

CHAPTER 15

TRADE AND ENVIRONMENT

ARTICLE 15.1: GENERAL PROVISIONS

1. The Parties recognise that each Party has sovereign rights to conserve and protect its environment, and affirm their environmental obligations under their law, as well as their international obligations under multilateral environmental agreements to which they are a party.
2. The Parties recognize the mutual supportiveness between trade and environmental policies and the need to implement this agreement in a manner consistent with environmental protection and conservation.
3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of the other Party.
4. The Parties agree to strengthen communication and cooperation between their respective environmental authorities on environmental issues of mutual interest.

ARTICLE 15.2: LEVELS OF PROTECTION

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

ARTICLE 15.3: APPLICATION AND ENFORCEMENT OF ENVIRONMENTAL LAW

1. A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.
2. The Parties shall not weaken or reduce the environmental protections provided by their laws and regulations to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, their laws or regulations in a manner affecting trade or investment between the Parties.
3. The parties recognize that it is inappropriate to establish or use its environmental laws or other measures in a manner that would constitute a disguised restriction on trade between the parties

ARTICLE 15.4: ACCESS TO REMEDIES AND PROCEDURAL GUARANTEES

1. Each Party shall ensure that an interested person residing or established in its territory may request the Party's competent authorities to investigate an alleged violation of its environmental laws and shall give such a request due consideration, in accordance with its law.
2. Each Party shall provide a person with a legally recognised interest under its laws in a particular matter appropriate access to administrative, quasi-judicial or judicial proceedings for the enforcement of the Party's environmental laws, and to seek remedies for violation of those laws.
3. Each Party shall ensure that its administrative ,quasi- judicial or judicial proceedings referred to in paragraph 2 are fair, equitable, and transparent and to this end shall ensure that the proceeding:
 - (a) is conducted by an impartial and independent natural person who does not have an interest in the outcome of the matter;
 - (b) is open to the public, except if the law or the administration of justice requires otherwise;
 - (c) entitles the parties to a proceeding to support or defend their respective positions and to present information or evidence; and
 - (d) is, within the framework of its legal system, not unnecessarily complicated and does not entail an unreasonable fee or time limit or an unwarranted delay.
4. Each Party shall provide that a final decision on the merits of the case in a proceeding is:
 - (a) in writing and, if appropriate, states the reasons on which the decision is based;
 - (b) made available within a reasonable time period to the parties to a proceeding and, in accordance with its law, to the public; and
 - (c) based on information or evidence presented by the parties to a proceeding.
5. Each Party shall also provide, as appropriate, that parties to a proceeding have the right, in accordance with its law, to seek review and, if warranted, correction or redetermination, of a final decision in a proceeding.
6. Each Party shall ensure that a tribunal that conducts or reviews a proceeding is impartial and independent, and does not have any substantial interest in the outcome of the matter.

ARTICLE 15.5: TRANSPARENCY

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

ARTICLE 15.6: ENVIRONMENT AND ENTERPRISE

Each Party shall strive to promote compliance with its environmental guidelines by enterprises operating in its territory.

ARTICLE 15.7 MEASURES TO ENHANCE ENVIRONMENTAL PERFORMANCES

1. The Parties recognise that flexible, voluntary and incentive-based mechanisms can contribute to the achievement and maintenance of a high level of environmental protection, complementing regulatory measures under environmental laws. In accordance with its law and policy, each Party shall encourage the development and use of such mechanisms.
2. In accordance with its law and policy, each Party shall encourage the development, establishment, maintenance or improvement of performance goals and standards used in measuring environmental performance.

ARTICLE 15.8: INSTITUTIONAL MECHANISM

1. The Parties hereby establish an Environmental Affairs Committee comprising senior level representatives of each Party.
2. The Committee shall meet within one year following the date of entry into force of this Agreement, and thereafter as necessary, to discuss matters of mutual interest, and oversee the implementation of this Chapter, and perform any other function that the Parties may decide.
3. The Committee shall prepare a summary record of each meeting unless the Committee decides otherwise.
4. The Committee may prepare reports and recommendations on any activity or action related to the implementation of this Chapter. A copy of these reports and recommendations may be submitted to the Joint Committee, for its consideration.

5. Summary records, reports and recommendations of the Committee shall be made available to the public, unless otherwise decided by the Parties.
6. Each Party shall designate an office within its administration that shall serve as a contact point with the other Party for purposes of implementing this Chapter.
7. The Committee shall consider undertaking a review of the implementation of this Chapter, in order to improve its operation and effectiveness.

