



# Secret TPP treaty: Environment chapter for all 12 nations

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Consolidated Text

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## Description

This is the confidential draft treaty chapter from the Environment Working Group of the Trans-Pacific Partnership (TPP) talks between the United States, Japan, Mexico, Canada, Australia, Malaysia, Chile, Singapore, Peru, Vietnam, New Zealand and Brunei Darussalam. The treaty is being negotiated in secret by delegations from each of the 12 countries, who together account for 40% of global GDP. The chapter, covering proposed international obligations and enforcement mechanisms for protection of the environment, was drafted by the Chairs of the TPP Environment Working Group, at request from the TPP Ministers and at the Chairs' own responsibility, and is an attempt at a "landing zone" document to quickly move the text along and identify outliers. The document demonstrates the state of the text at the end of the Brunei round, as well as all discussions that have occurred in each negotiating round that the Chairs have participated in since, up to the date of drafting. The text dates from the end of the Salt Lake City meetings, and before the December Singapore TPP Ministerial Meeting. The text endeavours to present a package from the Chairs that considers the interests of all Parties and encompasses compromises across all issues, attempting to resolve tensions within the working group, which are then further detailed in the corresponding Chairs' report.

# WikiLeaks

Trans-Pacific Partnership Agreement negotiations

## **Environment Chapter**

### **Consolidated Text**

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The following draft Trans-Pacific Partnership (TPP) environment text is without prejudice to the positions of any TPP Party. It responds to the request by TPP Ministers that Canada draft a consolidated text after bilateral consultations with other TPP Parties to determine concerns and redlines and possible landing zones.

**November 24, 2013**

## Chapter SS

### Environment

#### Article SS.1: Definitions

For purposes of this Chapter:

**environmental law** means any statute or regulation of a Party, or provision thereof, including any that implement its 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, and 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<sup>1,2</sup>,

but does not include any 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.

**statute or regulation** means:

[AU: 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.]

[BN: for Brunei, an Act, Order or Rule promulgated pursuant to the Constitution of Brunei Darussalam, enforceable by the Government of His Majesty the Sultan and yang Di-Pertuan of Brunei Darussalam.]

[CA: for Canada, an Act of the Parliament of Canada or regulation made under an Act of the Parliament of Canada that is enforceable by the central level of government.]

[MY: for Malaysia, an act of Parliament or regulation promulgated pursuant to an act of Parliament that is enforceable by action of the federal government.]

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1 “specially protected natural areas” – as defined by the Party in its legislation.

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

[**MX**: for the United Mexican States, an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the federal level of government.]

[**PE**: for Peru, a law of Congress or 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.]

[**US**: 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.]

[**VN**: for Vietnam, 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.]

*Drafter's note: Language relating to equivalency in scope of coverage is attached. Placement is to be determined.*

## **Article SS.2: Objectives**

1. The objectives of this Chapter are to: promote mutually supportive trade and environment 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 recognize that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits which can contribute to sustainable development, strengthen their environmental governance and complement the objectives of the TPP.
3. The Parties further recognize that it is inappropriate to set 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 SS.3: General Commitments**

1. The Parties recognize the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in the furtherance of sustainable development.
2. The Parties recognize the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to set, adopt or modify accordingly its environmental laws and policies.
3. Each Party shall strive to ensure that its environmental 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.

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.
5. The Parties recognize 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 where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bona fide* decision regarding the allocation of such resources in accordance with priorities for enforcement of its environmental laws.
6. Without prejudice to paragraph 2, the Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws 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 SS.4: Multilateral Environmental Agreements**

1. The Parties recognize 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 stress the need to enhance mutual supportiveness between trade and environment laws and policies through dialogue between the Parties on trade and environment issues of mutual interest, particularly with respect to negotiations and implementation of relevant multilateral environmental agreements and trade agreements.
3. If a Party is found to be in non-compliance with its obligations under a multilateral environmental agreement through applicable compliance procedures under such agreement<sup>3</sup>, and such non-compliance is in a manner affecting trade or investment between the Parties, any other Party whose trade or investment is affected and is party to the same multilateral environmental agreement may request that the Committee be convened to consider the issue by delivering a written request to each national contact point. The Committee shall convene to consider whether the matter could benefit from cooperative activities under this agreement, with a view to facilitating the relevant Party

