

CHAPTER 20

ENVIRONMENT

Article 20.1: Definitions

For the purposes of this Chapter:

environmental law means a statute 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;
- (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 statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources; and

statute or regulation means:

- (a) for Australia, 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;

¹ For the purposes of this Chapter, the term "specially protected natural areas" means those areas as defined by the Party in its legislation.

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

- (b) for Brunei Darussalam, an Act, Order or a Regulation promulgated pursuant to the Constitution of Brunei Darussalam, enforceable by the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam;
- (c) for Canada, an Act of the Parliament of Canada or regulation made under an Act of the Parliament of Canada that is enforceable by action of the central level of government;
- (d) for Chile, a law of National Congress or decree of the President of the Republic, enacted as indicated by the Political Constitution of the Republic of Chile;
- (e) for Japan, a Law of the Diet, a Cabinet Order, or a Ministerial Ordinance and other Orders established pursuant to a Law of the Diet, that is enforceable by action of the central level of government;
- (f) for Malaysia, an Act of Parliament or regulation promulgated pursuant to an Act of Parliament that is enforceable by action of the federal government;
- (g) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government;
- (h) for New Zealand, an Act of the Parliament of New Zealand or a regulation made under an Act of the Parliament of New Zealand by the Governor-General in Council, which is enforceable by action of the central level of government;
- (i) for Peru, a law of Congress, Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government;
- (j) for Singapore, an Act of the Parliament of Singapore, or a Regulation promulgated pursuant to an Act of the Parliament of Singapore, which is enforceable by action of the Government of Singapore;
- (k) for the United States, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the central level of government; and
- (l) for Viet Nam, a law of the National Assembly, an ordinance of the Standing Committee of the National Assembly, or a regulation promulgated by the central level of government to implement a law

of the National Assembly or an ordinance of the Standing Committee of the National Assembly that is enforceable by action of the central level of government.

Article 20.2: 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 national 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 measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

Article 20.3: 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 environmental priorities, 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. No 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 for that Party.
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 higher priorities. 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. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

Article 20.4: 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 20.5: Protection of the Ozone Layer

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. Accordingly, each Party shall take measures to control the production and consumption of, and trade in, such substances.^{3, 4, 5}

³ For greater certainty, for each Party, this provision pertains to substances controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, September 16, 1987 (Montreal Protocol), including any future amendments thereto, as applicable to it.

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 layer protection.

3. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest related to ozone-depleting substances. Cooperation may include, but is not limited to exchanging information and experiences in areas related to:

- (a) environmentally friendly alternatives to ozone-depleting substances;
- (b) refrigerant management practices, policies and programmes;
- (c) methodologies for stratospheric ozone measurements; and
- (d) combating illegal trade in ozone-depleting substances.

⁴ A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 20-A 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, certain substances that 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, in a manner affecting trade or investment between the Parties.

Article 20.6: 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 20.12 (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

⁶ For greater certainty, for each Party, this provision pertains to pollution regulated by *the International Convention for the Prevention of Pollution from Ships*, done at London, November 2, 1973, as modified by the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships*, done at London, February 17, 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, September 26, 1997 (MARPOL), including any future amendments thereto, as applicable to it.

⁷ A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 20-B 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.

- (h) enforcement measures including notifications to flag States and, as appropriate, by port States.

Article 20.7: Procedural Matters

1. Each Party shall promote public awareness of its environmental laws and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public.

2. Each Party shall ensure that an interested person residing or established in its territory may request that the Party's competent authorities investigate alleged violations of its environmental laws, and that the competent authorities give those requests due consideration, in accordance with the Party's law.

3. Each Party shall ensure that judicial, quasi-judicial or administrative proceedings for the enforcement of its environmental laws are available under its law and that those proceedings are fair, equitable, transparent and comply with due process of law. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable laws.

4. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 3.

5. Each Party shall provide appropriate sanctions or remedies for violations of its environmental laws for the effective enforcement of those laws. Those sanctions or remedies may include a right to bring an action directly against the violator to seek damages or injunctive relief, or a right to seek governmental action.

6. Each Party shall ensure that it takes appropriate account of relevant factors in the establishment of the sanctions or remedies referred to in paragraph 5. Those factors may include the nature and gravity of the violation, damage to the environment and any economic benefit the violator derived from the violation.

