

## CHAPTER EIGHTEEN

### LABOUR

#### Article 18.1: Statement of Shared Commitments

The Parties affirm their obligations as members of the International Labour Organization (hereinafter referred to as the “ILO”), including those in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up* (1998) (hereinafter referred to as the “ILO Declaration”).

#### Section A – Obligations

#### Article 18.2: General Obligations

Affirming full respect for each Party’s Constitution and labour law and recognising the right of each Party to establish its own labour standards in its territory, adopt or modify accordingly its labour law, and set its priorities in the execution of its labour policies, each Party shall ensure that its labour law embodies and provides protection for the principles concerning the following internationally recognised labour rights<sup>1</sup>:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour and a prohibition on the worst forms of child labour;
- (d) the elimination of discrimination in respect of employment and occupation;

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<sup>1</sup> To establish a violation of an obligation under this Article, a Party must demonstrate that the other Party has failed to ensure its labour law embodies and provides protection for the principles concerning the internationally-recognised labour rights referred to in this Article in a matter related to trade or investment.

- (e) acceptable minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements;
- (f) the prevention of occupational injuries and illnesses;
- (g) compensation in cases of occupational injuries or illnesses; and
- (h) non-discrimination in respect of working conditions for migrant workers.

### **Article 18.3: Non-derogation**

A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, that Party's labour law implementing Article 18.2 in a matter related to trade or investment, if the waiver or derogation would be inconsistent with the rights set out in that Article.

### **Article 18.4: Government Enforcement Action<sup>2</sup>**

1. Each Party shall effectively enforce its labour law through appropriate government action, such as:

- (a) appointing and training inspectors;
  - (b) monitoring compliance and investigating suspected violations;
  - (c) requiring record keeping and reporting;
  - (d) encouraging the establishment of worker-management committees to address labour regulation of the workplace;
  - (e) providing or encouraging mediation, conciliation and arbitration services;
- and

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<sup>2</sup> To establish a violation under this Article, a Party must demonstrate that the other Party has failed to effectively enforce its labour law through a sustained or recurring course of action or inaction in a matter related to trade or investment, and that the matter of dispute is covered by mutually-recognised labour law.

- (f) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give due consideration, in accordance with that Party's domestic law, to a request by an employer, employee or their representatives, or another interested person, for an investigation of an alleged violation of the Party's labour law.

#### **Article 18.5: Private Action**

Each Party shall ensure that a person with a legally-recognised interest under that Party's domestic law has appropriate access to proceedings before a tribunal that can:

- (a) enforce the Party's labour law and give effect to such person's labour rights; and
- (b) remedy breaches of the Party's labour law or rights.

#### **Article 18.6: Procedural Guarantees**

1. Each Party shall ensure that investigations or proceedings referred to in Articles 18.4.1(b), 18.4.1(f), and 18.5:

- (a) are fair, equitable and transparent and to this end that they comply with the due process of law;
- (b) are open to the public except if it is not appropriate for the proper administration of these proceedings; and
- (c) do not entail unreasonable fees, delays or time limits.

2. Each Party shall provide that final decisions on the merits of the case in proceedings referred to in paragraph 1 are in writing, preferably state the reasons on which the decisions are based, and are made available to the parties to the proceedings in a timely manner and, in accordance with its domestic law, to the public.

3. Each Party shall provide that parties to those proceedings have the right, as appropriate and in accordance with applicable domestic law, to seek review in accordance with due process and, if warranted, correction of decisions issued in those proceedings.

#### **Article 18.7: Public Information**

Each Party shall make available to the public information respecting its labour law, including information related to enforcement and compliance procedures.

### **Section B – Institutional Mechanisms**

#### **Article 18.8: Labour Ministerial Council**

1. The Parties hereby establish a Labour Ministerial Council composed of Ministers responsible for labour affairs of the Parties or their designees.
2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to discuss matters of common interest, and to oversee the implementation of and review progress under this Chapter.
3. The Council may consider any matter within the scope of this Chapter and take such other action in the exercise of its functions as the Parties may agree.
4. The Council shall review the operation and effectiveness of the Chapter in the light of experience within five years after the date of entry into force of this Agreement or such other period as may be agreed by the Council.

