

Agreement on Environmental Cooperation Between the Government of Canada and the Government of the Republic of Chile

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Preamble

The Government of Canada and the Government of the Republic of Chile:

Convinced of the importance of the conservation, protection and enhancement of the environment in their territories and the essential role of cooperation in these areas in achieving sustainable development for the well-being of present and future generations;

Reaffirming the sovereign right of States to exploit their own resources pursuant to their own environmental and development policies and their responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

Recognizing the global nature of the environment;

Acknowledgments the growing economic and social links between them, including the Canada-Chile Free Trade Agreement (CCFTA);

Recalling that Canada and Chile share a commitment to pursue policies which promote sustainable development, and that sound environmental management is an essential element of sustainable development;

Reconfirming the importance of the environmental goals and objectives of the CCFTA, including enhanced levels of environmental protection;

Emphasizing the importance of public participation in conserving, protecting and enhancing the environment;

Noting the existence of differences in their respective natural endowments, climatic and geographical conditions, and economic, technological and infrastructural capabilities;

Reaffirming the Stockholm Declaration on the Human Environment of 1972 and the Rio Declaration on Environment and Development of 1992;

Recalling their tradition of environmental cooperation and expressing their desire to support and build on international environmental agreements and existing policies and laws, in order to promote cooperation between them;

Recognizing the desire to build on progress made through the cooperative activities of the Memorandum of Understanding on Environmental Cooperation between the Department of the Environment of Canada and the Department of Industry Canada and the National Commission on the Environment of Chile;

Convinced of the benefits to be derived from a framework, including a Commission, to facilitate effective cooperation on the conservation, protection and enhancement of the environment in their territories; and

Desiring to facilitate the accession of Chile to the North American Agreement on Environmental Cooperation;

Have Agreed as follows:

Part One

Objectives

Article 1: Objectives

The objectives of this Agreement are to:

- (a) foster the protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
- (b) promote sustainable development based on cooperation and mutually supportive environmental and economic policies;
- (c) increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;
- (d) support the environmental goals and objectives of the CCFTA;
- (e) avoid creating trade distortions or new trade barriers;
- (f) strengthen cooperation on the development and improvement of environmental laws, regulations, procedures, policies and practices;
- (g) enhance compliance with, and enforcement of, environmental laws and regulations;
- (h) promote transparency and public participation in the development of environmental laws, regulations and policies;
- (i) promote economically efficient and effective environmental measures; and
- (j) promote pollution prevention policies and practices.

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Part Two

Obligations

Article 2: General Commitments

1. Each Party shall, with respect to its territory:

- a. periodically prepare and make publicly available reports on the state of the environment;
- b. develop and review environmental emergency preparedness measures;
- c. promote education in environmental matters, including environmental law;
- d. further scientific research and technology development in respect of environmental matters;
- e. assess, as appropriate, environmental impacts; and
- f. promote the use of economic instruments for the efficient achievement of environmental goals.

2. Each Party shall consider implementing in its law any recommendation developed by the Council under Article 10(6)(b).

3. Each Party shall consider prohibiting the export to the territory of the other Party of a pesticide or toxic substance whose use is prohibited within the Party's territory. When a Party adopts a measure prohibiting or

severely restricting the use of a pesticide or toxic substance in its territory, it shall notify the other Party of the measure, either directly or through an appropriate international organization.

Article 3: Levels of Protection

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

Article 4: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

- (a) publish in advance any such measure that it proposes to adopt; and
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

Article 5: Government Enforcement Action

1. With the aim of achieving high levels of environmental protection and compliance with its environmental laws and regulations, each Party shall effectively enforce its environmental laws and regulations through appropriate governmental action, subject to Article 37, such as:

- (a) appointing and training inspectors;
- (b) monitoring compliance and investigating suspected violations, including through on-site inspections;
- (c) seeking assurances of voluntary compliance and compliance agreements;
- (d) publicly releasing non-compliance information;
- (e) issuing bulletins or other periodic statements on enforcement procedures;
- (f) promoting environmental audits;
- (g) requiring record keeping and reporting;
- (h) providing or encouraging mediation and arbitration services;
- (i) using licenses, permits or authorizations;
- (j) initiating, in a timely manner, judicial, quasi-judicial or administrative proceedings to seek appropriate sanctions or remedies for violations of its environmental laws and regulations;
- (k) providing for search, seizure or detention; or
- (l) issuing administrative orders, including orders of a preventative, curative or emergency nature.