ARTICLE 15.9: CONSULTATIONS

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter and shall make every attempt through consultations, the exchange of information and, if appropriate, cooperation to address any matter that might affect the operation of this Chapter.
2. A Party may request consultations with the other Party through the Committee regarding any matter arising under this Chapter by delivering a written request to the National Contact Point of the other Party, with a copy to the Coordinator of the other Party. The request shall clearly identify the question at issue and provide a brief summary of any claim under this Chapter. Consultations shall commence promptly after a Party delivers a request for consultations to the National Contact Point of the other Party.
3. During the consultations, each Party shall provide the other with sufficient information in its possession to allow a full examination of the matters raised.
4. Consultations, including documents prepared specifically for the purposes of these consultations, are confidential and without prejudice to the rights of the Parties in any proceedings.
5. Consultations may be held in person or by any other means that the Parties mutually decide. If consultations are held in person, they shall take place in the territory of the Party that has received the request, unless the Parties decide otherwise.
6. For greater certainty, if relevant, a Party may seek information or views of any person, organization or body that may contribute to the examination of the matter at issue.
7. If the Parties fail to resolve the matter pursuant to paragraph 2, the requesting Party may request higher level consultations with the other Party regarding any matter under this Chapter by delivering a written request to the National Contact Point of the other Party. The Party receiving the request shall respond expeditiously. The higher level consultations, including documents prepared specifically for the purposes of these consultations, are confidential and without prejudice to the rights of the Parties in any proceedings. The

higher level consultations shall be concluded within 120 days of a Party's receipt of the request unless the Parties decide otherwise.

ARTICLE 15.10 PUBLIC INFORMATION

Each Party shall provide for the receipt and the consideration of enquiries from persons residing or established in that Party on matters related to the implementations of this chapter.

ARTICLE 15.11 REVIEW PANEL

1. Following the conclusion of the higher level consultations, the requesting Party may request that a Review Panel be convened to examine the matter if it considers that the consultations have not satisfactorily addressed the matter by delivering a written request to the National Contact Point of the other Party. The requesting Party shall also deliver a copy of the request to the Coordinator of the other Party.
2. A Review Panel shall be established upon receipt of the request referred to in paragraph 1 by a National Contact Point. Unless the Parties decide otherwise, the terms of reference of the Review Panel shall be: "To examine, in light of the relevant provisions of Chapter 15 (Trade and Environment) of the Korea – Israel Free Trade Agreement, the matter referred to in the request for the establishment of the Review Panel, and to issue a report making recommendations for the resolution of the matter."
3. If in the final report the Review Panel determines that a Party has not complied with its obligations under this Chapter, the Parties shall, within three months of the submission of that final report and taking into account that report, endeavor to consent to a mutually satisfactory action plan to address the matter. Any action plan developed by the Parties shall be made public promptly, unless otherwise decided by the Parties. The Party undertaking the action plan shall submit a copy of it to the Coordinator of the other Party.
4. If the Parties reach a mutually agreed solution to a matter at any point after a Review Panel has been established, they shall notify the Review Panel of the solution. Upon the Review Panel's receipt of this notification, the panel procedure shall be terminated.
5. Annex 15-A shall apply to the selection of panelists and procedures related to the Review Panel.

ARTICLE 15.12: DISPUTE SETTLEMENT

Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matter arising under this Chapter.

ARTICLE 15.13 PUBLIC ENGAGEMENT

1. Each Party shall inform the public of activities, including meetings of the Parties and cooperative activities, undertaken to implement this Chapter.
2. Each Party shall endeavour to engage the public in activities undertaken to implement this Chapter.

ARTICLE 15.14 PROTECTION OF CONFIDENTIAL INFORMATION

Each Party shall ensure that information designated by either Party for treatment as confidential information, in particular personal or commercial information, is protected.

ARTICLE 15.15: COOPERATION

1. The Parties hereby agree to promote cooperation activities of mutual interest, subject to the availability of resources.
2. The Parties shall endeavor to assure that cooperation activities:
 - (a) are consistent with the programs, strategies of development, and national priorities of each Party; and
 - (b) would create opportunities for the public to take part in the development and implementation of such activities.

ARTICLE 15.16: COOPERATION AREAS

1. Areas of cooperation between the Parties in respect of this Chapter may include, but shall not be limited to:
 - (a) cooperation on environmental issues in other bilateral, regional and multilateral forums in which they participate;
 - (b) exchange of views on the trade impact of environmental regulations, norms, and standards;
 - (c) exchange of views on the relationship between multilateral environmental agreements and international trade rules;
 - (d) prevention and management of environmental disasters and emergencies;

- (e) environmental aspects of industrial activity including chemical management;
 - (f) other forms of environmental cooperation as the Parties may deem appropriate.
2. The Parties agree to identify priority areas to establish cooperative activities, and will prepare a work program, including these priority areas and activities after the entry into force of this Agreement.