Article 20.8: 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 national 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 20.9: 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.⁹ Each Party shall respond in a timely manner to such submissions in writing and in accordance with domestic procedures, and make the submissions and its responses available to the public, for example by posting on an appropriate public website.

2. Each Party shall make its procedures for the receipt and consideration of written submissions readily accessible and publicly available, for example by posting on an appropriate public website. These procedures may provide that to be eligible for consideration the submission should:

- (a) be in writing in one of the official languages of the Party receiving the submission;
- (b) clearly identify the person making the submission;
- (c) provide sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based;
- (d) explain how, and to what extent, the issue raised affects trade or investment between the Parties;
- (e) not raise issues that are the subject of ongoing judicial or administrative proceedings; and
- (f) indicate whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any.

3. Each Party shall notify the other Parties of the entity or entities responsible for receiving and responding to any written submissions referred to in paragraph 1 within 180 days of the date of entry into force of this Agreement for that Party.

4. If a submission asserts that a Party is failing to effectively enforce its environmental laws and following the written response to the submission by that Party, any other Party may request that the Committee on Environment

⁹ If available and appropriate, a Party may use an existing institutional body or mechanism for this purpose.

(Committee) discuss that submission and written response with a view to further understanding the matter raised in the submission and, as appropriate, to consider whether the matter could benefit from cooperative activities.

5. At its first meeting, the Committee shall establish procedures for discussing submissions and responses that are referred to it by a Party. These procedures may provide for the use of experts or existing institutional bodies to develop a report for the Committee comprised of information based on facts relevant to the matter.

6. No later than three years after the date of entry into force of this Agreement, and thereafter as decided by the Parties, the Committee shall prepare a written report for the Commission on the implementation of this Article. For the purposes of preparing this report, each Party shall provide a written summary regarding its implementation activities under this Article.

Article 20.10: 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 20.11: Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognise that flexible, voluntary mechanisms, for example, voluntary auditing and reporting, market-based incentives, voluntary sharing of information and expertise, and public-private partnerships, can contribute to the achievement and maintenance of high levels of environmental protection and complement domestic regulatory measures. The Parties also recognise that those mechanisms should be designed in a manner that maximises their environmental benefits and avoids the creation of unnecessary barriers to trade.

2. Therefore, in accordance with its laws, regulations or policies and to the extent it considers appropriate, each Party shall encourage:

- (a) the use of flexible and voluntary mechanisms to protect natural resources and the environment in its territory; and
- (b) its relevant authorities, businesses and business organisations, non-governmental organisations and other interested persons involved in the development of criteria used to evaluate environmental performance, with respect to these voluntary mechanisms, to continue to develop and improve such criteria.

3. Further, if private sector entities or non-governmental organisations develop voluntary mechanisms for the promotion of products based on their environmental qualities, each Party should encourage those entities and organisations to develop voluntary mechanisms that, among other things:

- (a) are truthful, are not misleading and take into account scientific and technical information;
- (b) if applicable and available, are based on relevant international standards, recommendations or guidelines, and best practices;
- (c) promote competition and innovation; and
- (d) do not treat a product less favourably on the basis of origin.

Article 20.12: 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 as they strengthen their trade and investment relations.

2. Taking account of their national priorities and circumstances, and available resources, the Parties shall cooperate to address matters of joint or common interest among the participating Parties related to the implementation of this Chapter, when there is mutual benefit from that cooperation. This cooperation may be carried out on a bilateral or plurilateral basis between Parties and, subject to consensus by the participating Parties, may include non-governmental bodies or organisations and non-Parties to this Agreement.

3. Each Party shall designate the authority or authorities responsible for cooperation related to the implementation of this Chapter to serve as its national contact point on matters that relate to coordination of cooperation activities and shall notify the other Parties in writing within 90 days of the date of entry into force of this Agreement for that Party of its contact point. On notifying the other Parties of its contact point, or at any time thereafter through the contact points, a Party may:

- (a) share its priorities for cooperation with the other Parties, including the objectives of that cooperation; and
- (b) propose cooperation activities related to the implementation of this Chapter to another Party or Parties.