2. Each Party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its law to sanction or remedy violations of its environmental laws and regulations.

3. Sanctions and remedies provided for a violation of a Party's environmental laws and regulations shall, as appropriate:

(a) take into consideration the nature and gravity of the violation, any economic benefit derived from the violation by the violator, the economic condition of the violator, and other relevant factors; and

(b) include compliance agreements, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.

Article 6: Private Access to Remedies

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

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

3. Private access to remedies shall include rights, in accordance with the Party's law, such as:

(a) to sue another person under that Party's jurisdiction for damages;

(b) to seek sanctions or remedies such as monetary penalties, emergency closures or orders to mitigate the consequences of violations of its environmental laws and regulations;

(c) to request the competent authorities to take appropriate action to enforce that Party's environmental laws and regulations in order to protect the environment or to avoid environmental harm; or

(d) to seek injunctions where a person suffers, or may suffer, loss, damage or injury as a result of conduct by another person under that Party's jurisdiction contrary to that Party's environmental laws and regulations or from tortious conduct.

Article 7: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in Articles 5(2) and 6(2) are fair, open and equitable, and to this end shall provide that such proceedings:

(a) comply with due process of law;

(b) are open to the public, except where the administration of justice otherwise requires;

(c) entitle the parties to the proceedings to support or defend their respective positions and to present information or evidence; and

(d) are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and preferably state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

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Part Three

Canada-Chile Commission for Environmental Cooperation

Article 8: The Commission

1. The Parties hereby establish the Canada-Chile Commission for Environmental Cooperation.

2. The Commission shall comprise a Council, a Joint Submission Committee and a Joint Public Advisory Committee. The Commission shall be assisted by the National Secretariat of each Party.

Section A: The Council

Article 9: Council Structure and Procedures

1. The Council shall comprise cabinet-level or equivalent representatives of the Parties, or their designees.

2. The Council shall establish its rules and procedures.

3. The Council shall convene:

(a) at least once a year in regular session; and

(b) in special session at the request of either Party.

Regular sessions shall be chaired alternately by each Party.

4. The Council shall hold public meetings in the course of all regular sessions. Other meetings held in the course of regular or special sessions shall be public where the Council so decides.

5. The Council may:

(a) establish, and assign responsibilities to, ad hoc or standing committees, working groups or expert groups;

(b) seek the advice of non-governmental organizations or persons, including independent experts; and

(c) take such other action in the exercise of its functions as the Parties may agree.

6. All decisions and recommendations of the Council shall be taken by mutual agreement, except as the Council may otherwise decide or as otherwise provided in this Agreement.

7. All decisions and recommendations of the Council shall be made public, except as the Council may otherwise decide or as otherwise provided in this Agreement.

Article 10: Council Functions

1. The Council shall be the governing body of the Commission and shall:

(a) serve as a forum for the discussion of environmental matters within the scope of this Agreement;

(b) oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within three years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience;

(c) oversee the functions assigned to the National Secretariats within the scope of this Agreement;

(d) address questions and differences that may arise between the Parties regarding the interpretation or application of this Agreement;

(e) approve the annual program of work and budget of the Commission; and

(f) promote and facilitate cooperation between the Parties with respect to environmental matters.

2. The Council may consider, and develop recommendations regarding:

(a) comparability of techniques and methodologies for data gathering and analysis, data management and electronic data communications on matters covered by this Agreement;

(b) pollution prevention techniques and strategies;

(c) approaches and common indicators for reporting on the state of the environment;

(d) the use of economic instruments for the pursuit of domestic and internationally agreed environmental objectives;

(e) scientific research and technology development in respect of environmental matters;

(f) promotion of public awareness regarding the environment;

(g) global environmental issues, such as the long-range transport of air and marine pollutants;

(h) exotic species that may be harmful;

(i) the conservation and protection of wild flora and fauna and their habitat, and specially protected natural areas;

(j) the protection of endangered and threatened species;

(k) environmental emergency preparedness and response activities;

(l) environmental matters as they relate to economic development;

(m) the environmental implications of goods throughout their life cycles;

(n) human resource training and development in the environmental field;

(o) the exchange of environmental scientists and officials;

(p) approaches to environmental compliance and enforcement;

(q) ecologically sensitive national accounts;

(r) eco-labelling; and

(s) other matters as it may decide.