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3 For greater clarity, this does not include self-reporting of non-compliance.

coming into compliance with its obligations under the multilateral environmental agreement.<sup>4</sup>

#### *Montreal Protocol*

4. The Parties recognize 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. To that end, each Party affirms its commitment to take measures to control the production and consumption of, and trade in, such substances by implementing its obligations under the Montreal Protocol of Substances that Deplete the Ozone Layer, including its amendments.<sup>5</sup>

#### **Article SS.5: Procedural Matters**

1. Each Party shall promote public awareness of its environmental laws, regulations and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public.
2. Each Party shall ensure that interested persons residing in or established in the territory of such Party may request the Party's competent authorities to investigate alleged violations of its environmental laws, and that the competent authorities shall give such 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 are fair, equitable, transparent, and comply with due process of law. Any hearings in such proceedings shall be open to the public, except where the administration of justice otherwise requires, and in accordance with its applicable laws.
4. Each Party shall ensure that persons with a recognized 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. Such sanctions or remedies may include a right to bring an action against the violator directly seeking damages or injunctive relief, or a right to seek governmental action.
6. Each Party shall ensure that, in the establishment of the sanctions or remedies referred to in paragraph 5, appropriate account is taken of relevant factors. Such factors may include the nature and gravity of the violation, damage to the environment, and any economic benefit the violator has derived from the violation.

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4 For greater clarity, this provision is not subject to any dispute settlement mechanism in this agreement.

5 For purposes of this Article, a Party's Montreal Protocol on Substances that Deplete the Ozone Layer obligations shall encompass those in existing or future protocols, amendments, annexes, and adjustments to which it is party; and a Party's obligations shall be interpreted to reflect, among other things, existing and future reservations, exemptions and exceptions that are applicable to it.



## **Article SS.6: 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, such as national advisory committees, to seek views on matters related to the implementation of this Chapter. Such mechanisms may comprise persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.

## **Article SS.7: 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.<sup>6</sup> 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, such as 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, such as 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 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 after this Agreement enters into force.
4. Where a submission asserts that a Party is failing to effectively enforce its environmental laws and following the provision of the written response by that Party, any other Party may request that the 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.

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<sup>6</sup> Where available and appropriate, a Party may use an existing institutional body or mechanism for this purpose.

5. At its first meeting, the Committee shall establish procedures for discussing submissions and responses referred to it. Such procedures may provide for the utilization of experts, or existing institutional bodies, for the purpose of developing a report for the Committee comprised of information on facts relevant to the matter.
6. No later than three years after the date this Agreement enters into force, and thereafter as agreed to by the Parties, the Committee shall prepare a written report for the Commission on the implementation of this Article. For purposes of preparing this report, each Party shall provide a written summary regarding its implementation activities under this Article.

#### **Article SS.8: 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 related to the environment, consistent with internationally recognized standards and guidelines that have been endorsed or are supported by that Party.

#### **Article SS.9: Voluntary Mechanisms to Enhance Environmental Performance**

1. The Parties recognize that flexible, voluntary mechanisms, such as 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 further recognize that such mechanisms should be designed in a manner that maximizes their environmental benefits and avoids the creation of unnecessary barriers to trade.
2. Therefore, in accordance with its domestic laws, regulations or policies, and to the extent it considers appropriate, each Party shall encourage:
  - (a) the use of such flexible and voluntary mechanisms to protect natural resources and the environment in its territory; and
  - (b) its relevant authorities, businesses and business organizations, non-governmental organizations, and other interested persons involved in the development of criteria used in evaluating environmental performance, with respect to such voluntary mechanisms, to continue to develop and improve such criteria.
3. Further, where private sector entities or non-governmental organizations develop voluntary mechanisms for the promotion of products based on their environmental qualities, each Party should encourage those entities and organizations to develop such mechanisms that among other things:
  - (a) are truthful, not misleading and take into account scientific and technical information;
  - (b) where 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 favorably on the basis of origin.

