

## CHAPTER 19

### LABOUR

#### Article 19.1: Definitions

For the purposes of this Chapter:

**ILO Declaration** means the International Labour Organization (ILO) *Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*;

**labour laws** means statutes and regulations, or provisions of statutes and regulations, of a Party that are directly related to the following internationally recognised labour rights:

- (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, a prohibition on the worst forms of child labour and other labour protections for children and minors;
- (d) the elimination of discrimination in respect of employment and occupation; and
- (e) acceptable conditions of work with respect to minimum wages<sup>1</sup>, hours of work, and occupational safety and health;

**statutes and regulations** and **statutes or regulations** means:<sup>2</sup>

- (a) for Australia, Acts of the Commonwealth Parliament, or regulations made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament;

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<sup>1</sup> For Singapore, minimum wages may include wage payments and adjustments gazetted under the *Employment Act* and wage supplement schemes under the *Central Provident Fund Act*.

<sup>2</sup> For greater certainty, for each Party setting out a definition, which has a federal form of government, its definition provides coverage for substantially all workers.

- (b) for Malaysia, the Federal Constitution, Acts of Parliament and subsidiary legislation or regulations made under Acts of Parliament;
- (c) for Mexico, Acts of Congress or regulations and provisions promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United Mexican States; and
- (d) for the United States, Acts of Congress or regulations promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United States.

### **Article 19.2: Statement of Shared Commitment**

1. The Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration, regarding labour rights within their territories.
2. The Parties recognise that, as stated in paragraph 5 of the ILO Declaration, labour standards should not be used for protectionist trade purposes.

### **Article 19.3: Labour 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<sup>3, 4</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, 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.

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<sup>3</sup> The obligations set out in Article 19.3 (Labour Rights), as they relate to the ILO, refer only to the ILO Declaration.

<sup>4</sup> To establish a violation of an obligation under Article 19.3.1 (Labour Rights) or Article 19.3.2, 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.

2. Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>5</sup>

#### **Article 19.4: Non Derogation**

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. Accordingly, no Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations:

- (a) implementing Article 19.3.1 (Labour Rights), if the waiver or derogation would be inconsistent with a right set out in that paragraph; or
- (b) implementing Article 19.3.1 (Labour Rights) or Article 19.3.2, if the waiver or derogation would weaken or reduce adherence to a right set out in Article 19.3.1, or to a condition of work referred to in Article 19.3.2, in a special trade or customs area, such as an export processing zone or foreign trade zone, in the Party's territory,

in a manner affecting trade or investment between the Parties.

#### **Article 19.5: Enforcement of Labour Laws**

1. No Party shall fail to effectively enforce its labour 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.

2. If a Party fails to comply with an obligation under this Chapter, a decision made by that Party on the provision of enforcement resources shall not excuse that failure. 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 among the fundamental labour rights and acceptable conditions of work enumerated in Article 19.3.1 (Labour Rights) and Article 19.3.2, provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

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<sup>5</sup> For greater certainty, this obligation relates to the establishment by a Party in its statutes, regulations and practices thereunder, of acceptable conditions of work as determined by that Party.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of another Party.

#### **Article 19.6: Forced or Compulsory Labour**

Each Party recognises the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour. Taking into consideration that the Parties have assumed obligations in this regard under Article 19.3 (Labour Rights), each Party shall also discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour.<sup>6</sup>

#### **Article 19.7: Corporate Social Responsibility**

Each Party shall endeavour to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party.

#### **Article 19.8: Public Awareness and Procedural Guarantees**

1. 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.

2. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to impartial and independent tribunals for the enforcement of the Party's labour laws. These tribunals may include administrative tribunals, quasi-judicial tribunals, judicial tribunals or labour tribunals, as provided for in each Party's law.

3. Each Party shall ensure that proceedings before these tribunals for the enforcement of its labour laws: are fair, equitable and transparent; comply with due process of law; and do not entail unreasonable fees or time limits or unwarranted delays. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable laws.

4. Each Party shall ensure that:

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<sup>6</sup> For greater certainty, nothing in this Article authorises a Party to take initiatives that would be inconsistent with its obligations under other provisions of this Agreement, the WTO Agreement or other international trade agreements.