#### **Article 18.9: National Points of Contact**

Each Party shall designate an office within their governmental department responsible for labour affairs that shall serve as a national point of contact (hereinafter referred to as the “NPC”) and provide to the other Party its contact information by diplomatic note.

#### **Article 18.10: Public Communications**

1. Each Party shall provide for the submission and receipt and periodically make available a list of public communications on labour law matters that:
  - (a) are raised by a national of the Party or an entity that is established in the territory of the Party;
  - (b) arise in the territory of the other Party; and
  - (c) pertain to obligations under Section A.
2. Each Party shall review such matters, as appropriate, in accordance with domestic procedures pursuant to Annex 18-B.

#### **Article 18.11: Cooperative Activities**

The Parties may initiate cooperative labour activities for the promotion of the objectives of this Chapter, enhancement of workers' welfare and the promotion of better understanding by each Party of the other Party's labour system, as set out in Annex 18-A.

#### **Article 18.12: General Consultations**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter.
2. A Party may request consultations with the other Party regarding obligations under this Chapter by delivering a written request to the NPC of the other Party. The Parties shall make every attempt, including through cooperation, consultations and the exchange of information, to address a matter that might affect its operation.
3. If the Parties are unable to resolve the matter, the requesting Party may use the procedures provided under Article 18.13.

## Section C – Procedures for Review of Obligations

### Article 18.13: Labour Consultations

1. A Party may request in writing consultations with the other Party at the ministerial level to discuss matters related to obligations in Section A. The Party that is subject to the request shall respond within 60 days.
2. Each Party shall provide the other Party with sufficient information under its control to allow a full examination of the matters raised, subject to a requirement in its domestic law regarding confidentiality of personal and commercial information.
3. To facilitate discussion of the matters under consideration, either Party may call upon one or more independent experts to prepare a report, which shall be made public within 90 days of its receipt by the Ministers. The Parties shall make every effort to agree upon selection of the expert or experts and shall cooperate with the expert or experts in the preparation of the report.
4. Labour consultations shall be concluded no later than 180 days after the request unless the Parties otherwise agree.

### Article 18.14: Review Panel<sup>3, 4</sup>

1. Following the conclusion of labour consultations, the Party that requested the consultations may request that a Review Panel be convened if it considers that:
  - (a) the other Party has failed to comply with its obligations under Section A;  
and
  - (b) the matter has not been satisfactorily addressed through labour consultations.
2. Unless otherwise agreed by the Parties, the Review Panel shall be established and perform its functions in a manner consistent with this Section.

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<sup>3</sup> Recognising the principle of reciprocity, prior to the request for a Review Panel, each Party shall consider whether the obligations under this Chapter apply to a reasonably meaningful portion of its own labour force in its own territory.

<sup>4</sup> A Party should resort to dispute settlement under this Article only in cases with merit that are related to trade or investment.

3. The Review Panel shall determine, within 30 days after the last panellist is selected, whether the matter is related to trade or investment and shall cease its functions if it determines that the matter is not related to trade or investment.

4. The review shall be conducted in accordance with the procedures set out in Annex 18-D.

#### **Article 18.15: Panellists**

1. A Review Panel shall be composed of three panellists.

2. Panellists shall:

(a) be chosen on the basis of expertise in labour matters or other appropriate disciplines, objectivity, reliability, and sound judgment;

(b) be independent of, and not be affiliated with or take instructions from, either Party; and

(c) comply with the Code of Conduct set out in Annex 21-B (Code of Conduct for Members of Panels) which applies *mutatis mutandis*.

3. If either Party believes that a panellist is in violation of the code of conduct, the Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with the procedures set out in Annex 18-D that were used to select the panellist who was removed. The time limits shall run from the date of their agreement to remove the panellist.

4. Individuals shall not serve as panellists with respect to a review in which they have, or a person or organisation with which they are affiliated has, an interest.

5. The chairperson shall not be a national of either Party.

6. Panellists shall be selected in accordance with the procedures set out in Annex 18-D.

### **Article 18.16: Information for the Review Panel**

1. The Parties shall be entitled to make written and oral submissions to the Review Panel in accordance with the relevant provisions of Annex 21-C (Model Rules of Procedure) which apply *mutatis mutandis*.
2. The Review Panel may invite or receive and consider written submissions and any other information from organisations, institutions, the public and persons with relevant information or expertise.