#### **Article SS.10: Cooperation Frameworks**

1. The Parties recognize the importance of cooperation as a mechanism for implementation of this Chapter and enhancing its benefits and to strengthen their 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, where there is mutual benefit from such cooperation. Such cooperation may be carried out on a bilateral or plurilateral basis between or among the Parties and, subject to consensus by the participating Parties, may include non-government bodies or organizations 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 relating to coordination of cooperation activities and shall notify the other Parties in writing within 90 days of entry into force of this Agreement 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 such cooperation;
  - (b) propose cooperation activities related to the implementation of this chapter to another Party or Parties.
4. Where possible and appropriate, the Parties shall seek to complement and utilize their existing cooperation mechanisms and take into account relevant work of regional and international organizations.
5. The Parties agree that cooperation may be undertaken through modes such as dialogues, workshops, seminars, conferences, collaborative programs and projects, and technical assistance to promote and facilitate cooperation and training; the sharing of best practices on policies and procedures; and exchange of experts.
6. In developing cooperative activities and programs, each Party shall, where relevant, identify performance measures and indicators to assist in examining and evaluating the efficiency, effectiveness and progress of specific cooperative activities and programs and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of a cooperative activity or program, with the Parties.
7. The Parties, through their national 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 SS.11(3)(c). The Parties, through the Committee, may periodically evaluate the necessity

of designating an entity to provide administrative and operational support for cooperative activities. In the event that the Parties agree to establish such an entity, the Parties shall agree on the provision of funds on a voluntary basis to support its operation.

8. Each Party shall promote public participation in the development and implementation, as appropriate, of cooperative activities. 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. All cooperative activities under this Chapter shall be subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the participating Parties. The funding of cooperative activities shall be decided by the participating Parties on a case-by-case basis.

#### **Article SS.11: Institutional Arrangements**

1. Each Party shall designate a national contact point from its relevant national authorities within three months of the date of entry into force of this Agreement, in order to facilitate communication among the Parties in the implementation of this Chapter. Changes to the national contact point shall be communicated promptly to the other Parties as they occur.
2. The Parties hereby establish an Environment Committee (“Committee”) which shall comprise 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 [Trans-Pacific Partnership Commission] regarding implementation of this Chapter;
  - (c) provide a forum to discuss and review cooperative activities pursuant to this Chapter;
  - (d) consider and endeavor to resolve matters referred to it under Article SS.12 [Consultations];
  - (e) coordinate with other Committees under the Agreement as appropriate; and
  - (f) perform any other functions as the Parties may agree.
4. The Committee shall meet within the first year of entry into force of this Agreement. Thereafter, the Committee shall normally meet every two years unless the Committee decides 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 decides otherwise.
5. All decisions and reports of the Committee shall be made by consensus, unless otherwise agreed, or unless otherwise provided in this Chapter.
6. All decisions and reports of the Committee shall be made available to the public, unless otherwise decided by consensus.

7. During the fifth year after the 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 agreed 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 recognize the importance of resource efficiency in the implementation of this Chapter and the desirability of utilizing, wherever possible, new technologies to facilitate communication and interaction among the Parties and with the public.

## **Article SS.12: Consultation/Dispute Resolution**

### **Article SS.12.1: Environment Consultations**

1. The Parties shall at all times endeavor to agree on the interpretation and application of this Chapter, and shall make every effort through dialogue, consultation, exchange of information, and, where appropriate, cooperation to address any matter that might affect the operation of this Chapter.
2. Any 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 national contact point designated in accordance with Article SS.11 (Institutional Arrangements) of this Chapter. The request shall contain information that is specific and sufficient to enable the responding Party receiving the request to respond, including identification of the matter at issue and an indication of the legal basis for the request.
3. The requesting Party shall inform the other Parties through the national contact points, of its request for consultations. A Party other than the requesting or 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 national contact point of the requesting and responding Parties within seven days of the date of delivery of the request for consultations. The participating party shall include in its notice an explanation of its substantial interest in the matter.
4. Unless they otherwise agree, the requesting and responding Parties ("the consulting Parties") shall enter into consultations within 30 days after the receipt of the written 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 SS.12.2: Senior Representative Consultations**

1. If the consulting Parties fail to resolve the matter pursuant to Article SS.12.1 (Environment Consultations), any consulting Party may request that the Committee representatives from the consulting Parties convene to consider the matter by delivering a written request to the national contact point of the other consulting Party and circulating it to the national contact point of other Parties.
2. The Committee representatives from the consulting Parties shall meet no later than 90 days following the delivery of the request and shall seek to resolve the matter including, where appropriate, by gathering relevant scientific and technical information from governmental or non-governmental experts. Committee representatives from any other Party that considers it as a substantial interest in the matter may participate in the consultations.