- (a) the parties to these proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and
- (b) final decisions on the merits of the case:
  - (i) are based on information or evidence in respect of which the parties were offered the opportunity to be heard;
  - (ii) state the reasons on which they are based; and
  - (iii) are available in writing without undue delay to the parties to the proceedings and, consistent with its law, to the public.

5. Each Party shall provide that parties to these proceedings have the right to seek review or appeal, as appropriate under its law.

6. Each Party shall ensure that the parties to these proceedings have access to remedies under its law for the effective enforcement of their rights under the Party's labour laws and that these remedies are executed in a timely manner.

7. Each Party shall provide procedures to effectively enforce the final decisions of its tribunals in these proceedings.

8. For greater certainty, and without prejudice to whether a tribunal's decision is inconsistent with a Party's obligations under this Chapter, nothing in this Chapter shall be construed to require a tribunal of a Party to reopen a decision that it has made in a particular matter.

#### **Article 19.9: Public Submissions**

1. Each Party, through its contact point designated under Article 19.13 (Contact Points), shall provide for the receipt and consideration of written submissions from persons of a Party on matters related to this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions.

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:
- (a) consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate; and
  - (b) make the submission and the results of its consideration available to the other Parties and the public, as appropriate, in a timely manner.
4. 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 19.10: Cooperation**

1. The Parties recognise the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labour standards and to further advance common commitments regarding labour matters, including workers' wellbeing and quality of life and the principles and rights stated in the ILO Declaration.
2. In undertaking cooperative activities, the Parties shall be guided by the following principles:
- (a) consideration of each Party's priorities, level of development and available resources;
  - (b) broad involvement of, and mutual benefit to, the Parties;
  - (c) relevance of capacity and capability-building activities, including technical assistance between the Parties to address labour protection issues and activities to promote innovative workplace practices;
  - (d) generation of measurable, positive and meaningful labour outcomes;
  - (e) resource efficiency, including through the use of technology, as appropriate, to optimise resources used in cooperative activities;

- (f) complementarity with existing regional and multilateral initiatives to address labour issues; and
- (g) transparency and public participation.

3. Each Party shall invite the views and, as appropriate, participation of its stakeholders, including worker and employer representatives, in identifying potential areas for cooperation and undertaking cooperative activities. Subject to the agreement of the Parties involved, cooperative activities may occur through bilateral or plurilateral engagement and may involve relevant regional or international organisations, such as the ILO, and non-Parties.

4. The funding of cooperative activities undertaken within the framework of this Chapter shall be decided by the Parties involved on a case-by-case basis.

5. In addition to the cooperative activities outlined in this Article, the Parties shall, as appropriate, caucus and leverage their respective membership in regional and multilateral fora to further their common interests in addressing labour issues.

6. Areas of cooperation may include:

- (a) job creation and the promotion of productive, quality employment, including policies to generate job-rich growth and promote sustainable enterprises and entrepreneurship;
- (b) creation of productive, quality employment linked to sustainable growth and skills development for jobs in emerging industries, including environmental industries;
- (c) innovative workplace practices to enhance workers' well-being and business and economic competitiveness;
- (d) human capital development and the enhancement of employability, including through lifelong learning, continuous education, training and the development and upgrading of skills;
- (e) work-life balance;
- (f) promotion of improvements in business and labour productivity, particularly in respect of SMEs;
- (g) remuneration systems;
- (h) promotion of the awareness of and respect for the principles and rights as stated in the ILO Declaration and for the concept of Decent Work as defined by the ILO;

- (i) labour laws and practices, including the effective implementation of the principles and rights as stated in the ILO Declaration;
- (j) occupational safety and health;
- (k) labour administration and adjudication, for example, strengthening capacity, efficiency and effectiveness;
- (l) collection and use of labour statistics;
- (m) labour inspection, for example, improving compliance and enforcement mechanisms;
- (n) addressing the challenges and opportunities of a diverse, multigenerational workforce, including:
  - (i) promotion of equality and elimination of discrimination in respect of employment and occupation for migrant workers, or in the areas of age, disability and other characteristics not related to merit or the requirements of employment;
  - (ii) promotion of equality of, elimination of discrimination against, and the employment interests of women; and
  - (iii) protection of vulnerable workers, including migrant workers, and low-waged, casual or contingent workers;
- (o) addressing the labour and employment challenges of economic crises, such as through areas of common interest in the ILO *Global Jobs Pact*;
- (p) social protection issues, including workers' compensation in case of occupational injury or illness, pension systems and employment assistance schemes;
- (q) best practice for labour relations, for example, improved labour relations, including promotion of best practice in alternative dispute resolution;
- (r) social dialogue, including tripartite consultation and partnership;
- (s) with respect to labour relations in multi-national enterprises, promoting information sharing and dialogue related to conditions of employment by enterprises operating in two or more Parties with representative worker organisations in each Party;
- (t) corporate social responsibility; and