3. The Council shall strengthen cooperation on the development and continuing improvement of environmental laws and regulations, including by:

(a) promoting the exchange of information on criteria and methodologies used in establishing domestic environmental standards; and

(b) without reducing levels of environmental protection, establishing a process for developing recommendations on greater compatibility of environmental technical regulations, standards and conformity assessment procedures in a manner consistent with the CCFTA.

4. At the request of the Council, either National Secretariat, or both, shall prepare a report on any environmental matter related to the cooperative functions of this Agreement.

5. The Council shall encourage:

(a) effective enforcement by each Party of its environmental laws and regulations;

(b) compliance with those laws and regulations; and

(c) technical cooperation between the Parties.

6. The Council shall promote and, as appropriate, develop recommendations regarding:

(a) public access to information concerning the environment that is held by public authorities of each Party, including information on hazardous materials and activities in its communities, and opportunity to participate in decision-making processes related to such public access; and

(b) appropriate limits for specific pollutants, taking into account differences in ecosystems.

7. The Council shall cooperate with the CCFTA Free Trade Commission to achieve the environmental goals and objectives of the CCFTA by:

(a) acting as a point of inquiry and receipt for comments from non-governmental organizations and persons concerning those goals and objectives;

(b) providing assistance in consultations under Article G-14 of the CCFTA where a Party considers that the other Party is waiving or derogating from, or offering to waive or otherwise derogate from, an environmental measure as an encouragement to establish, acquire, expand or retain an investment of an investor, with a view to avoiding any such encouragement;

(c) contributing to the prevention or resolution of environment-related trade disputes by:

(i) seeking to avoid disputes between the Parties,

(ii) making recommendations to the Free Trade Commission with respect to the avoidance of such disputes, and

(iii) identifying experts able to provide information or technical advice to CCFTA committees, working groups and other CCFTA bodies;

(d) considering on an ongoing basis the environmental effects of the CCFTA; and

(e) otherwise assisting the Free Trade Commission in environment-related matters.

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Section B: The National Secretariats

Article 11: National Secretariat

1. Each Party shall establish a National Secretariat and notify the other Party of its location.

2. Each Party shall designate an Executive Secretary for its National Secretariat, who shall be responsible for its administration and management.
3. The National Secretariats shall provide technical, administrative and operational support to the Council and to committees and groups established by the Council, and such other support as the Council may direct.
4. The National Secretariats shall jointly submit for the approval of the Council the annual program of work and budget of the Commission, including provisions for proposed cooperative activities and for the National Secretariats to respond to contingencies. The annual program of work shall identify how its implementation shall be financed and clearly define how it shall be implemented, including identification of institutions, agencies, individuals, and/or cooperative arrangements whereby it shall be implemented. In developing the annual program of work, the National Secretariats shall consider issues arising from factual records previously prepared, or under preparation, by the Commission.
5. The National Secretariats shall, as appropriate, provide the public information on where they may receive technical advice and expertise with respect to environmental matters.
6. The National Secretariats and the Joint Submission Committee shall safeguard:
 - (a) from disclosure information they receive that could identify a non-governmental organization or person making a submission if the person or organization so requests or the National Secretariats or the Joint Submission Committee otherwise consider it appropriate; and
 - (b) from public disclosure any information they receive from any non-governmental organization or person where the information is designated by that non-governmental organization or person as confidential or proprietary.

Article 12: The Joint Submission Committee

1. A Joint Submission Committee consisting of two members, one from each Party, shall be established within six months of the entry into force of this Agreement. The members shall be chosen by the Council for a three year term, which may be renewed by the Council for one additional three year term.
2. The members of the Joint Submission Committee shall be chosen in accordance with general standards to be established by the Council. The general standards shall provide that the members shall:
 - (a) be familiar with environmental law and its enforcement;
 - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
 - (c) be independent of, and not be affiliated with or take instruction from, either Party; and
 - (d) comply with a code of conduct.