4. When possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account relevant work of regional and international organisations.
5. Cooperation may be undertaken through various means including: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate cooperation and training; the sharing of best practices on policies and procedures; and the exchange of experts.
6. In developing cooperative activities and programmes, a Party shall, if relevant, identify performance measures and indicators to assist in examining and evaluating the efficiency, effectiveness and progress of specific cooperative activities and programmes and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of a cooperative activity or programme, with the other Parties.
7. The Parties, through their contact points for cooperation, shall periodically review the implementation and operation of this Article and report their findings, which may include recommendations, to the Committee to inform its review under Article 20.19(3)(c) (Environment Committee and Contact Points). The Parties, through the Committee, may periodically evaluate the necessity of designating an entity to provide administrative and operational support for cooperative activities. If the Parties decide to establish such an entity, the Parties shall agree on the funding of the entity on a voluntary basis to support the entity's operation.
8. Each Party shall promote public participation in the development and implementation of cooperative activities, as appropriate. This may include activities such as encouraging and facilitating direct contacts and cooperation among relevant entities and the conclusion of arrangements among them for the conduct of cooperative activities under this Chapter.
9. Where a Party has defined the environmental laws under Article 20.1 (Definitions) to include only laws at the central level of government (first Party), and where another 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 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.
10. 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 participating Parties. The participating Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

Article 20.13: Trade and Biodiversity

1. The Parties recognise the importance of conservation and sustainable use of biological diversity 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 or 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 national jurisdictions, consistent with each Party's international obligations. The Parties further recognise that some Parties require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.

5. 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 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 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest. Cooperation may include, but is not limited to, exchanging information and experiences in areas related to:

- (a) the conservation and sustainable use of biological diversity;
- (b) the protection and maintenance of ecosystems and ecosystem services; and
- (c) access to genetic resources and the sharing of benefits arising from their utilisation.

Article 20.14: 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 human health. The Parties also recognise that the prevention, detection, control and, when possible, eradication, of invasive alien species are critical strategies for managing those adverse impacts.

2. Accordingly, the Committee shall coordinate with the Committee on Sanitary and Phytosanitary Measures established under Article 7.5 (Committee on Sanitary and Phytosanitary Measures) to 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 20.15: Transition to a Low Emissions and Resilient Economy

1. The Parties acknowledge that transition to a low emissions economy requires collective action.

2. The Parties recognise that each Party's actions to transition to a low emissions economy should reflect domestic circumstances and capabilities and, consistent with Article 20.12 (Cooperation Frameworks), Parties shall cooperate to address matters of joint or common interest. Areas of cooperation may include, but are not limited to: energy efficiency; development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources; sustainable transport and sustainable urban infrastructure development; addressing deforestation and forest degradation; emissions monitoring; market and non-market mechanisms; low emissions, resilient development and sharing of information and experiences in addressing this issue. Further, the Parties shall, as appropriate, engage in cooperative and capacity-building activities related to transitioning to a low emissions economy.

Article 20.16: Marine Capture Fisheries¹⁰

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.

¹⁰ For greater certainty, this Article does not apply with respect to aquaculture.

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) fishing¹¹ can have significant negative impacts on trade, development and the environment and recognise the need for individual and collective action to address the problems of overfishing and unsustainable utilisation of fisheries resources.

3. Accordingly, each Party shall seek to 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.¹²

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. Such measures should include, as appropriate:

- (a) for sharks: the collection of species specific data, fisheries bycatch mitigation measures, catch limits, and finning prohibitions; and

¹¹ 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 Illegal, Unreported and Unregulated Fishing* (2001 IUU Fishing Plan of Action) of the UN Food and Agricultural Organisation (FAO), adopted in Rome, 2001.

¹² These instruments include, among others, and as they may apply, 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, December 4, 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*, (Compliance Agreement) done at Rome, November 24, 1993 and the 2001 IUU Fishing Plan of Action.

- (b) for marine turtles, seabirds, and marine mammals: fisheries bycatch mitigation measures, conservation and relevant 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, no Party shall grant or maintain any of the following subsidies¹³ 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 fishing¹⁴ that negatively affect¹⁵ fish stocks that are in an overfished¹⁶ condition; and
- (b) subsidies provided to any fishing vessel¹⁷ 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

¹³ 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.

¹⁴ 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.