- (u) other areas as the Parties may decide.

7. Parties may undertake activities in the areas of cooperation in paragraph 6 through:

- (a) workshops, seminars, dialogues and other fora to share knowledge, experiences and best practices, including online fora and other knowledge-sharing platforms;
- (b) study trips, visits and research studies to document and study policies and practices;
- (c) collaborative research and development related to best practices in subjects of mutual interest;
- (d) specific exchanges of technical expertise and assistance, as appropriate; and
- (e) other forms as the Parties may decide.

#### **Article 19.11: Cooperative Labour Dialogue**

1. A Party may request dialogue with another Party on any matter arising under this Chapter at any time by delivering a written request to the contact point that the other Party has designated under Article 19.13 (Contact Points).

2. The requesting Party shall include information that is specific and sufficient to enable the receiving Party to respond, including identification of the matter at issue, an indication of the basis of the request under this Chapter and, when relevant, how trade or investment between the Parties is affected.

3. Unless the requesting and receiving Parties (the dialoguing Parties) decide otherwise, dialogue shall commence within 30 days of a Party's receipt of a request for dialogue. The dialoguing Parties shall engage in dialogue in good faith. As part of the dialogue, the dialoguing Parties shall provide a means for receiving and considering the views of interested persons on the matter.

4. Dialogue may be held in person or by any technological means available to the dialoguing Parties.

5. The dialoguing Parties shall address all the issues raised in the request. If the dialoguing Parties resolve the matter, they shall document any outcome, including, if appropriate, specific steps and timelines that they have agreed. The dialoguing Parties shall make the outcome available to the public, unless they decide otherwise.

6. In developing an outcome pursuant to paragraph 5, the dialoguing Parties should consider all available options and may jointly decide on any course of action they consider appropriate, including:

- (a) the development and implementation of an action plan in any form that they find satisfactory, which may include specific and verifiable steps, such as on labour inspection, investigation or compliance action, and appropriate timeframes;
- (b) the independent verification of compliance or implementation by individuals or entities, such as the ILO, chosen by the dialoguing Parties; and
- (c) appropriate incentives, such as cooperative programmes and capacity building, to encourage or assist the dialoguing Parties to identify and address labour matters.

#### **Article 19.12: Labour Council**

1. The Parties hereby establish a Labour Council (Council) composed of senior governmental representatives at the ministerial or other level, as designated by each Party.

2. The Council shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Council shall meet every two years, unless the Parties decide otherwise.

3. The Council shall:

- (a) consider matters related to this Chapter;
- (b) establish and review priorities to guide decisions by the Parties about labour cooperation and capacity building activities undertaken pursuant to this Chapter, taking into account the principles in Article 19.10.2 (Cooperation);
- (c) agree on a general work programme in accordance with the priorities established under subparagraph (b);
- (d) oversee and evaluate the general work programme;
- (e) review reports from the contact points designated under Article 19.13 (Contact Points);
- (f) discuss matters of mutual interest;

- (g) facilitate public participation and awareness of the implementation of this Chapter; and
  - (h) perform any other functions as the Parties may decide.
4. During the fifth year after the date of entry into force of this Agreement, or as otherwise decided by the Parties, the Council shall review the implementation of this Chapter with a view to ensuring its effective operation and report the findings and any recommendations to the Commission.
  5. The Council may undertake subsequent reviews as agreed by the Parties.
  6. The Council shall be chaired by each Party on a rotational basis.
  7. All Council decisions and reports shall be made by consensus and be made publicly available, unless the Council decides otherwise.
  8. The Council shall agree on a joint summary report on its work at the end of each Council meeting.
  9. The Parties shall, as appropriate, liaise with relevant regional and international organisations, such as the ILO and APEC, on matters related to this Chapter. The Council may seek to develop joint proposals or collaborate with those organisations or with non-Parties.