#### **Article SS.12.3: Ministerial Consultations**

1. If the consulting Parties have failed to resolve the matter pursuant to Article SS.12.2 (Committee Consultations), any of the consulting Parties may refer the matter to the relevant Ministers of the consulting Parties who shall seek to resolve the matter.
2. Consultations pursuant to Articles SS.12.1, SS.12.2, and SS.12.3 may be held in person or by any technological means available agreed by the consulting Parties. If in person, consultations shall be held in the capital of the responding Party, unless the consulting Parties otherwise agree.
3. Consultations shall be confidential and without prejudice to the rights of any Party in any future proceedings.

#### **Article SS.12.4: Arbitral Tribunal**

1. If the consulting Parties have failed to resolve the matter within 90 days of the request made pursuant to Article SS.12.3 (Ministerial Consultations), the complaining Party may request in writing the establishment of an arbitral tribunal under this Chapter.
2. The complaining Party shall circulate the request to all Parties through the national contact points designated in accordance with Article SS.10 (Institutional Arrangements) of this Chapter.
3. An arbitral tribunal shall be established upon delivery of a request.
4. The complaining Party shall include in the request to establish an arbitral tribunal an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.
5. A Party that is eligible under paragraph 1 to request the establishment of an arbitral tribunal regarding the same matter may join the arbitral tribunal proceedings as a complaining Party upon delivery of a written notice to the other Parties. The Party joining the proceedings shall deliver the notice at the earliest possible time and in any event no

later than seven days after the date of delivery of the request for the establishment of an arbitral tribunal.

6. Where there is more than one dispute on the same matter arising under this Chapter against a Party, the disputes may be joined, subject to the agreement of all disputing Parties.

#### **Article SS.12.5: Terms of Reference**

Unless the disputing Parties otherwise agree, the terms of reference of the arbitral tribunal constituted under paragraph 1, shall be:

*“to examine, in the light of the relevant provisions of the Environment Chapter, the matter referred to in the request for the establishment of the arbitral tribunal and in any notice to join the arbitral tribunal proceedings pursuant to Article SS.12.4, and to issue a report, in accordance with Article BBB.16 (Final Report) of Chapter BBB (Dispute Settlement), making recommendations for the resolution of the matter.”*

#### **Article SS.12.6: Composition of the Arbitral Tribunal**

1. For purposes of selecting an arbitral tribunal, the following procedures shall apply:
  - (a) the arbitral tribunal shall comprise three members;
  - (b) within 20 days of receiving the request to establish an arbitral tribunal under Article SS.12.4 Request of the Arbitral Tribunal, the complaining Party or Parties and the responding Party shall each select one arbitrator;
  - (c) if one Party fails to select its arbitrator within such period, the other Party shall select the arbitrator from among qualified individuals who are nationals of the Party that failed to select its arbitrator;
  - (d) the following procedures shall apply to the selection of the chair:
    - i. the responding Party shall provide the complaining Party with the names of three qualified candidates. The names shall be provided within 20 days of receiving the request to establish the arbitral tribunal;
    - ii. the complaining Party may choose one of the individuals to be the chair or, if the names were not provided or none of the individuals are acceptable, provide the responding Party with the names of three individuals who are qualified to be the chair. Those names shall be provided no later than five days after receiving the names under subparagraph (i) or 25 days after the receipt of the request for the establishment of the arbitral tribunal, whichever is earlier; and
    - iii. the responding Party must choose one of the three individuals to be the chair within five days of receiving the names under subparagraph (ii).
2. Members of the arbitral tribunal shall:



- (a) have specialized knowledge or expertise in environmental law, issues addressed in this Chapter and, to the extent possible, the resolution of disputes arising under international agreements;
- (b) be chosen on the basis of objectivity, reliability and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from any Party; and
- (d) comply with a code of conduct established by the Parties under Article BBB.X of Chapter BBB (Dispute Settlement).