¹⁵ The negative effect of such subsidies shall be determined based on the best scientific evidence available.

¹⁶ 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 national 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.

¹⁷ 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.

possible and no later than three years¹⁸ 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 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 at regular meetings of the Committee.

9. Each Party shall notify the other Parties, within one year of the date of entry into force of this Agreement for it and every two years thereafter, of any subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement, that the Party grants or maintains to persons engaged in fishing or fishing related activities.

10. These notifications shall cover subsidies provided within the previous two-year period and shall include the information required under Article 25.3 of the SCM Agreement and, to the extent possible, the following information:¹⁹

- (a) programme name;
- (b) legal authority for the programme;
- (c) catch data by species in the fishery for which the subsidy is provided;

¹⁸ Notwithstanding this paragraph, and solely for the purpose of completing a stock assessment that it has already initiated, Viet Nam may request an extension of two additional years to bring any subsidy programmes into conformity with Article 20.16.5(a) (Marine Capture Fisheries) by providing a written request to the Committee no later than six months before the expiry of the three-year period provided for in this paragraph. Viet Nam's request shall include the reason for the requested extension and the information about its subsidy programmes as provided for in Article 20.16.10. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this footnote unless the Committee decides otherwise within 60 days of receiving the request. No later than the date on which the additional two-year period expires, Viet Nam shall provide to the Committee in writing a report on the measures it has taken to fulfil its obligation under Article 20.16.5(a).

¹⁹ Sharing information and data on existing fisheries subsidy programmes does not prejudice their legal status, effects or nature under the GATT 1994 or the SCM Agreement and is intended to complement WTO data reporting requirements.

- (d) status of the fish stocks in the fishery for which the subsidy is provided (for example, overexploited, depleted, fully exploited, recovering or underexploited);
- (e) fleet capacity in the fishery for which the subsidy is provided;
- (f) conservation and management measures in place for the relevant fish stock; and
- (g) total imports and exports per species.

11. 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.

12. A Party may request additional information from the notifying Party regarding the notifications under paragraphs 9 and 10. The notifying Party shall respond to that request as quickly as possible and in a comprehensive manner.

13. The Parties recognise the importance of concerted international action to address IUU fishing as reflected in regional and international instruments²⁰ and shall endeavour to improve cooperation internationally in this regard, including with and through competent international organisations.

14. 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 other Parties 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 flag 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;

²⁰ 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 March 12, 2005, the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, done at Rome, November 22, 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.

- (c) implement port State measures;
- (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.

15. Consistent with Article 26.2.2 (Publication), a Party shall, to the extent possible, provide other Parties the opportunity to comment on proposed measures that are designed to prevent trade in fisheries products that results from IUU fishing.

Article 20.17: Conservation and Trade

1. The Parties affirm the importance of combating the illegal take²¹ 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, each Party shall adopt, maintain and implement laws, regulations and any other measures to fulfil its obligations under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES).^{22, 23, 24}

²¹ The term “take” means captured, killed or collected and with respect to a plant, also means harvested, cut, logged or removed.

²² 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.

²³ To establish a violation of this paragraph, a Party must demonstrate that the other Party has failed to adopt, maintain or implement laws, regulations or other measures to fulfil its obligations under CITES in a manner affecting trade or investment between the Parties.

²⁴ If a Party considers that another Party is failing to comply with its obligations under this paragraph, it shall endeavour, in the first instance, to address the matter through a consultative or other procedure under CITES.

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;
- (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 evidence²⁵, were taken or traded in violation of that Party's law or another applicable law²⁶, the primary purpose of which is to conserve,

²⁵ For greater certainty, for the purposes of this paragraph, each Party retains the right to determine what constitutes "credible evidence".

²⁶ For greater certainty, "another applicable law" means a law of the jurisdiction where the take or trade occurred and is only relevant to the question of whether the wild fauna and flora has been taken or traded in violation of that law.

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 law 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.

Article 20.18: 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 and addressing global environmental challenges.

2. The Parties further recognise the importance of this Agreement to promoting trade and investment in environmental goods and services in the free trade area.

3. Accordingly, the Committee shall consider issues identified by a Party or 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 barriers to trade in environmental goods and services that may be identified by a Party, including by working through the Committee and in conjunction with other relevant committees established under this Agreement, as appropriate.

