

CHAPTER EIGHTEEN

LABOUR

ARTICLE 18.1: STATEMENT OF SHARED COMMITMENT

1. The Parties reaffirm their obligations as members of the International Labour Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)* (ILO Declaration). Each Party shall strive to ensure that such labour principles and the internationally recognised labour principles and rights set forth in Article 18.7 are recognised and protected by its law.

2. Recognizing the right of each Party to establish its own labour standards, and to adopt or modify accordingly its labour laws, each Party shall strive to ensure that its laws provide for labour standards consistent with the internationally recognised labour principles and rights set forth in Article 18.7 and shall strive to improve those standards consistent with the goal of maintaining high quality and high productivity workplaces.

ARTICLE 18.2: APPLICATION AND ENFORCEMENT OF LABOUR LAWS

1. (a) A Party shall not fail to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognise that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labour matters determined to have higher priority. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) 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 resources.

2. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective labour laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognised labour principles and rights referred to in Article 18.7 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

ARTICLE 18.3: PROCEDURAL GUARANTEES AND PUBLIC AWARENESS

1. Each Party shall ensure that persons with a legally recognised interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial, or labour tribunals for the enforcement of the Party's labour laws.

2. Each Party shall ensure that the proceedings of its administrative, quasi-judicial,

judicial, or labour tribunals for the enforcement of its labour laws are fair, equitable, and transparent.

3. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labour laws.

4. Each Party shall promote public awareness of its labour laws by ensuring that information is available to the public regarding its labour laws and enforcement and compliance procedures. A Party may use a variety of means available for this purpose, such as publishing information and notices in official bulletins and the mass media, publishing and distributing information manuals, undertaking compliance assistance programs, conducting meetings, and making information available through the Internet.

5. For greater certainty, nothing in this Chapter shall be construed as calling for the examination under this Agreement of whether a Party's court has appropriately applied that Party's labour laws.

ARTICLE 18.4: INSTITUTIONAL ARRANGEMENTS

1. In carrying out its functions, the Joint Committee established under Chapter 21 (Institutional Arrangements and Dispute Settlement) shall consider matters related to the operation of this Chapter and the pursuit of the Chapter's objectives. The Joint Committee may establish a Subcommittee on Labour Affairs, comprised of central government officials of each Party who are primarily responsible for labour or workplace relations, and officials of other appropriate agencies, to meet at such times as they deem appropriate to discuss the operation of this Chapter. Each meeting of the Subcommittee normally shall include a public session.

2. Each Party shall designate an office within its central government agency that deals with labour or workplace relations, which shall serve as a contact point with the other Party, and with the public, for the purposes of this Chapter. Each Party's contact point shall:

- (a) provide for the submission, receipt, and consideration of public communications on matters related to this Chapter, make the communications available to the other Party and, as appropriate, to the public, and review the communications, as appropriate, in accordance with its procedures; and
- (b) coordinate the development and implementation of cooperative activities under Article 18.5.

3. Each Party may consult with representatives of its labour and business organizations and other persons, including through its advisory committees, for advice on the operation of this Chapter by whatever means that Party considers appropriate.

4. Each formal decision of the Parties concerning the operation of this Chapter shall be made public, unless the Joint Committee decides otherwise.

ARTICLE 18.5: LABOUR COOPERATION

1. Recognizing that cooperation provides opportunities to promote respect for workers' rights and the rights of children consistent with core labour standards of the ILO, the Parties shall cooperate on labour matters of mutual interest and explore ways to further advance labour standards on a bilateral, regional, and multilateral basis. To that end, the Parties hereby establish a consultative mechanism for such cooperation.
2. Cooperative activities may include work on labour law and practice in the context of the ILO Declaration, and such other matters as the Parties agree. In identifying areas for cooperation, the Parties shall consider the views of their respective worker and employer representatives and other persons, as appropriate.
3. Cooperative activities may take the form of exchanges of information, joint research activities, visits or conferences, and such other forms of technical exchange as the Parties may agree.

ARTICLE 18.6: LABOUR CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. Unless the Parties agree otherwise, consultations shall commence within 30 days after a Party delivers a request for consultations to the other Party's contact point designated pursuant to Article 18.4.2.
2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate.
3. If the consultations fail to resolve the matter, either Party may request that the Subcommittee on Labour Affairs be convened. The Subcommittee shall convene within 30 days after a Party delivers a request to the other Party's contact point, unless the Parties otherwise agree. If the Joint Committee has not established the Subcommittee as of the date a Party delivers a request, they shall do so during the 30-day period described in this paragraph. The Subcommittee shall endeavour to resolve the matter expeditiously, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.
4. If a Party considers that the other Party has failed to carry out its obligations under Article 18.2.1(a), the Party may request consultations under paragraph 1 or pursuant to Article 21.5 (Consultations).
 - (a) If a Party requests consultations pursuant to Article 21.5 at a time when the Parties are engaged in consultations on the same matter under paragraph 1 or the Subcommittee is endeavouring to resolve the matter under paragraph 3, the Parties shall discontinue their efforts to resolve the matter under this Article.

Once consultations have begun under Article 21.5, no consultations on the same matter may be entered into under this Article.

- (b) If a Party requests consultations pursuant to Article 21.5 more than 60 days after the delivery of a request for consultations under paragraph 1 the Parties may agree at any time to refer the matter to the Joint Committee pursuant to Article 21.6 (Referral of Matters to the Joint Committee).

5. Articles 21.2 (Scope of Application) and 21.5 shall not apply to a matter arising under any provision of this Chapter other than Article 18.2.1(a).

ARTICLE 18.7: DEFINITIONS

For the purposes of this Chapter,

1. **internationally recognised labour principles and rights** means:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labour;
- (d) labour protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labour;¹⁸⁻⁶⁵ and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

2. **labour laws** means:

- (a) for the United States, acts of the Congress, regulations promulgated pursuant to an act of Congress, or provisions of such acts or regulations, where such acts, regulations, or provisions are directly related to internationally recognised labour principles and rights and are enforceable by action of the federal government.

¹⁸⁻⁶⁵ Australia provides labour protections for children and young people primarily through laws and regulations that regulate age levels for compulsory education.

- (b) for Australia, acts of a parliament of Australia, or regulations promulgated pursuant to such acts, directly related to internationally recognised labour principles and rights.