Article 13: Annual Report of the Commission

1. The National Secretariats shall jointly prepare an annual report of the Commission in accordance with instructions from the Council. The National Secretariats shall submit jointly a draft of the report for review by the Council. The final report shall be released publicly.
2. The report shall cover:
 - (a) activities and expenses of the Commission during the previous year;
 - (b) the approved program and budget of the Commission for the subsequent year;
 - (c) the actions taken by each Party in connection with its obligations under this Agreement, including data on the Party's environmental enforcement activities;
 - (d) relevant views and information submitted by non-governmental organizations and persons, including summary data regarding submissions, and any other relevant information the Council deems appropriate;
 - (e) recommendations made on any matter within the scope of this Agreement; and
 - (f) any other matter that the Council instructs the National Secretariats to include.

3. The report shall periodically address the state of the environment in the territories of the Parties.

Article 14: Submissions on Enforcement Matters

1. A submission on enforcement matters may be sent to either National Secretariat. When a National Secretariat receives a submission it will provide a copy to the other National Secretariat. The National Secretariats may consider in consultation with each other a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law. The submission will be forwarded to the Joint Submission Committee if either National Secretariat finds that a submission:

- (a) is in writing in one of the official languages of the Agreement;
- (b) clearly identifies the person or organization making the submission;
- (c) provides sufficient information to allow for the review of the submission, including any documentary evidence on which the submission may be based;
- (d) appears to be aimed at promoting enforcement rather than at harassing industry;
- (e) indicates that the matter has been communicated in writing to the relevant authorities of the Party and indicates the Party's response, if any;
- (f) is filed by a person or organization residing or established in the territory of a Party; and
- (g) includes, in the case of submissions sent by a person or organization residing or established in the territory of Canada, a declaration to the effect that the matter will not subsequently be submitted to the Secretariat of the Commission for Environmental Cooperation under the North American Agreement on Environmental Cooperation, with a view to avoiding duplication in the handling of submissions.

2. In deciding whether the submission merits requesting a response from the Party, the Joint Submission Committee shall be guided by whether:

- (a) the submission alleges harm to the person or organization making the submission;
- (b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of this Agreement;
- (c) private remedies available under the Party's law have been pursued; and
- (d) the submission is drawn exclusively from mass media reports.

Where the Joint Submission Committee makes such a request, it shall forward to the Party a copy of the submission and any supporting information provided with the submission.

3. The Party shall advise the Joint Submission Committee within 30 days or, in exceptional circumstances and on notification to the Joint Submission Committee, within 60 days of delivery of the request:

- (a) whether the matter is the subject of a pending judicial or administrative proceeding, or whether the matter has previously been or is presently being considered by the Secretariat of the Commission for Environmental Cooperation of the North American Agreement on Environmental Cooperation, in which case the Joint Submission Committee shall proceed no further; and
- (b) of any other information that the Party wishes to submit, such as

- i) whether the matter was previously the subject of a judicial or administrative proceeding, and
- ii) whether private remedies in connection with the matter are available to the person or organization making the submission and whether they have been pursued.

Article 15: Factual Record

1.If the Joint Submission Committee considers that the submission, in light of any response provided by the Party, warrants developing a factual record, the Joint Submission Committee shall so inform the Council and provide its reasons.

2.A factual record shall be prepared if a Party so decides. In cases to which paragraph 2 of Annex 41 applies, a factual record shall be prepared if the Council so agrees. The National Secretariat of the Party which is not the subject of the submission shall then commission an expert in environmental matters, selected from a roster of such experts established by the Parties within 6 months following the entry into force of this Agreement, to prepare a factual record.

3.The preparation of a factual record pursuant to this Article shall be without prejudice to any further steps that may be taken with respect to any submission.

4.In preparing a factual record, the expert in environmental matters shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information:

(a) that is publicly available;

(b) submitted by interested non-governmental organizations or persons;

(c) submitted by the Joint Public Advisory Committee; or

(d) developed by independent experts.