#### **Article SS.12.7: Rules of Procedure**

The Rules of Procedure under Article BBB.11 (Rules of Procedure {for Arbitral Tribunals}) of Chapter BBB (Dispute Settlement) shall apply to arbitral proceedings under this Chapter.

*Drafter's Note: This provision to be reviewed once Article BBB.11 is agreed.*

#### **Article SS.12.8: Third Party Participation**

A Party that is not a disputing Party, and that considers it has a substantial interest in the matter before the arbitral tribunal, shall, on delivery of a written notice to the disputing Parties, be entitled to attend all hearings, to make written submissions, to present views orally to the arbitral tribunal, and to receive written submissions of the disputing Parties. The delivery of the written notice shall occur no later than 10 days after the date of circulation of the request for the establishment of the arbitral tribunal pursuant to paragraph 1 of Article SS.12.4 (Arbitral Tribunal).

#### **Article SS.12.9: Role of Experts**

At the request of a disputing Party or on its own initiative, the arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as the disputing Parties may agree. The disputing Parties shall have an opportunity to comment on any information or advice so obtained.<sup>7</sup>

#### **Article SS.12.10: Initial Report**

The arbitral tribunal shall present to the disputing Parties an initial report in accordance with Article BBB.15 (Initial Report) of Chapter BBB (Dispute Settlement). For the purposes of this Chapter, the initial report shall contain:

- (a) findings of fact;
- (b) the determination of the arbitral tribunal as to whether the responding Party has failed to comply with its obligations under this Chapter;

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<sup>7</sup> This provision shall be applied in accordance with the Rules of Procedure set out in Article BBB.11 (Rules of Procedure) of Chapter BBB (Dispute Settlement).



- (c) any other determination requested in the terms of reference;
- (d) recommendations for the resolution of the dispute; and
- (e) the rationale for any findings, determinations and recommendations made by the arbitral tribunal.

#### **Article SS.12.11: Final Report**

The arbitral tribunal shall present a final report to the disputing Parties in accordance with Article BBB.16 (Final Report) of Chapter BBB (Dispute Settlement).

#### **Article SS.12.12: Implementation of Final Report**

1. If in its final report the arbitral tribunal determines that the responding Party has failed to comply with its obligations under this Chapter, the disputing Parties shall endeavor to agree within 90 days of the public issuance of the final report on a mutually satisfactory action plan pursuant to the determinations and recommendations of the tribunal. The Parties shall notify the Committee of such action plans and its implementation timeframes.
2. The responding Party shall keep the Committee informed in a timely manner through the national contact points of any actions or measures to be implemented pursuant to the determinations and recommendations of the tribunal, including any action plan agreed to pursuant to paragraph 1.
3. For any matter affecting the interpretation or application of this Chapter, the Parties shall only have recourse to the rules and procedures as set out in this Chapter. At any time, the Parties may have recourse to good offices, conciliation, or mediation to resolve that matter.

#### **Article SS.13: Trade and Biodiversity**

1. The Parties recognize the importance of conservation and sustainable use of biological diversity and their key role in achieving sustainable development.
2. Accordingly, the Parties are committed to promoting and encouraging the conservation and sustainable use of biological diversity and sharing in a fair and equitable way the benefits arising from the utilization of genetic resources.
3. The Parties reiterate their commitment to, subject to national legislation, respecting, preserving and maintaining the knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.
4. The Parties recognize the sovereign rights of States over their natural resources, and that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

5. The Parties recognize that, subject to national legislation, access to genetic resources for their utilization, where granted, should be subject to the prior informed consent of the Party providing such resources, unless otherwise determined by that Party. The Parties further recognize that benefits arising from the utilization of these genetic resources should be shared in a fair and equitable way. Such sharing should be upon mutually agreed terms.
6. The Parties also recognize the importance of public participation and consultations, as provided for by domestic law or policy, on matters concerning the conservation and sustainable use of biological diversity. Each Party should make publicly available information about its programs and activities, including cooperative programs, related to the conservation and sustainable use of biological diversity.
7. The Parties are committed to enhance their cooperative efforts in areas of mutual interest related to biological diversity, including through Article SS.10 (Cooperation). 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 ecosystem and ecosystem services; and
  - (c) the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources.

