

CHAPTER 23

TRADE AND LABOUR

Article 23.1 Definitions

For the purposes of this Chapter:

“2014 Protocol to the ILO Forced Labour Convention” means the *Protocol of 2014 to the Forced Labour Convention 1930 (No. 29)* done at Geneva on 11 June 2014;

“Call to Action to End Forced Labour, Modern Slavery and Human Trafficking” means the *Call to Action to End Forced Labour, Modern Slavery and Human Trafficking* done at New York City on 19 September 2017;

“ILO” means the International Labour Organization;

“ILO Centenary Declaration for the Future of Work” means the *Centenary Declaration for the Future of Work* done at Geneva on 21 June 2019;

“ILO Declaration on Fundamental Principles and Rights at Work” means the *Declaration on Fundamental Principles and Rights at Work and its Follow-up 1998* done at Geneva on 18 June 1998;

“ILO Declaration on Social Justice for a Fair Globalization” means the *Declaration on Social Justice for a Fair Globalization of 2008* done at Geneva on 10 June 2008;

“labour laws” means laws and regulations, or provisions of laws and regulations, of a Party that are required in order to implement the internationally recognised labour rights of:

- (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 prohibition of the worst forms of child labour;
- (d) the elimination of discrimination in respect of employment and occupation; and
- (e) labour protections relating to minimum wages, hours of work, and healthy and safe working conditions;

“Modern Slavery” means forced or compulsory labour, human trafficking, debt bondage, or other slavery and slavery like practices as defined in the laws and regulations of each Party; and

“Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains” means the *Principles to Combat Human Trafficking in Global Supply Chains* between the Governments of Australia, Canada, New Zealand, the United Kingdom, and the United States done at New York City in September 2018.

Article 23.2

Objective

1. The objective of this Chapter is for the Parties to promote the development of international trade and investment between them in a way that is conducive to full and productive employment and decent work for all.
2. The Parties affirm their commitment to mutually supportive trade and labour policies and practices, including the promotion of adherence to internationally recognised labour rights and decent work, and cooperation and dialogue between the Parties.

Article 23.3

Statement of Shared Commitment

1. The Parties affirm their obligations as members of the ILO, and the commitments stated in the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Declaration on Social Justice for a Fair Globalization, and the ILO Centenary Declaration for the Future of Work, regarding labour rights within their territories.
2. The Parties recall the ILO Declaration on Social Justice for a Fair Globalization, and note that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.
3. The Parties recognise the important role of workers’ and employers’ organisations in participating in the international development and supervision of internationally recognised labour rights.
4. The Parties also recognise the importance of tackling modern slavery in global supply chains to promote inclusive and sustainable economic growth, full and productive employment, and decent work for all.

Article 23.4
Right to Regulate and Levels of Protection

1. The Parties recognise the sovereign right of each Party to:
 - (a) determine its own labour policies and priorities;
 - (b) establish its own levels of labour and social protection; and
 - (c) establish, adopt, or modify its labour laws and policies, in a manner consistent with its international labour commitments and those in this Chapter.
2. Each Party shall strive to ensure that its labour laws and policies provide for and encourage high levels of labour protection and strive to continue to improve those laws and policies with the goal of providing high levels of labour protection.

Article 23.5
Labour Rights¹

1. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work, each Party shall respect, promote, and realise in its laws the principles concerning the fundamental rights at work namely:
 - (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, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and
 - (d) the elimination of discrimination in respect of employment and occupation.
2. Each Party shall adopt or maintain laws and regulations, and practices thereunder governing decent working conditions,² with respect to minimum wages, hours of work, and healthy and safe working conditions.

¹ To establish a violation of an obligation under paragraphs 1 or 2, a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice to encourage trade or investment.

² As determined by each Party.

3. Each Party reaffirms its commitment to implement in its laws and regulations, and practices thereunder, in its territory, the ILO Conventions that each Party has ratified respectively.
4. Recalling the ILO Centenary Declaration for the Future of Work, each Party recognises the importance of working towards the ratification and implementation of the ILO fundamental conventions in accordance with its national conditions, circumstances, and priorities.
5. The Parties shall exchange information, as appropriate, on their respective situations and progress regarding the ratification of ILO Conventions and Protocols that are classified as up to date by the ILO.