5. The expert in environmental matters shall submit a draft factual record for consideration by the Council. Any Party may provide comments on the accuracy of the draft within 45 days thereafter.

6. The expert in environmental matters shall incorporate, as appropriate, any such comments in the final factual record and submit it for the consideration of the Council.

7. At the request of either Party, the Council shall make the final factual record publicly available within 60 days following its submission.

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Section C: Advisory Committees

Article 16: Joint Public Advisory Committee

1.The Joint Public Advisory Committee shall comprise six members, unless the Council otherwise decides. Each Party shall appoint an equal number of members.

2.The Council shall establish the rules of procedure for the Joint Public Advisory Committee, which shall choose its own chair.

3.The Joint Public Advisory Committee shall convene at least once a year at the time of the regular session of the Council and at such other times as the Council, or the Committee's chair with the consent of a majority of its members, may decide.

4.The Joint Public Advisory Committee may provide advice to the Council on any matter within the scope of this Agreement, including on any documents provided to it under paragraph 6, and on the implementation and further elaboration of this Agreement, and may perform such other functions as the Council may direct.

5.The Joint Public Advisory Committee may provide relevant technical, scientific or other information to the National Secretariats, including for purposes of developing a factual record under Article 15. The National Secretariats shall provide to the Council copies of any such information.

6. The National Secretariats shall provide to the Joint Public Advisory Committee at the time they are submitted to the Council copies of the proposed annual program of work and budget of the Commission and the draft annual report.

Article 17: National Advisory Committees

Each Party may convene a national advisory committee, comprising members of its public, including representatives of non-governmental organizations and persons, to advise it on the implementation and further elaboration of this Agreement.

Article 18: Governmental Committees

Each Party may convene a governmental committee, which may comprise or include representatives of national and provincial governments, to advise it on the implementation and further elaboration of this Agreement.

Section D: Official Languages

Article 19: Official Languages

The official languages of the Commission shall be English, French and Spanish. All annual reports under Article 13, factual records submitted to the Council under Article 15(6) and panel reports under Part Five shall be available in each official language at the time they are made public. The Council shall establish rules and procedures regarding interpretation and translation.

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Part Four

Cooperation and Provision of Information

Article 20: Cooperation

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to resolve any matter that might affect its operation.

2. To the maximum extent possible, each Party shall notify the other Party of any proposed or actual environmental measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect that other Party's interests under this Agreement.

3. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any such actual or proposed environmental measure, whether or not the other Party has been previously notified of that measure.

4. A Party may notify the other Party of, and provide to that Party, any credible information regarding possible violations of its environmental law, specific and sufficient to allow the other Party to inquire into the matter. The notified Party shall take appropriate steps in accordance with its law to so inquire and to respond to the other Party.

Article 21: Provision of Information

1. On request of the Council, a National Secretariat or the members of the Joint Submission Committee, each Party shall, in accordance with its law, provide such information as the Council, a National Secretariat or the members of the Joint Submission Committee may require, including:

(a) promptly making available any information in its possession required for the preparation of a report or factual record, including compliance and enforcement data; and

(b) taking all reasonable steps to make available any other such information requested.

2. If a Party considers that a request for information from a National Secretariat or the members of the Joint Submission Committee is excessive or otherwise unduly burdensome, it may so notify the Council. The

National Secretariat or the members of a Joint Submission Committee shall revise the scope of the request to comply with any limitations established by the Council.

3. If a Party does not make available information requested by a National Secretariat, or the Joint Submission Committee, as may be limited pursuant to paragraph 2, it shall promptly advise the National Secretariat or the Joint Submission Committee, as appropriate, of its reasons in writing.

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Part Five

Consultation and Resolution of Disputes

Article 22: Consultations

1. Either Party may request in writing consultations with the other Party regarding whether there has been a persistent pattern of failure by the other Party to effectively enforce its environmental law.

2. In such consultations, the Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

Article 23: Initiation of Procedures

1. If the Parties fail to resolve the matter pursuant to Article 22 within 60 days of delivery of a request for consultations, or such other period as the Parties may agree, either Party may request in writing a special session of the Council.

2. The requesting Party shall state in the request the matter complained of and shall deliver the request to the other Party.

