, and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.
- 4. The Parties recognise the importance of facilitating access to genetic resources within their respective domestic jurisdictions, consistent with

each Party's international obligations. The Parties further recognise that each Party may require, through domestic measures, prior informed consent to access those genetic resources in accordance with domestic measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of those genetic resources, between users and providers.

5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law and policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity. Each Party shall make publicly available information, about its programmes and activities, including cooperative programmes, related to the conservation and sustainable use of biological diversity.
6. Consistent with Article 22.20 (Cooperation Frameworks), the Parties shall cooperate on matters of mutual interest. Cooperation may include exchanging information and experiences in areas related to:
 - (a) the conservation and sustainable use of biodiversity;
 - (b) the protection and maintenance of ecosystems and ecosystem services, including marine ecosystems;
 - (c) access to genetic resources and the sharing of benefits arising from their utilisation;
 - (d) embedding biodiversity considerations into policies, strategies, and practices of public and private actors in relevant sectors; and
 - (e) safeguarding wild and managed pollinators, and promoting the sustainable use of pollination services.

Article 22.15 Invasive Alien Species

1. The Parties recognise that the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways can adversely affect the environment, economic activities and development, and plant, animal, and human health. The Parties also recognise that the prevention, surveillance, detection, control, and, when possible, eradication, of invasive alien species are critical strategies for managing those adverse impacts.
2. Accordingly, the Parties shall identify cooperative opportunities to share information and management experiences on the movement, prevention, detection, control, and eradication of invasive alien species,

with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species.

Article 22.16 Conservation and Illegal Wildlife Trade

1. The Parties affirm the importance of combating the illegal take²⁰ of, and illegal trade in, wild fauna and flora, and acknowledge that this trade undermines efforts to conserve and sustainably manage those natural resources, has social consequences, distorts legal trade in wild fauna and flora, and reduces the economic and environmental value of these natural resources.
2. Accordingly, the Parties affirm their commitment to implement the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* done at Washington D.C. on 3 March 1973 (“CITES”).²¹
3. The Parties commit to promote conservation and to combat the illegal take of, and illegal trade in, wild fauna and flora. To that end, the Parties shall:
 - (a) exchange information and experiences on issues of mutual interest related to combating the illegal take of, and illegal trade in, wild fauna and flora, including combating illegal logging and associated illegal trade, and promoting the legal trade in associated products;
 - (b) undertake, as appropriate, joint activities on conservation issues of mutual interest, including through relevant regional and international fora; and
 - (c) endeavour to implement, as appropriate, CITES resolutions that aim to protect and conserve species whose survival is threatened by international trade.
4. Each Party further commits to:
 - (a) take appropriate measures to protect and conserve wild fauna and flora that it has identified to be at risk within its territory, including measures to conserve the ecological integrity of specially protected natural areas, for example wetlands;

²⁰ The term “take” here means captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged or removed.

²¹ For the purposes of this Article, a Party’s CITES obligations include existing and future amendments to which it is a Party and any existing and future reservations, exemptions, and exceptions applicable to it.

- (b) maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management and wild fauna and flora conservation, and endeavour to enhance public participation and transparency in these institutional frameworks; and
 - (c) endeavour to develop and strengthen cooperation and consultation with interested non-governmental entities in order to enhance implementation of measures to combat the illegal take of, and illegal trade in, wild fauna and flora.
5. In a further effort to address the illegal take of, and illegal trade in, wild fauna and flora, including parts and products thereof, each Party shall take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence²², were taken or traded in violation of that Party's laws and regulations, the primary purpose of which is to conserve, protect, or manage wild fauna or flora. Such measures shall include sanctions, penalties, or other effective measures, including administrative measures, that can act as a deterrent to such trade. In addition, each Party shall endeavour to take measures to combat the trade of wild fauna and flora transhipped through its territory that, based on credible evidence, were illegally taken or traded.
6. The Parties recognise that each Party retains the right to exercise administrative, investigatory, and enforcement discretion in its implementation of paragraph 5, including by taking into account in relation to each situation the strength of the available evidence and the seriousness of the suspected violation. In addition, the Parties recognise that in implementing paragraph 5, each Party retains the right to make decisions regarding the allocation of administrative, investigatory, and enforcement resources.
7. In order to promote the widest measure of law enforcement cooperation and information sharing between the Parties to combat the illegal take of, and illegal trade in, wild fauna and flora, the Parties shall endeavour to identify opportunities, consistent with their respective laws and regulations, and in accordance with applicable international agreements, to enhance law enforcement cooperation and information sharing, for example by creating and participating in law enforcement networks.
8. The Parties recognise the importance of continuing efforts to combat the illegal trade in wildlife, including ivory, and the importance of appropriate regulation of domestic wildlife markets worldwide, including markets for ivory and goods containing ivory, that are

²² For the purposes of this paragraph, each Party retains the right to determine what constitutes "credible evidence".

contributing to poaching or illegal trade. Accordingly, the Parties shall cooperate as appropriate to support non-party efforts to introduce and implement domestic controls on the take and trade in wildlife, and on markets for ivory and goods containing ivory, that are contributing to poaching or illegal trade.