### **Article 18.17: Initial Report**

1. Unless the Parties otherwise agree, the Review Panel shall base its report on the submissions and arguments of the Parties and on information before it pursuant to Article 18.16.
2. Unless the Parties otherwise agree, the Review Panel shall, within 180 days after the last panellist is selected, issue to the Parties an initial report containing:
  - (a) findings of fact;
  - (b) its determination as to whether the Party that is subject to the request has failed to comply with its obligations under Section A or any other determination requested in the terms of reference; and
  - (c) its recommendations, if any, for addressing the matter.
3. Panellists may furnish separate opinions on matters that are not the subject of unanimous agreement. The Review Panel, however, shall not disclose which panellists are associated with majority or minority opinions.
4. Either Party may submit written comments to the Review Panel on its initial report within 45 days of presentation of the report.



5. After considering such written comments, the Review 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 18.18: Final Report**

1. The Review Panel shall issue to the Parties a final report, including any separate opinions on matters not unanimously agreed to, within 90 days of the issuance of the initial report, unless the Parties otherwise agree.

2. The Parties shall make the final report available to the public within 120 days after it is issued to the Parties.

3. If, in the final report, the Review Panel determines that the Party that was subject to the request has failed to comply with its obligations under Section A, the Parties may develop, within the following 90 days or such longer period as they may decide, a mutually satisfactory action plan to implement the Review Panel's recommendations.

4. Following the expiry of the period pursuant to paragraph 3, if the Parties are unable to decide on an action plan or the Party that was subject to the request is failing to implement the action plan according to its terms, the requesting Party may request in writing that the Review Panel be reconvened with a view to determining whether a monetary assessment needs to be set and paid in accordance with Annex 18-E.

### **Section D – General Provisions**

#### **Article 18.19: Enforcement Principle**

This Chapter is not to be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party.

#### **Article 18.20: Private Rights**

A Party shall not provide for a right of action under its domestic law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Chapter.

#### **Article 18.21: Security of Domestic Procedures**

The decisions by each Party's tribunals, or pending decisions, as well as related proceedings, shall not be subject to revision or be reopened under this Chapter.

#### **Article 18.22: Protection of Information**

1. A Party that receives information identified by the other Party as confidential or proprietary information shall protect such information as confidential or proprietary.
2. Confidential or proprietary information provided to the Review Panel under this Chapter shall be treated in accordance with paragraph 32 of Annex 21-C (Confidentiality) which applies *mutatis mutandis*.

#### **Article 18.23: Cooperation with International and Regional Organisations**

The Parties may, as appropriate and by agreement, seek the assistance of the International Labour Office or any other competent international and regional organisation that has the necessary expertise and resources to enhance cooperation under this Chapter.

#### **Article 18.24: Dispute Settlement**

A Party shall not have recourse to Chapter Twenty-One (Dispute Settlement) for any matter arising under this Chapter, except as otherwise provided in this Chapter.

## **Article 18.25: Definitions**

For the purposes of this Chapter:

**due process** means that proceedings are conducted by decision-makers who are impartial and independent and do not have an interest in the outcome of the matter, that the parties to the proceedings are entitled to support or defend their respective positions and to present information or evidence, and that the decision is based on such information or evidence;

**forced or compulsory labour** does not include compulsory military service, certain civic obligations, prison labour not for private purposes and work exacted in cases of emergency;

**labour law** means laws, regulations, and, where applicable, jurisprudence that implement and protect the labour principles and rights set out in Article 18.2;

**mutually-recognised labour law** means labour law that addresses the same general subject matter in a manner in both Parties that provides rights, protections or standards, although for greater certainty the law of a Party need not be substantially similar to the law of the other Party in order to constitute a mutually-recognised labour law; and

**person** means a natural person, an enterprise, or an organisation of employers or workers.

## **Annex 18-A**

### **Cooperative Activities**

1. The NPCs established under Article 18.9 shall serve as the contact points for cooperative labour activities.
2. Officials of the labour ministries and other appropriate agencies and ministries shall cooperate to:
  - (a) establish priorities for cooperative activities on labour matters;
  - (b) develop specific cooperative activities in accordance with such priorities;
  - (c) exchange information regarding labour law and practices in each Party;
  - (d) exchange information on ways to improve labour law and practices, including best labour practices; and
  - (e) advance understanding of, respect for, and effective implementation of the principles reflected in the ILO Declaration.
3. Cooperative activities between the Parties may include the following subjects:
  - (a) policy issues of common interest and their effective application: legislation, practice, and implementation related to freedom of association and collective bargaining, non-discrimination in employment, child labour, forced labour, occupational health and safety, compensation for work-related injury or illness, employment standards, work benefits, and migrant workers;
  - (b) labour-management relations: forms of cooperation and dispute resolution among workers, management and governments;
  - (c) social safety net programs: social programs for workers and their families and unemployment assistance programs;