3. Unless agreed otherwise, the Council shall convene within 20 days of the delivery of the request and shall endeavour to resolve the dispute promptly.

4. The Council may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

(c) make recommendations,

as may assist the Parties to reach a mutually satisfactory resolution of the dispute. Any such recommendations shall be made public if the Council so decides.

5. Where the Council decides that a matter is more properly covered by another agreement or arrangement to which the Parties are party, it shall refer the matter for appropriate action in accordance with such other agreement or arrangement.

Article 24: Request for an Arbitral Panel

1. If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 23, the Council shall, on the written request of either Party, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its environmental law relates to a situation involving workplaces, firms, companies or sectors that produce goods or provide services:

(a) traded between the territories of the Parties; or

(b) that compete, in the territory of the Party complained against, with goods or services produced or provided by persons of the other Party.

2. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

Article 25: Roster

1. The Council shall establish and maintain a roster of up to 30 individuals, six of whom must not be citizens of either of the Parties, who are willing and able to serve as panelists. The roster members shall be appointed by mutual agreement for terms of three years, and may be reappointed.

2. Roster members shall:

(a) have expertise or experience in environmental law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical or professional expertise or experience;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;

(c) be independent of, and not be affiliated with or take instructions from, either Party or the Joint Public Advisory Committee; and

(d) comply with a code of conduct to be established by the Council.

Article 26: Qualifications of Panelists

1. All panelists shall meet the qualifications set out in Article 25(2).

2. Individuals may not serve as panelists for a dispute in which:

(a) they have participated pursuant to Article 23(4); or

(b) they have, or a person or organization with which they are affiliated has, an interest, as set out in the code of conduct established under Article 25(2)(d).

Article 27: Panel Selection

1. For purposes of selecting a panel, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The Parties shall endeavour to agree on the chair of the panel within 15 days after the Council decides to convene the panel. If the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days a chair who is not a citizen of that Party.

(c) Within 15 days of selection of the chair, each Party shall select two panelists who are citizens of the other Party.

(d) If either Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other Party.

2. Panelists shall normally be selected from the roster. Either Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by the other Party within 30 days after the individual has been proposed.

3. If either Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

Article 28: Rules of Procedure

1. The Council shall establish Model Rules of Procedure. The procedures shall provide:

(a) a right to at least one hearing before the panel;

(b) the opportunity to make initial and rebuttal written submissions; and

(c) that no panel may disclose which panelists are associated with majority or minority opinions.

2. Unless the Parties otherwise agree, panels convened under this Part shall be established and conduct their proceedings in accordance with the Model Rules of Procedure.

3. Unless the Parties otherwise agree within 20 days after the Council convenes the panel, the terms of reference shall be:

"To examine, in light of the relevant provisions of the Agreement, including those contained in Part Five, whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, and to make findings, determinations and recommendations in accordance with Article 30(2)."

Article 29: Role of Experts

On request of either Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties so agree and subject to such terms and conditions as the Parties may agree.

Article 30: Initial Report

1. Unless the Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 29.

2. Unless the Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the Parties an initial report containing:

(a) findings of fact;

(b) its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, or any other determination requested in the terms of reference; and

(c) in the event the panel makes an affirmative determination under subparagraph (b), its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of non-enforcement.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. Either Party may submit written comments to the panel on its initial report within 30 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of either Party, may:

(a) request the views of the Parties;

(b) reconsider its report; and

(c) make any further examination that it considers appropriate.

Article 31: Final Report

1. The panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the Parties otherwise agree.

2. The Parties shall transmit to the Council the final report of the panel, as well as any written views that either Party desires to be appended, on a confidential basis within 15 days after it is presented to them.

3. The final report of the panel shall be published five days after it is transmitted to the Council.

Article 32: Implementation of Final Report

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, the Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel.

Article 33: Review of Implementation

1. If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its environmental law, and:

(a) the Parties have not agreed on an action plan under Article 32 within 60 days of the date of the final report, or

(b) the Parties cannot agree on whether the Party complained against is fully implementing

(i) an action plan agreed under Article 32,

(ii) an action plan deemed to have been established by a panel under paragraph 2, or

(iii) an action plan approved or established by a panel under paragraph 4,

either Party may request that the panel be reconvened by delivering a request in writing to the other Party. The Council shall reconvene the panel on delivery of the request to the other Party.