#### **Article SS.14: Invasive Alien Species**

1. The Parties recognize 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 and that prevention, detection, control and, when possible, eradication, of invasive alien species are critical strategies for managing these impacts.
2. Accordingly, the Committee shall coordinate with the Committee on Sanitary and Phytosanitary Measures established under Article X.X of Chapter XXX (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 SS.15: Trade and Climate Change**

1. The Parties acknowledge climate change as a global concern that requires collective action and recognize the importance of implementation of their respective commitments under the United Nations Framework Convention on Climate Change (UNFCCC) and its related legal instruments.
2. The Parties recognize the desirability that trade and climate change policies be mutually supportive, and that policies and measures to deal with climate change should be cost

effective. The Parties further recognize the role that market and non-market approaches can play in achieving climate change objectives.

3. The Parties agree that migration and adaptation actions should reflect domestic circumstances and capabilities, and note efforts underway in a range of international fora to: increase energy efficiency; develop low-carbon technologies and alternative and renewable energy sources; promote sustainable transport and sustainable urban infrastructure development; address deforestation and forest degradation; reduce emissions in international maritime shipping and air transport; improve monitoring, reporting and verification of greenhouse gas emissions; and develop adaptation actions for climate change. The Parties agree to encourage and facilitate cooperation on the complementary, trade-related, aspects of these efforts in areas of mutual interest.
4. The Parties recognize that there are a suite of economic and environmental policy instruments that can play a role in achieving domestic climate change objectives and in helping achieve their international climate change commitments. The Parties acknowledge the value of sharing information and experiences in developing and implementing such instruments. Accordingly, where relevant and appropriate, the Parties agree to discuss matters such as:
  - (a) best practices and lessons learned in designing, implementing, and operating mechanisms to reduce carbon emissions, including market and non-market measures;
  - (b) best practices in the design, implementation and enforcement of regulatory instruments; and
  - (c) best practices and lessons learned to enhance the transparency and accuracy of such instruments.
5. Activities pursuant to paragraphs 3 and 4 may, at the discretion of the participating Parties and as appropriate, involve other governments in the Asia-Pacific region with an interest in such mechanisms, as well as the private sector and non-governmental organizations.
6. The Parties recognize their respective commitments in APEC to rationalize and phase out over the medium term inefficient fossil fuel subsidies that encourage wasteful consumption, while recognizing the importance of providing those in need with essential energy services. Accordingly, the Parties agree to undertake, as appropriate, cooperative and capacity building activities designed to facilitate effective implementation of these commitments, including in applying the APEC Voluntary Reporting Mechanism.

#### **Article SS.16: Marine Capture Fisheries<sup>8</sup>**

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

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

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 recognize the importance of taking measures aimed at the conservation and the sustainable management of fisheries.

2. In this regard, the Parties acknowledge that inadequate fisheries management, fisheries subsidies that contribute to overfishing and overcapacity, and Illegal, Unreported and Unregulated (IUU) fishing<sup>9</sup> can have significant negative impacts on trade, development and the environment and, thus recognize the need for individual and collective action to address the problems of overfishing and unsustainable utilization 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 prevent overfishing and overcapacity, to reduce bycatch of non-target species and juveniles, including through the regulation of fishing gear that results in bycatch and of fishing in areas where bycatch is likely to occur, and to promote the recovery of overfished stocks for all marine fisheries in which its persons conduct fishing activities. Such a management system shall be based on internationally recognized 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.<sup>10</sup>
4. Each Party's fisheries management system shall, based on the best scientific evidence available, promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals, through the implementation and effective enforcement of conservation and management measures that may include, as appropriate, the collection of species specific data, fisheries bycatch mitigation measures, catch limits, and prohibitions, such as on finning and commercial whaling.
5. The Parties also recognize the importance of protecting and preserving the marine environment. To that end, each Party affirms its commitment to take measures to prevent the pollution of the marine environment by implementing its obligations under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL) and its associated Annexes.<sup>11</sup>

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9 The term "illegal, unreported and unregulated fishing" refers to the activities set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organization.

10 These instruments include, among others, and as they may apply, the United Nations Convention on the Law of the Sea, the UN Fish Stocks Agreement, the FAO Code of Conduct for Responsible Fisheries, the 1993 FAO Compliance Agreement and the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing.