ARTICLE 15.17 A DEFINITIONS

1. For the purposes of this Chapter:

Committee means the Committee on the Environment established by Article 15.8;

environmental laws means any law or statutory or regulatory provision, or other legally binding measure of a Party, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

- (a) the prevention, abatement or control of the release, discharge or emission of pollutants or environmental contaminants;
- (b) the management of chemicals and waste and the dissemination of information related thereto; or
- (c) the conservation and protection of wild flora or wild fauna, including endangered species, their habitat and protected natural areas;

but does not include any measure directly related to worker health and safety, nor any measure of which the primary purpose is managing the commercial harvest or exploitation, or subsistence of natural resources.

Review Panel means a panel established pursuant to Article 15.11.

2. For the purposes of this Chapter, a Party has not failed to “**effectively enforce its environmental laws**” in a particular case if the action or inaction in question by an agency or an official of that Party:
- (a) reflects a reasonable exercise of discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or
 - (b) results from a bona fide decision to allocate resources to enforcement in respect of other environmental matters determined to have higher priority.

ANNEX 15-A

PROCEDURES RELATED TO REVIEW PANEL

1. A Review Panel shall be composed of two panellists and a chair.
2. For the purposes of selecting the panellists, the following procedures shall apply:
 - (a) within 30 days of a Party's receipt of a request to establish a Review Panel, each Party shall select one panellist; and
 - (b) if one Party fails to select a panellist within the period referred to in subparagraph (a), the other Party shall select that panellist from among qualified candidates who are nationals of the Party that failed to select its panellist.
3. For the purposes of selecting the chair, the following procedures shall apply:
 - (a) the Party that is the subject of the request shall provide the requesting Party with the names of three qualified candidates who are not nationals of either Party. These names shall be provided within 30 days of a Party's receipt of the request to establish a Review Panel;
 - (b) the requesting Party may choose one of the three candidates referred to in subparagraph (a) to be the chair or, if no names were provided or none of the candidates are acceptable, provide the Party that is the subject of the request with the names of three candidates who are qualified to be the chair and who are not nationals of either Party. Those names shall be provided no later than seven days after receipt of the names under subparagraph (a) or 37 days after the receipt of the request referred to in Article 15.11 for the establishment of a Review Panel, whichever is earlier; and
 - (c) the Party that is the subject of the request may choose one of the three candidates to be the chair within seven days of receiving their names under subparagraph (b), failing which the chair shall be selected by the requesting Party by lot from the six candidates proposed by the Parties pursuant to subparagraphs (a) and (b) within a further 7 days.
4. A Review Panel shall be composed of individuals with specialized knowledge or expertise in environmental law, issues addressed in this Chapter and, to the extent possible, the settlement of disputes arising under international agreements. Members of a Review Panel shall be independent, shall serve in their individual capacities, shall not take instructions from any organisation or government with regard to issues related to the matter at stake and shall not be affiliated with the government of any

- Party. A Review Panel shall be composed of individuals who are nationals of a state having diplomatic relations with both Parties.
5. Unless the Parties decide otherwise, a Review Panel shall perform its functions in accordance with Annex 20-A (Code of Conduct) and Annex 20-B (Rules of Procedure), with such changes as may be necessary. If there is an inconsistency between those Annexes and this Annex, the provisions of this Annex shall prevail.
 6. A Review Panel shall ensure that:
 - (a) each Party has the opportunity to provide written and oral submissions to the Review Panel;
 - (b) at the request of either Party, or on its own initiative, the Review Panel may seek, as appropriate, information and technical advice from any person or body with relevant expertise. The Parties shall have an opportunity to comment on any information or advice so obtained;
 7. A Review Panel shall issue to the Parties an interim report and a final report, each; setting out the findings of fact, its determinations as to whether the responding Party has complied with its obligations under this Chapter and the rationale behind any findings, determinations, and recommendations that it makes.
 8. A Review Panel shall submit the interim report to the Parties within 120 days of the selection of the last panellist or within another time period decided by the Parties. The Parties may provide comments to the Review Panel on the interim report within 45 days of its submission. After considering these comments, the Review Panel may reconsider its report or make any further examination it considers appropriate.
 9. A Review Panel shall submit the final report to the Parties within 60 days of the submission of the interim report. Unless the Parties decide otherwise, the final report of a Review Panel may be published by either Party 30 days after it is submitted to the Parties.