2. No Party may make a request under paragraph 1(a) earlier than 60 days, or later than 120 days, after the date of the final report. If the Parties have not agreed to an action plan and if no request was made under paragraph 1(a), the last action plan, if any, submitted by the Party complained against to the other Party within 60 days of the date of the final report, or such other period as the Parties may agree, shall be deemed to have been established by the panel 120 days after the date of the final report.

3. A request under paragraph 1(b) may be made no earlier than 180 days after an action plan has been:

(a) agreed under Article 32,

(b) deemed to have been established by a panel under paragraph 2, or

(c) approved or established by a panel under paragraph 4,

and only during the term of any such action plan.

4. Where a panel has been reconvened under paragraph 1(a), it:

(a) shall determine whether any action plan proposed by the Party complained against is sufficient to remedy the pattern of non-enforcement and

(i) if so, shall approve the plan, or

(ii) if not, shall establish such a plan consistent with the law of the Party complained against, and

(b) may, where warranted, impose a monetary enforcement assessment in accordance with Annex 33, within 90 days after the panel has been reconvened or such other period as the Parties may agree.

5. Where a panel has been reconvened under paragraph 1(b), it shall determine either that:

(a) the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment, or

(b) the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 33,

within 60 days after it has been reconvened or such other period as the Parties may agree.

6. A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 4(a)(ii) or 5(b), and pay any monetary enforcement assessment imposed under paragraph 4(b) or 5(b), and any such provision shall be final.

Article 34: Further Proceeding

A complaining Party may, at any time beginning 180 days after a panel determination under Article 33(5)(b), request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan. On delivery of the request to the other Party, the Council shall reconvene the panel. The panel shall make the determination within 60 days after it has been reconvened or such other period as the Parties may agree.

Article 35: Domestic Enforcement and Collection

1. For the purposes of this Article, "panel determination" means:

(a) a determination by a panel under Article 33(4)(b) or 5(b) that provides that the Party complained against shall pay a monetary enforcement assessment; and

(b) a determination by a panel under Article 33(5)(b) that provides that the Party complained against shall fully implement an action plan where the panel:

(i) has previously established an action plan under Article 33(4)(a)(ii) or imposed a monetary enforcement assessment under Article 33(4)(b); or

(ii) has subsequently determined under Article 34 that the Party complained against is not fully implementing an action plan.

2. In Canada, the procedures shall be the following:

(a) subject to subparagraph (b), the National Secretariat of Chile, acting on behalf of the Commission, may in the name of the Commission file in a court of competent jurisdiction a certified copy of a panel determination;

(b) the National Secretariat of Chile, acting on behalf of the Commission, may file in court a panel determination that is a panel determination described in paragraph 1(a) only if Canada has failed to comply with the determination within 180 days of when the determination was made;

(c) when filed, the panel determination, for purposes of enforcement, shall become an order of the court;

(d) the National Secretariat of Chile, acting on behalf of the Commission, may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person against whom the panel determination is addressed in accordance with paragraph 6 of Annex 41;

(e) proceedings to enforce a panel determination that has been made an order of the court shall be conducted by way of summary proceedings;

(f) in proceedings to enforce a panel determination that is a panel determination described in paragraph 1(b) and that has been made an order of the court, the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the panel determination, and the decision of the panel shall be binding on the court;

(g) a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and

(h) an order made by the court in proceedings to enforce a panel determination that has been made an order of the court shall not be subject to review or appeal.

3. In Chile, the procedures shall be the following:

(a) subject to subparagraph (b), the National Secretariat of Canada, acting on behalf of the Commission, may in the name of the Commission file in a court of competent jurisdiction a certified copy of a panel determination;

(b) the National Secretariat of Canada, acting on behalf of the Commission, may file in court a panel determination that is a panel determination described in paragraph 1(a) only if Chile has failed to comply with the determination within 180 days of when the determination was made;

(c) the court of competent jurisdiction is the Supreme Court;

(d) the National Secretariat of Canada, acting on behalf of the Commission, shall certify that the panel determination is final and not subject to appeal;

(e) the Supreme Court shall issue a resolution ordering the enforcement of the panel determination within 10 days of when the petition was filed; and

(f) the resolution of the Supreme Court shall be addressed to the competent administrative authority for its prompt compliance.