- (d) human resource development and management: skills development and life-long learning and training;
- (e) programs, methodologies and experience regarding productivity improvement;
- (f) labour statistics; and
- (g) such other matters as the Parties may agree.

4. Cooperative activities agreed upon under paragraph 3 may be implemented through:

- (a) exchanges of delegations, professionals and specialists, including study visits and other technical exchanges;
- (b) exchange of information, standards, regulations and procedures, and best practices, including publications and monographs;
- (c) organisation of joint conferences, seminars, workshops, meetings, training sessions and outreach and education programs;
- (d) development of collaborative projects or demonstrations;
- (e) joint research projects, studies and reports, including through engagement of independent experts with recognised expertise;
- (f) cooperation within international fora such as the ILO on labour-related issues; and
- (g) other forms of technical exchanges or cooperation to which the Parties may agree.

5. In identifying areas for cooperation and carrying out cooperative activities, the Parties shall consider the views of their respective worker and employer representatives. The Parties shall carry out the cooperative activities with due regard for the economic, social cultural, and legislative differences between them.

## **Annex 18-B**

### **Public Communications**

Public communication procedures of each Party regarding the right of a person to submit a public communication to the NPC shall indicate, *inter alia*:

- (a) the requirements regarding the acceptance of communications, including that:
  - (i) except in exceptional circumstances, relief before domestic tribunals has been pursued and that matters pending before such tribunals will not be accepted, provided that the tribunal's proceedings conform to Article 18.5;
  - (ii) except in exceptional circumstances, matters pending before an international body will not be accepted;
  - (iii) communications that are trivial, frivolous, or vexatious will not be accepted; and
  - (iv) communication must be substantially different from previous communications or include new or supplemental information not available in previous communications;
- (b) that there will be early consultation with the other Party;
- (c) that the final report will consider relevant information, including that provided by the submitter, the other Party and other interested persons, as well as indicate how to obtain access to that information; and
- (d) that the public notification of the acceptance for review and of the release of the final report will indicate how to obtain access to any response of the other Party.

## **Annex 18-C**

### **Extent of Obligations**

1. At the time of entry into force of this Agreement, Canada shall provide to Korea through diplomatic channels a written declaration with a list of any provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration shall be effective on delivery to Korea, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify Korea six months in advance of any modification to its declaration.
2. Canada shall not request consultations, or the establishment of a Review Panel, under Section C at the instance, or primarily for the benefit, of the government of a province not included in the declaration made under paragraph 1.
3. Korea shall not request the establishment of a Review Panel, under Section C, concerning a matter related to a labour law of a province unless that province is included in the declaration made under paragraph 1.
4. Canada shall, no later than the date on which the Review Panel is convened pursuant to Article 18.14 respecting a matter within the scope of paragraph 3, notify Korea in writing of whether any recommendation of the Review Panel in a final report under Article 18.18 or monetary assessment determined pursuant to Annex 18-E with respect to Canada shall be addressed to Her Majesty in right of Canada or Her Majesty in right of the province concerned.
5. Canada shall use its best efforts to make this Chapter applicable to as many of its provinces as possible.

