

CHAPTER NINETEEN LABOR

ARTICLE 19.1: STATEMENT OF SHARED COMMITMENT

The Parties reaffirm their obligations as members of the International Labor Organization (ILO).

ARTICLE 19.2: FUNDAMENTAL LABOR RIGHTS

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up* (1998) (ILO Declaration):^{1 2}

- (a) freedom of association;
- (b) the effective recognition of the right to collective bargaining;
- (c) the elimination of all forms of compulsory or forced labor;
- (d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and
- (e) the elimination of discrimination in respect of employment and occupation.

2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.

ARTICLE 19.3: APPLICATION AND ENFORCEMENT OF LABOR LAWS

- 1. (a) Neither Party shall fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 19.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date this Agreement enters into force.
- (b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to *bona fide* decisions with

¹ The obligations set out in Article 19.2, as they relate to the ILO, refer only to the ILO Declaration.

² To establish a violation of an obligation under Article 19.2.1 a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the Parties.

regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 19.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter.³

2. For greater certainty, nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of the other Party.

ARTICLE 19.4: PROCEDURAL GUARANTEES AND PUBLIC AWARENESS

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

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall ensure, in accordance with its law, that:

- (a) such proceedings comply with due process of law;
- (b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;
- (c) the parties to such proceedings are entitled to support or defend their respective positions, including by presenting information or evidence;
- (d) such proceedings do not entail unreasonable fees or time limits or unwarranted delays;
- (e) final decisions on the merits of the case in such proceedings are: (i) in writing and state the reasons on which the decisions are based; (ii) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and (iii) based on information or evidence in respect of which the parties were offered the opportunity to be heard;
- (f) as appropriate, parties to such proceedings have the right to seek review and, where warranted, correction of decisions issued in such proceedings; and
- (g) tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

³ For greater certainty, a Party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions regarding the allocation of enforcement resources with respect to labor laws other than those relating to fundamental rights enumerated in Article 19.2.1.

3. Each Party shall provide that parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws.
4. Each Party shall promote public awareness of its labor laws, including by:
 - (a) ensuring that information related to its labor laws and enforcement and compliance procedures is publicly available; and
 - (b) encouraging education of the public regarding its labor laws.

ARTICLE 19.5: INSTITUTIONAL ARRANGEMENTS

1. The Parties hereby establish a Labor Affairs Council. The Council shall comprise appropriate senior officials from the labor ministry and other appropriate agencies or ministries of each Party.
2. The Council shall meet within the first year after the date this Agreement enters into force, and thereafter as necessary, to oversee the implementation of this Chapter, including activities of the Labor Cooperation Mechanism established under Article 19.6. Unless the Parties otherwise agree, each meeting of the Council shall include a session in which members of the Council have an opportunity to meet with the public to discuss matters related to the implementation of this Chapter.
3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Party and with the public for purposes of implementing this Chapter. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to this Chapter and shall make such communications available to the other Party and the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures.
4. Each Party may convene a national labor advisory committee comprising members of its public, including representatives of its labor and business organizations and other persons, to advise it on the implementation of this Chapter.
5. Formal decisions of the Council shall be made public, unless the Council decides otherwise.
6. The Council may prepare reports on matters related to the implementation of this Chapter and shall make such reports public.

ARTICLE 19.6: LABOR COOPERATION

Recognizing that cooperation provides enhanced opportunities to promote respect for core labor standards embodied in the ILO Declaration and compliance with *ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999) (ILO Convention 182), and to further advance other common commitments

regarding labor matters, the Parties hereby establish a Labor Cooperation Mechanism, as set out in Annex 19-A.

ARTICLE 19.7: LABOR CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point the other Party has designated under Article 19.5.3. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond. Consultations shall commence promptly after a Party delivers a request for consultations to the other Party's contact point.
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 consider appropriate.
3. If the consultations fail to resolve the matter, either Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of the other Party. The Council shall convene promptly and endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or other experts and having recourse to such procedures as good offices, conciliation, or mediation.
4. If the Parties have failed to resolve the matter within 60 days of the delivery of a request for consultations under paragraph 1, the complaining Party may request consultations under Article 22.7 (Consultations) or refer the matter to the Joint Committee pursuant to Article 22.8 (Referral to the Joint Committee) and, as provided in Chapter Twenty-Two (Institutional Provisions and Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.
5. Neither Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

ARTICLE 19.8: DEFINITIONS

For purposes of this Chapter:

labor laws means a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) freedom of association;
- (b) the effective recognition of the right to collective bargaining;
- (c) the elimination of all forms of forced or compulsory labor;
- (d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;

- (e) the elimination of discrimination in respect of employment and occupation; and
- (f) acceptable conditions of work with respect to minimum wages, hours of work,⁴ and occupational safety and health; and

statutes and regulations and **statutes or regulations** means:

- (a) for Korea, acts of the National Assembly or regulations promulgated pursuant to acts of the National Assembly that are enforceable by action of the central level of government; and
- (b) for the United States, acts of Congress or regulations promulgated pursuant to acts of Congress that are enforceable by action of the central level of government and, for purposes of this Chapter, includes the Constitution of the United States.