4. Any change by the Parties to the procedures adopted and maintained by each of them pursuant to this Article that has the effect of undermining the provisions of this Article shall be considered a breach of this Agreement.

Article 36: Funding of Panel Proceedings

The Parties shall agree on a separate budget for each set of panel proceedings pursuant to Articles 24 to 34. The Parties shall contribute equally to this budget.

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Part Six

General Provisions

Article 37: Enforcement Principle

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.

Article 38: Private Rights

No Party may provide for a right of action under its law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement.

Article 39: Protection of Information

1. Nothing in this Agreement shall be construed to require a Party to make available or allow access to information:

(a) the disclosure of which would impede its environmental law enforcement; or

(b) that is protected from disclosure by its law governing business or proprietary information, personal privacy or the confidentiality of governmental decision making.

2. If a Party provides confidential or proprietary information to the other Party, the Council, a National Secretariat, the Joint Submission Committee or the Joint Public Advisory Committee, the recipient shall treat the information on the same basis as the Party providing the information.

3. Confidential or proprietary information provided by a Party to a panel under this Agreement shall be treated in accordance with the rules of procedure established under Article 28.

Article 40: Relation to Other Environmental Agreements

Nothing in this Agreement shall be construed to affect the existing rights and obligations of either Party under other international environmental agreements, including conservation agreements, to which such Party is a party.

Article 41: Extent of Obligations

Annex 41 applies to the Parties specified in that Annex.

Article 42: National Security

Nothing in this Agreement shall be construed:

(a) to require a Party to make available or provide access to information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to prevent a Party from taking any actions that it considers necessary for the protection of its essential security interests relating to

(i) arms, ammunition and implements of war, or

(ii) the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices.

Article 43: Funding of the Commission

Each Party shall contribute an equal share of the annual budget of the Commission, subject to the availability of appropriated funds in accordance with the Party's legal procedures. Neither Party shall be obligated to pay more than the other Party in respect of an annual budget.

Article 44: Definitions

1. For purposes of this Agreement:

A Party has not failed to "effectively enforce its environmental law" or to comply with Article 5(1) in a particular case where the action or inaction in question by agencies or officials of that Party:

(a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or

(b) results from bona fide decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities;

"citizen" means a citizen as defined in Annex 44.1 for the Party specified in that Annex;

"non-governmental organization" means any scientific, professional, business, non-profit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;

"persistent pattern" means a sustained or recurring course of action or inaction beginning after the date of entry into force of this Agreement;

"province" means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors; and

"territory" means for a Party the territory of that Party as set out in Annex 44.1.

2. Except as otherwise provided in Annex 44.2, for purposes of Article 14(1) and Part Five:

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

(i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,

(ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or

(iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas

in the Party's territory, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

(b) For greater certainty, the term "environmental law" does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources.

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

3. For purposes of Article 14(3), "judicial or administrative proceeding" means:

(a) a domestic judicial, quasi-judicial or administrative action pursued by the Party in a timely fashion and in accordance with its law. Such actions comprise: mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order; and

(b) an international dispute resolution proceeding to which the Party is party.

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Article 45: Annexes

The Annexes to this Agreement constitute an integral part of the Agreement.

Article 46: Entry into Force

This Agreement shall enter into force on June 2, 1997, immediately after entry into force of the CCFTA, on an exchange of written notifications certifying the completion of necessary legal procedures.

Article 47: Amendments

1. The Parties may agree on any modification of or addition to this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

Article 48: Accession of Chile to the North American Agreement on Environmental Cooperation

The Parties shall work toward the early accession of Chile to the North American Agreement on Environmental Cooperation.

Article 49: Termination

Either Party may terminate this Agreement by giving written notice to the other Party. Such termination shall take effect six months after the date of receipt of written notice by the other Party.

Article 50: Authentic Texts

The English, French, and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate, in Ottawa, this 6th day of February, 1997.

For the Government of Canada

For the Government of Republic of Chile