11 For purposes of this Article, a Party's MARPOL obligations shall encompass those in existing or future protocols, amendments, annexes, and adjustments to which it is Party; and a Party's obligations shall be interpreted to reflect, among other things, existing and future reservations, exemptions and exceptions that are applicable to it.

6. The Parties recognize 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 subsidies<sup>12</sup> 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 that target the fishing<sup>13</sup> of fish stocks that are in an overfished<sup>14</sup> condition; and
  - (b) subsidies provided to any fishing vessel<sup>15</sup> while listed by the flag State or a relevant Regional Fisheries Management Organization or Arrangement for illegal, unreported or unregulated fishing in accordance with the rules and procedures of such organization or arrangement and in conformity with international law.
7. Subsidy programs established by a Party before the entry into force of this Agreement and which are inconsistent with paragraph 6 (a) shall be brought into conformity with that paragraph as soon as possible and no later than [X year/s] of the date of entry into force of this Agreement.
8. In relation to subsidies that are not prohibited by paragraph 6 (a) and (b), and taking into consideration their social and developmental concerns, 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.
9. With a view to achieving the objective of eliminating subsidies that contribute to overfishing and overcapacity, the Parties shall review the disciplines in paragraph 6 at regular meetings of the Committee.
10. Each Party shall notify to the other Parties, by the first anniversary of the entry into force of this Agreement and every two years thereafter, any subsidy within the meaning of Article 1.1 of the SCM Agreement which is specific within the meaning of Article 2 of

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

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

14 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 recognized by the relevant national jurisdictions or regional fisheries management organizations as overfished shall also be considered overfished for the purposes of this paragraph.

15 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 as defined in footnote 5.



the SCM Agreement, and that the Party grants or maintains to persons engaged in fishing or fishing related activities.

11. Such notifications shall cover subsidies provided within the previous two-year period and should include the following information, in addition to information required under Article 25.3 of the SCM Agreement the SCM notification process, to the extent possible, the following information<sup>16</sup>:
  - a) program name;
  - b) legal authority for the program;
  - c) catch data for the species targeted by the subsidy;
  - d) status of the fish stocks targeted by the subsidy (e.g. overexploited, depleted, fully exploited, recovering, underexploited);
  - e) fleet capacity in the fishery for which the subsidy is provided;
  - f) conservation and management measures in place in the relevant fishery; and
  - g) total imports/exports per species.
12. Each Party shall also provide, to the extent possible, information in relation to other fisheries subsidies that the Party grants or maintains not covered by paragraph 6 above, in particular fuel subsidies.
13. A Party may request additional information from the notifying Party regarding such notifications. The notifying Party shall respond to such requests as quickly as possible and in a comprehensive manner.
14. The Parties recognize the importance of concerted international action to address IUU fishing, as reflected in regional and international instruments,<sup>17</sup> and shall endeavor to improve cooperation internationally in this regard, including with and through competent international organizations.
15. In support of efforts to combat IUU fishing practices and to help deter trade in products from species harvested from such practices, each Party shall:
  - a) cooperate with other Parties to identify needs and build capacity that would 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 deter vessels flying its flag and its nationals from engaging in IUU activities and measures to address the transshipment of fish or fish products caught through IUU activities;
  - c) implement port state measures;

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<sup>16</sup> Sharing information and data on existing fisheries subsidy programs does not prejudice their legal status, effects or nature under the GATT 1994 or the WTO SCM Agreement and is intended to complement WTO data reporting requirements.

<sup>17</sup> Regional and international instruments include, among others, and as they may apply, the 2001 International Plan of Action to Prevent, Deter and Eliminate IUU Fishing, the 2005 Rome Declaration on IUU Fishing, the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing, as well as instruments establishing and adopted by Regional Fisheries Management Organizations, which are defined as intergovernmental fisheries organizations or arrangements, as appropriate, that have the competence to establish conservation and management measures.



- d) strive to act consistently with relevant conservation and management measures adopted by regional fisheries management organizations of which it is not a member so as not to undermine those measures; and
  - e) endeavor not to undermine catch or trade documentation schemes operated by regional fisheries management organizations (RFMO) or arrangements (RFMA) or an international organization that has in its scope the management of shared fisheries resources, including straddling and highly migratory species, where such Party is not a Member of those organizations or arrangements.
16. Consistent with Article ZZ.2.2 (Publication) of Chapter XXX (Transparency), a Party shall, to the extent possible, provide other Parties the opportunity to comment on proposed measures designed to prevent trade in fisheries products resulting from IUU fishing.