4. The Parties may develop bilateral and plurilateral cooperative projects on environmental goods and services to address current and future global trade-related environmental challenges.

Article 20.19: Environment Committee and Contact Points

1. 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 for it, in order to facilitate communication between the Parties in the implementation of this Chapter. Each Party shall promptly notify the other Parties in the event of any change to its contact point.

2. The Parties establish an Environment Committee (Committee) composed of senior government representatives, or their designees, of the relevant trade and environment national authorities of each Party responsible for the implementation of this Chapter.

3. The purpose of the Committee is to oversee the implementation of this Chapter and its functions shall be to:

- (a) provide a forum to discuss and review the implementation of this Chapter;
- (b) provide periodic reports to the Commission regarding the implementation of this Chapter;
- (c) provide a forum to discuss and review cooperative activities under this Chapter;
- (d) consider and endeavour to resolve matters referred to it under Article 20.21 (Senior Representative Consultations);
- (e) coordinate with other committees established under this Agreement as appropriate; and
- (f) perform any other functions as the Parties may decide.

4. The Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Committee shall meet every two years unless the Committee agrees otherwise. The Chair of the Committee and the venue of its meetings shall rotate among each of the Parties in English alphabetical order, unless the Committee agrees otherwise.

5. All decisions and reports of the Committee shall be made by consensus, unless the Committee agrees otherwise or unless otherwise provided in this Chapter.

6. All decisions and reports of the Committee shall be made available to the public, unless the Committee agrees otherwise.

7. During the fifth year after the date of entry into force of this Agreement, the Committee shall:

- (a) review the implementation and operation of this Chapter;
- (b) report its findings, which may include recommendations, to the Parties and the Commission; and
- (c) undertake subsequent reviews at intervals to be decided by the Parties.

8. The Committee shall provide for public input on matters relevant to the Committee's work, as appropriate, and shall hold a public session at each meeting.

9. The Parties recognise the importance of resource efficiency in the implementation of this Chapter and the desirability of using new technologies to facilitate communication and interaction between the Parties and with the public.

Article 20.20: 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 any 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. The requesting Party shall circulate its request for consultations to the other Parties through their respective contact points.

3. A Party other than the requesting or the responding Party that considers it has a substantial interest in the matter (a participating Party) may participate in the consultations by delivering a written notice to the contact point of the requesting and responding Parties no later than seven days after the date of circulation of the request for consultations. The participating Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the requesting and the responding Parties (the consulting Parties) agree otherwise, the consulting Parties 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 consulting Parties shall make every effort to arrive at a mutually satisfactory resolution to the matter, which may include appropriate cooperative activities. The consulting Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

Article 20.21: Senior Representative Consultations

1. If the consulting Parties have failed to resolve the matter under Article 20.20 (Environment Consultations), a consulting Party may request that the Committee representatives from the consulting Parties convene to consider the matter by delivering a written request to the contact point of the other consulting Party or Parties. At the same time, the consulting Party making the request shall circulate the request to the contact points of other Parties.

2. The Committee representatives from the consulting Parties 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. Committee representatives from any other Party that considers it has a substantial interest in the matter may participate in the consultations.

Article 20.22: Ministerial Consultations

1. If the consulting Parties have failed to resolve the matter under Article 20.21 (Senior Representative Consultations), a consulting Party may refer the matter to the relevant Ministers of the consulting Parties who shall seek to resolve the matter.

2. Consultations pursuant to Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and this Article may be held in person or by any technological means available as agreed by the consulting Parties. If in person, consultations shall be held in the capital of the responding Party, unless the consulting Parties agree otherwise.

3. Consultations shall be confidential and without prejudice to the rights of any Party in any future proceedings.

Article 20.23: Dispute Resolution

1. If the consulting Parties have failed to resolve the matter under Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and Article 20.22 (Ministerial Consultations) within 60 days after the date of receipt of a request under Article 20.20, or any other period as the consulting Parties may agree, the requesting Party may request consultations

under Article 28.5 (Consultations) or request the establishment of a panel under Article 28.7 (Establishment of a Panel).