## **Annex 18-D**

### **Procedures Related to Review Panels**

#### *Review Panel Selection Procedures*

1. For the purposes of selecting a panellist, the following procedures shall apply:
  - (a) within 20 days of the receipt of the request for the establishment of a Review Panel, each Party shall select one panellist;
  - (b) if a Party fails to select its panellist within such period, the other Party shall select the panellist from among qualified individuals who are nationals of the Party that has failed to select its panellist; and
  - (c) the following procedures apply to the selection of the chairperson:
    - (i) the Party that is subject to the request shall provide the Party that made the request with the names of three individuals who are qualified to be the chairperson. The names shall be provided no later than 20 days after the receipt of the request for the establishment of a Review Panel;
    - (ii) the Party that made the request may choose one of the individuals to be the chairperson or, if the names were not provided or none of the individuals is acceptable, provide the Party that is subject to the request with the names of three individuals who are qualified to be the chairperson. Those names shall be provided no later than five days after receiving the names under sub-subparagraph (i) or 25 days after the receipt of the request for the establishment of a Review Panel; and
    - (iii) the Party that is subject to the request may choose one of the three individuals to be the chairperson, no later than five days after receiving the names under sub-subparagraph (ii), in default of which the Parties shall immediately request the Director General of the International Labour Office to appoint a chairperson within 25 days.



*Rules of Procedure*

2. The rules of procedure under Article 21.8 (Rules of Procedure) apply *mutatis mutandis* to Review Panel proceedings under this Chapter.
3. The Parties shall agree on a separate budget for each set of Review Panel proceedings under this Chapter. The Parties shall contribute equally to the budget, unless they agree otherwise.

*Terms of Reference of Panels*

4. Unless the Parties otherwise agree within 30 days after the Review Panel is convened, the terms of reference shall be:

“To examine, in light of the relevant provisions of this Chapter, whether the Party that was subject to the request has failed to comply with its obligations under Section A, and to make findings, determinations and recommendations in accordance with Articles 18.17.1 and 18.17.2.”

## Annex 18-E

### Monetary Assessments

1. The Review Panel shall be reconvened as soon as possible after delivery of the request pursuant to Article 18.18.4. Within 90 days after being reconvened, the Review Panel shall determine whether the terms of the action plan have been implemented or the non-compliance otherwise remedied.
2. In the event of a negative determination pursuant to paragraph 1 and at the request of the complaining Party, the Review Panel shall assess an annual monetary assessment equivalent to the degree of adverse trade effects related to the non-compliance within the meaning of Article 18.14.1 or the non-compliance with the action plan and the Review Panel may adjust the assessment to reflect:
  - (a) mitigating factors, such as good faith efforts made by the Party to begin remedying such non-compliance after the final report of the Review Panel, *bona fide* reasons for the Party's failure to comply with such obligations; and
  - (b) aggravating factors, such as the pervasiveness and duration of the Party's failure to comply with its obligations.
3. Monetary assessments shall be paid into an interest-bearing fund designated by the Council and shall be expended at the direction of the Council to implement the action plan or other appropriate measures.
4. 90 days from the date on which the Review Panel determines the amount of the monetary assessment pursuant to paragraph 2, or at any time thereafter, the complaining Party may provide notice in writing to the other Party demanding payment of the monetary assessment. The monetary assessment shall be paid in equal, quarterly instalments beginning 120 days after the requesting Party provides such notice and ending upon decision of the Parties or upon the date of the Review Panel determination pursuant to paragraph 5.
5. If the Party that was subject to the review considers that it has eliminated the non-compliance, it may refer the matter to the Review Panel by providing written notice to the other Party. The Review Panel shall be reconvened within 60 days of that notice and issue its report within 90 days thereafter.

6. In Canada, the procedure for enforcement of the monetary assessment is the following:

- (a) Korea may file in a court of competent jurisdiction a certified copy of a Review Panel determination under paragraph 2 above only if Canada has failed to comply with the terms of a notice provided under paragraph 4 within 180 days of the notice being provided;
- (b) when filed, the Review Panel determination, for purposes of enforcement, becomes an order of the court;
- (c) Korea may take proceedings for the enforcement of a Review Panel determination that is made an order of the court, in that court, against the person in Canada against whom the Review Panel determination is addressed in accordance with paragraph 4 of Annex 18-C;
- (d) proceedings to enforce a Review Panel determination that has been made an order of the court are to be conducted in Canada by way of summary proceedings, provided that the court shall promptly refer a question of fact or a question of interpretation of the Review Panel determination to the Review Panel that made the determination, and the decision of the Review Panel shall be binding on the court;
- (e) a Review Panel determination that has been made an order of the court is not subject to domestic review or appeal; and
- (f) an order made by the court in proceedings to enforce a Review Panel determination that has been made an order of the court is not subject to review or appeal.

7. Korea shall provide for the enforcement of the monetary assessment in its territory.