#### **Article SS.17: Conservation and Trade**

1. The Parties affirm the importance of combating the illegal take<sup>18</sup> of, and illegal trade in, wild fauna and flora, and acknowledge that such trade undermines efforts to conserve and sustainably manage such natural resources, distorts legal trade in wild fauna and flora, and reduces the economic and environmental value of these natural resources.
2. Accordingly, each Party affirms its commitment to take measures to ensure that international trade of wild flora and fauna does not threaten the survival of such species by implementing its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>19</sup>
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; and
  - (b) undertake, as appropriate, joint activities on conservation issues of mutual interest, including through relevant regional and international fora.
4. Each Party further commits to:
  - (a) take appropriate measures to protect and conserve wild fauna and flora that are at risk within its territory, including measures to conserve the integrity of designated natural protected areas;<sup>20</sup>

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

19 For purposes of this Article, a Party’s CITES obligations shall encompass those in existing or future protocols, amendments, annexes, and adjustments to which it is Party; and a Party’s obligations shall be interpreted to reflect, among other things, existing and future reservations, exemptions and exceptions that are applicable to it.

20 As defined by the Party in its legislation.

- (b) maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management and wild fauna and flora conservation, and endeavor to enhance public participation and transparency therein; and
  - (c) endeavor 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 or illegal trade in wild fauna and flora.
- 5. In a further effort to combat the illegal take of, and illegal trade in, wild fauna and flora, including parts and products thereof, each Party shall adopt or maintain appropriate measures that allow it to take action to prohibit the trade, transshipment or transaction within its territory of wild fauna and flora that, based on credible evidence, were taken or traded in violation of that Party's law or a foreign law, the primary purpose of which is to conserve, protect or manage wild fauna or flora. Such measures should include sanctions or penalties at levels which act as a deterrent to such trade, transshipments or transaction.
- 6. The Parties recognize that each Party retains the right to exercise 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 recognize that in implementing paragraph 5, each Party retains the right to make decisions regarding the allocation of enforcement resources.
- 7. In order to promote the widest measure of law enforcement cooperation and information sharing among the Parties to combat the illegal take of or illegal trade in wild fauna and flora, the Parties shall endeavor to identify opportunities, consistent with their respective domestic 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 SS.18: Environmental Goods and Services**

- 1. The Parties recognize 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. Accordingly, each Party has, consistent with its national circumstances, eliminated all customs duties upon entry into force of this Agreement on a wide range of environmental goods and as soon as possible on all other environmental goods.
- 3. Furthermore, in recognition of the importance of environmental services in supporting environmental goods trade and delivering benefits in their own right, each Party has, consistent with national circumstances, limited its restrictions on trade in environmental services, including environmental service suppliers, in accordance with Chapter XX (Investment), Chapter XX (Cross Border Trade in Services), and Chapter XX (Temporary Entry for Business Persons).
- 4. The Committee shall consider issues identified by Parties related to the trade in environmental goods and services, including issues identified as potential non-tariff

barriers to such trade. The Parties shall endeavor to address any potential barriers to trade that may be identified by a Party, including by working through the Committee and in conjunction with other relevant TPP Committees, as appropriate.

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

### **Equivalency in Scope of Coverage**

1. Before initiating dispute settlement under the Agreement for a matter arising under Article SS.3 [effective enforcement obligation and non-derogation], a Party (“the initiating Party”) shall consider whether it maintains environmental laws that are substantially equivalent in scope to those that would be the subject of the dispute and exercise restraint in taking recourse to dispute settlement under this Agreement with respect to any laws for which it has no substantially equivalent obligation.
2. Where an initiating Party has requested consultation with another Party (“the responding Party”) under Article SS.12 [Environment Government Consultations] for a matter arising under Article SS.3 [effective enforcement and non-derogation], and the responding Party considers that the initiating Party does not maintain environmental laws that are substantially equivalent in scope to those that would be the subject of the dispute, the Parties shall discuss the issue during the consultations.