Article 23.6 **Trade and Labour**

1. The Parties recognise that it is inappropriate to use labour laws for protectionist trade purposes.
2. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws.
3. Accordingly, the Parties shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, their respective labour laws in order to encourage trade or investment if the waiver or derogation weakens or reduces adherence to the internationally recognised labour rights in paragraph 1 of Article 23.5 (Labour Rights) and the labour protections referred to in paragraph 2 of Article 23.5 (Labour Rights).
4. Neither Party shall, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour laws to encourage trade or investment.
5. Each Party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources between labour enforcement activities relating to paragraphs 1 and 2 of Article 23.5 (Labour Rights), provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

Article 23.7 **Decent Work**

The Parties recognise the importance of decent work, and each Party shall, with due regard to national conditions, circumstances, and priorities, promote

through its laws and regulations, policies, and practices the objectives of the Decent Work Agenda, as expressed in the ILO Declaration on Social Justice for a Fair Globalization, with respect to labour protection.

Article 23.8
Non-Discrimination and Gender Equality in the Workplace

1. The Parties support the goals of eliminating discrimination in employment and occupation, and of promoting the equality of women in relation to their engagement in trade and the workplace. Accordingly, each Party shall implement policies and measures that it considers appropriate to:
 - (a) ensure equal opportunities and an inclusive labour market;
 - (b) protect workers against employment discrimination on the basis of sex or gender (including with regard to sexual harassment or gender-based violence), pregnancy, and sexual orientation;
 - (c) provide job-protected leave for birth or adoption of a child; and
 - (d) protect against wage discrimination including working towards the elimination of gender wage gaps with the aim of achieving equal pay.
2. To assist in the implementation of paragraph 1, the Parties shall develop cooperation activities to improve the capacity and conditions for women in trade and the workplace. These activities shall be carried out with the inclusive participation of women. Areas of cooperation may include:
 - (a) the promotion of labour practices that facilitate the integration, retention, and progression of women in the job market, and seek to build the capacity and skills of women workers;
 - (b) the advancement of policies and programmes encouraging, valuing, and recognising women's unpaid care work including parenting and other family co-responsibilities, such as access to flexible working arrangements or access to leave and affordable childcare; and
 - (c) the development of sex or gender-disaggregated data, the use of indicators, monitoring, and evaluation methodologies, and the analysis of sex or gender-focused statistics related to trade and the workplace including pay transparency data and labour force participation.

Article 23.9

Modern Slavery

1. The Parties reaffirm the importance of the ILO's *Forced Labour Convention 1930 (No. 29)* done at Geneva on 28 June 1930, the ILO's *Abolition of Forced Labour Convention 1957 (No.105)* done at Geneva on 25 June 1957, and the 2014 Protocol to the ILO Forced Labour Convention, as key international instruments in helping combat Modern Slavery. The Parties also recall their endorsement of the Call to Action to End Forced Labour, Modern Slavery and Human Trafficking, their commitment to implement the Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains, and the United Nations' *Guiding Principles on Business and Human Rights* done at Geneva on 16 June 2011 ("Guiding Principles").
2. Each Party shall encourage private and public sector entities operating in its territory to take appropriate steps to prevent Modern Slavery in their supply chains. To this end, each Party shall adopt or maintain measures, in a manner it considers appropriate to:
 - (a) facilitate private and public sector entities to identify and address Modern Slavery in their global and domestic supply chains, including to publish relevant guidance to raise awareness, to promote responsible business conduct, and to foster collaboration across sectors and with civil society;
 - (b) encourage private and public sector entities to identify and address Modern Slavery in their global and domestic supply chains, which may include proposing laws and regulations;
 - (c) facilitate the capability of staff in public sector entities working on government procurement to identify and address Modern Slavery in their global and domestic supply chains, including through training; and
 - (d) encourage responsible recruitment policies and practices, which may include the regulation of work-finding fees or premiums to secure employment sought from or charged to workers by employers or their agents.
3. The Parties shall endeavour to:
 - (a) cooperate, share information and best practice, including with regard to the implementation of paragraph 2 in their jurisdictions, as appropriate, and identify areas of alignment to tackle Modern Slavery; and
 - (b) cooperate bilaterally and in international fora as appropriate, on initiatives to tackle Modern Slavery.