⁴ For greater certainty, “hours of work” does not include paid annual leave or holidays.

ANNEX 19-A

LABOR COOPERATION MECHANISM

Establishment of a Labor Cooperation Mechanism

1. Recognizing that cooperation provides enhanced opportunities for the Parties to improve labor standards and to further advance common commitments with respect to labor matters, including the ILO Declaration and ILO Convention 182, the Parties have established a Labor Cooperation Mechanism under Article 19.6.

Principal Functions and Organization

2. The contact points established under Article 19.5.3 shall serve as the contact points for the Labor Cooperation Mechanism.

3. Officials of each Party's labor ministry and other appropriate agencies or ministries shall carry out the work of the Labor Cooperation Mechanism by cooperating to:

- (a) establish priorities for cooperative activities on labor matters;
- (b) develop specific cooperative activities in accord with such priorities;
- (c) exchange information regarding labor law and practice in each Party;
- (d) exchange information on ways to improve labor law and practice, including best labor practices;
- (e) advance understanding of, respect for, and effective implementation of the principles reflected in the ILO Declaration and ILO Convention 182;
- (f) review and compare which statutes or regulations, or provisions thereof, of each Party fall within the definition of "labor laws" in Article 19.8 to understand further the scope of each Party's laws falling within that definition; and
- (g) develop recommendations, for consideration by the Council, of actions each Party may take.

Cooperative Activities

4. The Parties may undertake cooperative activities through the Labor Cooperation Mechanism on any labor matter they consider appropriate, including:

- (a) fundamental rights and their effective application: legislation and practice related to the principles and rights contained in the ILO Declaration (freedom of association and the effective recognition of the right to collective bargaining,

elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation);

- (b) worst forms of child labor;
- (c) social safety net programs: unemployment insurance and worker adjustment programs;
- (d) working conditions: hours of work, minimum wages, and overtime; occupational safety and health; and prevention of and compensation for work-related injuries and illnesses;
- (e) labor-management relations: forms of cooperation among workers, management, and government to ensure productive labor relations and contribute to efficiency and productivity in the workplace;
- (f) labor statistics; and
- (g) human resources development and life-long learning.

Implementation of Cooperative Activities

5. The Parties may carry out cooperative activities undertaken by the Labor Cooperation Mechanism through any form they consider appropriate, including, but not limited to:

- (a) arranging study visits and other exchanges between government delegations, professionals, students, and specialists;
- (b) exchanging information on standards, regulations, procedures, and best practices, including through the exchange of pertinent publications and monographs;
- (c) organizing joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;
- (d) developing collaborative projects or demonstrations; and
- (e) engaging in joint research projects, studies, and reports, including through engagement of independent experts with recognized expertise.

6. In identifying areas for labor cooperation, and in conducting cooperative activities, each Party shall seek the views and participation of its worker and employer representatives, as well as other members of the public.

June 30, 2007

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Article 19.5.3 (Institutional Arrangements) of Chapter Nineteen (Labor) of the Free Trade Agreement between our two Governments signed this day:

For greater certainty:

Each Party may establish appropriate procedures, consistent with Article 19.5.3, for reviewing communications from persons of a Party on matters related to Chapter Nineteen. Article 19.5.3 does not require a Party to establish new procedures that duplicate existing channels for reviewing such communications. A Party may limit the scope of any new procedures it establishes to comply with Article 19.5.3 to communications on labor matters in the other Party's territory, provided that the Party has other procedures in place for reviewing communications on other matters related to Chapter Nineteen.

The Parties recognize that it is in their mutual interest not to pursue frivolous or meritless communications and for each Party to take into account when reviewing any communication whether: (1) the person submitting the communication or any other person has sought relief regarding the matter under pertinent domestic laws of the other Party; (2) the matter is pending before an international body; and (3) the communication is substantially similar to another recent communication regarding the matter.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the United States of America and the Republic of Korea during the course of negotiations regarding Article 19.5.3 (Institutional Arrangements) of Chapter Nineteen (Labor) of the Free Trade Agreement between our two Governments signed this day:

For greater certainty:

Each Party may establish appropriate procedures, consistent with Article 19.5.3, for reviewing communications from persons of a Party on matters related to Chapter Nineteen. Article 19.5.3 does not require a Party to establish new procedures that duplicate existing channels for reviewing such communications. A Party may limit the scope of any new procedures it establishes to comply with Article 19.5.3 to communications on labor matters in the other Party's territory, provided that the Party has other procedures in place for reviewing communications on other matters related to Chapter Nineteen.

The Parties recognize that it is in their mutual interest not to pursue frivolous or meritless communications and for each Party to take into account when reviewing any communication whether: (1) the person submitting the communication or any other person has sought relief regarding the matter under pertinent domestic laws of the other Party; (2) the matter is pending before an international body; and (3) the communication is substantially similar to another recent communication regarding the matter.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]
Hyun Chong Kim