2. Notwithstanding Article 28.15 (Role of Experts), in a dispute arising under Article 20.17.2 (Conservation and Trade) a panel convened under Chapter 28 (Dispute Settlement) shall:

- (a) seek technical advice or assistance, if appropriate, from an entity authorised under CITES to address the particular matter, and provide the consulting Parties with an opportunity to comment on any such technical advice or assistance received; and
- (b) provide due consideration to any interpretive guidance received pursuant to subparagraph (a) on the matter to the extent appropriate in light of its nature and status in making its findings and determinations under Article 28.17.4 (Initial Report).

3. Before a Party initiates dispute settlement under this Agreement for a matter arising under Article 20.3.4 (General Commitments) or Article 20.3.6, 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.

4. If a Party requests consultations with another Party under Article 20.20 (Environment Consultations) for a matter arising under Article 20.3.4 (General Commitments) or Article 20.3.6, and the responding Party considers that the requesting Party does not maintain environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute, the Parties shall discuss the issue during the consultations.

ANNEX 20-A

For Australia, the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

For Brunei Darussalam, the *Customs (Prohibition and Restriction on Imports and Exports), Order*.

For Canada, the *Ozone-depleting Substances Regulations, 1998* of the *Canadian Environmental Protection Act, 1999* (CEPA).

For Chile, *Supreme Decree N° 238* (1990) of the Ministry of Foreign Affairs and *Law N° 20.096*.

For Japan, the *Law concerning the Protection of the Ozone Layer through the Control of Specified Substances and Other Measures* (Law No. 53, 1988).

For Malaysia, the *Environmental Quality Act 1974*.

For Mexico, the *General Law on Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente – LGEEPA)*, under Title IV Environmental Protection, Chapter I and II regarding federal enforcement of atmospheric provisions.

For New Zealand, the *Ozone Layer Protection Act 1996*.

For Peru, the *Supreme Decree No. 033-2000-ITINCI*.

For Singapore, the *Environmental Protection and Management Act*, including regulations made thereunder.

For the United States, 42 U.S.C §§ 7671-7671q (*Stratospheric Ozone Protection*).

For Viet Nam, the *Law on Environmental Protection 2014*; Joint Circular No. 47/2011/TTLT-BCT-BTNMT dated 30 December 2011 of the Ministry of Industry and Trade and the Ministry of Natural Resources and Environment, regulating the management of import, export and temporary import for re-export of ozone depleting substances according to the Montreal Protocol; Decision No. 15/2006/QĐ-BTNMT dated 08 September 2006 of the Ministry of Natural Resources and Environment, issuing a list of refrigeration equipment using chlorofluorocarbons prohibited for import.

ANNEX 20-B

For Australia, the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Navigation Act 2012*.

For Brunei Darussalam, the *Prevention of Pollution of the Sea Order 2005*; the *Prevention of Pollution of the Sea (Oil) Regulations 2008*; and the *Prevention of the Pollution of the Seas (Noxious Liquid Substances in Bulk) Regulations, 2008*.

For Canada, the *Canada Shipping Act, 2001* and its related regulations.

For Chile, the *Decree N°1.689 (1995)* of the Ministry of Foreign Affairs.

For Japan, the *Law Relating to the Prevention of Marine Pollution and Maritime Disasters (Law No. 136, 1970)*.

For Malaysia, the *Act 515 Merchant Shipping (Oil Pollution) Act 1994*; *Merchant Shipping Ordinance 1952* (amended in 2007 by *Act A1316*); and the *Environmental Quality Act 1974*.

For Mexico, Article 132 of the *General Law on Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente – LGEEPA)*.

For New Zealand, the *Maritime Transport Act 1994*.

For Peru, the *Decree Law No. 22703*; and the *1978 Protocol by Decree Law No. 22954 (March 26, 1980)*.

For Singapore, the *Prevention of Pollution of the Sea Act*, including regulations made thereunder.

For the United States, the *Act to Prevent Pollution from Ships*, 33 U.S.C §§ 1901-1915.

For Viet Nam, the *Law on Environmental Protection 2014*; the *Maritime Code 2005*; Circular 50/2012/TT-BGTVT dated 19 December 2012 of the Ministry of Transport, regulating the management of receiving and processing oil-containing liquid waste from sea vessels at Viet Nam's sea ports; the *National Technical Regulation on Marine Pollution Prevention Systems of Ships QCVN 26: 2014/BGTVT*.