Article 23.10
Corporate Social Responsibility and Responsible Business Conduct

1. The Parties recognise the importance of responsible business conduct and corporate social responsibility practices, including responsible supply chain management, and the role of trade in pursuing this objective.
2. In light of paragraph 1, each Party shall:
 - (a) encourage enterprises to adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party; and
 - (b) commit to promote the relevant international instruments such as the OECD's *Guidelines for Multinational Enterprises* (2011 Edition) done at Paris on 25 May 2011 and *Due Diligence Guidance for Responsible Business Conduct* done at Paris on 31 May 2018, the *United Nations Global Compact* done at New York on 26 July 2000, and the Guiding Principles, including by supporting their dissemination and use.
3. The Parties shall endeavour to strengthen their cooperation on corporate social responsibility and responsible business conduct bilaterally and in international fora as appropriate, on issues of mutual interest.

Article 23.11
Labour Cooperation

1. The Parties recognise the importance of cooperation in the implementation of this Chapter and commit to cooperate on labour issues of mutual interest to further advance the Chapter's commitments through actions which may include:
 - (a) the exchange of information on best practices on issues of common interest and on relevant events, activities, and initiatives;
 - (b) cooperation in international fora that deal with issues relevant for trade and labour, including in particular the WTO and the ILO;
 - (c) the international promotion of the effective application of fundamental principles and rights at work referred to in paragraph 1 of Article 23.5 (Labour Rights), and the Decent Work Agenda as expressed in the ILO Declaration on Social Justice for a Fair Globalization;

- (d) the exploration of collaboration in initiatives regarding non-parties; and
 - (e) any other form of cooperation deemed appropriate.
- 2. The Parties will consider any views provided by their stakeholders, including worker and employer organisations, when identifying potential areas for cooperation and carrying out cooperative activities.

Article 23.12 **Public Awareness**

Each Party shall promote public awareness of its labour laws, including by ensuring that information related to its labour laws and enforcement and compliance procedures is publicly available.

Article 23.13 **Procedural Guarantees**

- 1. Each Party shall adopt and implement laws and policies for facilitating the resolution of individual and collective labour disputes, and maintain an effective labour enforcement system, including labour inspections in accordance with its international obligations.
- 2. Each Party shall ensure that its administrative, judicial, and labour tribunal proceedings for the enforcement of its labour laws are fair, accessible, and transparent, and permit effective action against infringements of labour rights referred to in this Chapter, including appropriate remedies.

Article 23.14 **Advisory Groups**

- 1. Each Party shall establish or maintain and consult an independent advisory group with a balanced representation of its worker and employer organisations, and other relevant experts as appropriate, on matters relating to the operation and implementation of this Chapter.
- 2. Each Party shall inform its independent advisory group of the outcome of any dispute relating to this Chapter, together with any follow-up actions or measures.

Article 23.15
Public Submissions

1. Each Party shall provide for the receipt and consideration of written submissions from persons of a Party regarding its implementation of this Chapter in accordance with its domestic procedures. Each Party shall make its procedures, including timelines, for the receipt and consideration of written submissions readily accessible and publicly available.
2. A Party may provide in its procedures that, to be eligible for consideration, a submission should, at a minimum:
 - (a) raise an issue directly relevant to this Chapter;
 - (b) clearly identify the person or organisation making the submission; and
 - (c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.
3. Each Party shall respond in a timely manner to those submissions in accordance with domestic procedures. A Party may request from the person or organisation that made the submission additional information that is necessary to consider the substance of the submission.

Article 23.16
Contact Points

1. Each Party shall designate a contact point within 90 days of the date of entry into force of this Agreement. Each Party shall notify the other Party of the contact details of its contact point and shall promptly notify the other Party of any change to its contact point or those contact details.
2. The contact points shall facilitate regular communication between the Parties on any matter relating to this Chapter. The contact point may also:
 - (a) act as a channel for communication with the public in their respective territories;
 - (b) work together, including with appropriate departments of their central level of government, to coordinate cooperative activities in line with the priorities of the Committee; and
 - (c) receive and respond to requests for consultations in accordance with this Chapter.