Article 22.17
Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory or jurisdiction, to adopt voluntarily, into their policies and practices, principles of corporate social responsibility that are related to the environment, consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Party.

Article 22.18
Opportunities for Public Participation

1. Each Party shall seek to accommodate requests for information regarding the Party's implementation of this Chapter.
2. Each Party shall make use of existing, or establish new, consultative mechanisms, for example domestic advisory committees, to seek views on matters related to the implementation of this Chapter. These mechanisms may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.

Article 22.19
Public Submissions

1. Each Party shall provide for the receipt and consideration of written submissions from persons of that Party regarding its implementation of this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures for the receipt and consideration of written submissions.
2. A Party may provide in its procedures that a submission should:
 - (a) raise an issue directly relevant to this Chapter;
 - (b) clearly identify the person or organisation making the submission; and

- (c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.
3. Each Party shall consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate.

Article 22.20 Cooperation Frameworks

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development and clean growth as they strengthen their trade and investment relations.
2. Accordingly, the Parties shall cooperate as appropriate on the matters identified in this Chapter. Such cooperation may take place bilaterally and in international fora.
3. Each Party may:
 - (a) share its priorities for cooperation with the other Party, including the objectives of that cooperation;
 - (b) propose cooperation activities related to the implementation of this Chapter; and
 - (c) develop and participate in cooperation activities and programmes as agreed by the Parties.
4. Cooperation may be undertaken through various means including: dialogue, workshops, seminars, conferences, collaborative programmes, and projects; technical assistance to promote and facilitate cooperation and training, the sharing of information, data, and evidence based practices on policies and procedures; and the exchange of experts.
5. Each Party may promote public participation in the development and implementation of cooperative activities, as appropriate.
6. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the Parties. The Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

Article 22.21

Environment Working Group

1. The Parties hereby establish an Environment Working Group (“the Working Group”) composed of official level representatives, as designated by each Party.
2. The Working Group shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Working Group shall meet at least every two years, unless the Parties decide otherwise.
3. The purpose of the Working Group is to oversee the implementation of this Chapter and its functions shall be to:
 - (a) review and monitor the implementation and operation of the provisions of this Chapter;
 - (b) provide a forum to seek solutions to resolve differences between the Parties as to the interpretation or application of this Chapter;
 - (d) coordinate with other committees, working groups, and any other subsidiary bodies established under this Agreement as appropriate;
 - (e) perform any other functions as the Parties may decide.
4. The Working Group shall be jointly chaired and shall produce an agreed record of its meetings, including decisions and next steps and, as appropriate, report to the Joint Committee.

Article 22.22

Environment Contact Points

Each Party shall designate and notify a contact point from its relevant authorities within 90 days of the date of entry into force of this Agreement in order to facilitate communication between the Parties in the implementation of this Chapter. Each Party shall promptly notify the other Party in the event of any change to its contact point.

Article 22.23

Environment Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through

dialogue, consultation, exchange of information and, if appropriate, cooperation to address any matter that might affect the operation of this Chapter.

2. A Party (the requesting Party) may request consultations with the other Party (the responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis for the request.
3. Before a Party requests consultations under this Article for a matter arising under paragraph 4 or paragraph 6 of Article 22.3 (General Commitments), that Party shall consider whether it maintains environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute and shall identify and notify those laws to the responding Party. The Parties shall take this issue into account during the consultations.
4. Unless the Parties agree otherwise, they shall enter into consultations promptly, and no later than 30 days after the date of receipt by the responding Party of the request.
5. The Parties shall make every effort to arrive at a mutually agreed solution to the matter, which may include appropriate cooperative activities. The Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.
6. Consultations pursuant to this Article, Article 22.24 (Joint Committee Consultations) and Article 22.25 (Ministerial Consultations) may be held in person or by any technological means available as agreed by the Parties.
7. Consultations pursuant to this Article, Article 22.24 (Joint Committee Consultations) and Article 22.25 (Ministerial Consultations), and in particular, positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

Article 22.24 Joint Committee Consultations

1. If the Parties have failed to resolve the matter under Article 22.23 (Environment Consultations), either Party may request that the Joint

Committee convene to consider the matter by delivering a written request to the contact point of the other Party.

2. The Joint Committee shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant scientific and technical information from governmental or non-governmental experts.

Article 22.25 Ministerial Consultations

If the Parties have failed to resolve the matter under Article 22.24 (Joint Committee Consultations), either Party may refer the matter to the relevant Ministers of the Parties by delivering a written request to the contact point of the other Party. The relevant Ministers shall seek to resolve the matter.

Article 22.26 Dispute Resolution

1. If the Parties have failed to resolve the matter under Article 22.23 (Environment Consultations), Article 22.24 (Joint Committee Consultations) and Article 22.25 (Ministerial Consultations), within 120 days after the date of receipt of a request under Article 22.23 (Environment Consultations), or any other period as the Parties may agree, the requesting Party may request consultations under Article 30.7 (Consultations – Dispute Settlement) or request the establishment of a panel under Article 30.8 (Request for Establishment of a Panel – Dispute Settlement).
2. In addition to the requirements set out in subparagraph 1(a) of Article 30.10 (Qualification of Panellists), for a dispute arising under this Chapter panellists other than the chair shall have sufficient expertise or experience in environmental law or practice.