Article 23.17
Labour Sub-Committee

1. The Labour Sub-Committee (“Sub-Committee”) established under Article 30.9 (Sub-Committees – Institutional Provisions) shall be composed of official level representatives with relevant trade or labour responsibilities as designated by each Party.
2. The purpose of the Sub-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 Joint Committee regarding the implementation of this Chapter;
 - (c) provide a forum to establish and review cooperative priorities and activities under this Chapter;
 - (d) provide a forum to resolve differences between the Parties as to the interpretation or application of this Chapter; and
 - (e) perform any other functions as the Parties may decide.
3. The Sub-Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Sub-Committee shall meet at least every two years, unless the Parties agree otherwise. The Sub-Committee meetings shall be chaired by each Party in turn and may meet physically or virtually as mutually agreed.
4. All decisions and reports of the Sub-Committee shall be made by consensus.
5. As part of its proceedings, the Sub-Committee shall convene Dialogues on issues relevant to the implementation of this Chapter with the members of their advisory groups referred to in Article 23.14 (Advisory Groups), including representatives of its worker and employer organisations, unless the Parties agree otherwise. Participation in the Joint Dialogues may take place by any appropriate means of communication as the Parties agree.
6. The Sub-Committee shall monitor and periodically review the implementation and operation of this Chapter and make appropriate recommendations to the Joint Committee for its consideration.
7. To facilitate public awareness of the implementation of this Chapter, the Sub-Committee shall agree on a joint summary report on its work at the end of each Sub-Committee meeting, which shall be made publicly available.

8. The Parties shall, as appropriate, liaise with relevant international organisations, such as the ILO, on matters related to this Chapter. The Committee may seek to develop joint proposals or collaborate with those organisations or with non-parties.

Article 23.18 **Labour Consultations**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through cooperation, dialogue, consultations, and exchange of information to address any matter arising under this Chapter.
2. A Party (“the requesting Party”) may request consultations with the other Party (“the responding Party”) regarding any matter arising under this Chapter by delivering a written request to the responding Party’s contact point. The requesting Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the request. The responding Party shall, unless agreed otherwise with the requesting Party, respond to the request in writing no later than 10 days after the date of receipt of the request.
3. Unless the Parties agree otherwise, they shall enter into consultations promptly, and no later than 30 days after the date of receipt by the responding Party of the request.
4. The Parties shall make every effort to arrive at a mutually agreed solution to the matter, which may include appropriate cooperative activities. The Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

Article 23.19 **Joint Committee Consultations**

1. If the Parties have failed to resolve the matter under Article 23.18 (Labour Consultations), a Party may request that the Joint Committee convene to consider the matter by delivering a written request to the contact point of the other Party.
2. The Joint Committee shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant information from governmental or non-governmental experts.

Article 23.20
Ministerial Consultations

If the Parties have failed to resolve the matter under Article 23.19 (Joint Committee Consultations), a Party may refer the matter to the relevant Ministers of the Parties who shall seek to resolve the matter.

Article 23.21
Consultation Procedure

Consultations pursuant to Articles 23.18 (Labour Consultations) to Article 23.20 (Ministerial Consultations) may be held in person or by any technological means available as agreed by the Parties. Consultations and, in particular, positions taken by the Parties during their consultations, shall be confidential and without prejudice to the rights of a Party in any further proceedings.

Article 23.22
Dispute Settlement

1. Articles 23.18 (Labour Consultations) to Article 23.20 (Ministerial Consultations) apply by way of derogation from Article 31.5 (Consultations – Dispute Settlement).
2. If the matter at issue falls within Article 31.4 (Scope – Dispute Settlement) and the Parties have failed to resolve the matter under Articles 23.18 (Labour Consultations) to Article 23.20 (Ministerial Consultations) within 120 days of the date of receipt of a request under Article 23.18 (Labour Consultations), or any other period as the Parties may agree, the requesting Party may request the establishment of a panel under Article 31.6 (Establishment of a Panel – Dispute Settlement) and, as provided in Chapter 31 (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.
3. In addition to the requirements under Article 31.8 (Qualifications of Arbitrators – Dispute Settlement), the Parties shall ensure that the panel appointed in accordance with Article 31.7 (Composition of a Panel – Dispute Settlement) has sufficient expertise or experience in labour law for the purposes of a dispute arising under this Chapter. In a dispute arising under this Chapter, the panel shall seek information or technical advice from any expert that it deems appropriate, which may include experts in labour law.