#### **Article 19.13: Contact Points**

1. Each Party shall designate an office or official within its labour ministry or equivalent entity as a contact point to address matters related to this Chapter within 90 days of the date of entry into force of this Agreement for that Party. Each Party shall notify the other Parties promptly in the event of any change to its contact point.
2. The contact points shall:
  - (a) facilitate regular communication and coordination between the Parties;
  - (b) assist the Council;
  - (c) report to the Council, as appropriate;
  - (d) act as a channel for communication with the public in their respective territories; and

- (e) work together, including with other appropriate agencies of their governments, to develop and implement cooperative activities, guided by the priorities of the Council, areas of cooperation identified in Article 19.10.6 (Cooperation) and the needs of the Parties.

3. Contact points may develop and implement specific cooperative activities bilaterally or plurilaterally.

4. Contact points may communicate and coordinate activities in person or through electronic or other means of communication.

#### **Article 19.14: Public Engagement**

1. In conducting its activities, including meetings, the Council shall provide a means for receiving and considering the views of interested persons on matters related to this Chapter.

2. Each Party shall establish or maintain, and consult, a national labour consultative or advisory body or similar mechanism, for members of its public, including representatives of its labour and business organisations, to provide views on matters regarding this Chapter.

#### **Article 19.15: Labour Consultations**

1. The Parties shall make every effort through cooperation and consultation based on the principle of mutual respect to resolve any matter arising under this Chapter.

2. A Party (requesting Party) may, at any time, request labour consultations with another Party (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 include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request under this Chapter. The requesting Party shall circulate the request to the other Parties through their respective contact points.

3. The responding Party shall, unless agreed otherwise with the requesting Party, reply to the request in writing no later than seven days after the date of its receipt. The responding Party shall circulate the reply to the other Parties and enter into labour consultations in good faith.

4. A Party other than the requesting Party or the responding Party (the consulting Parties) that considers that it has a substantial interest in the matter may participate in the labour consultations by delivering a written notice to the

other Parties within seven days of the date of circulation by the requesting Party of the request for labour consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

5. The Parties shall begin labour consultations no later than 30 days after the date of receipt by the responding Party of the request.

6. In the labour consultations:

- (a) each consulting Party shall provide sufficient information to enable a full examination of the matter; and
- (b) any Party participating in the consultations shall treat any confidential information exchanged in the course of the consultations on the same basis as the Party providing the information.

7. Labour consultations may be held in person or by any technological means available to the consulting Parties. If labour consultations are held in person, they shall be held in the capital of the responding Party, unless the consulting Parties agree otherwise.

8. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through labour consultations under this Article, taking into account opportunities for cooperation related to the matter. The consulting Parties may request advice from an independent expert or experts chosen by the consulting Parties to assist them. The consulting Parties may have recourse to such procedures as good offices, conciliation or mediation.

9. In labour consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies with expertise in the matter that is the subject of the labour consultations.

10. If the consulting Parties are unable to resolve the matter, any consulting Party may request that the Council representatives of the consulting Parties convene to consider the matter by delivering a written request to the other consulting Party through its contact point. The Party making that request shall inform the other Parties through their contact points. The Council representatives of the consulting Parties shall convene no later than 30 days after the date of receipt of the request, unless the consulting Parties agree otherwise, and shall seek to resolve the matter, including, if appropriate, by consulting independent experts and having recourse to such procedures as good offices, conciliation or mediation.

11. If the consulting Parties are able to resolve the matter, they shall document any outcome including, if appropriate, specific steps and timelines agreed upon.

The consulting Parties shall make the outcome available to the other Parties and to the public, unless they agree otherwise.

12. If the consulting Parties have failed to resolve the matter no later than 60 days after the date of receipt of a request under paragraph 2, the requesting Party may request the establishment of a panel under Article 28.7 (Establishment of a Panel) and, as provided in Chapter 28 (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

13. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

14. A Party may have recourse to labour consultations under this Article without prejudice to the commencement or continuation of cooperative labour dialogue under Article 19.11 (Cooperative Labour Dialogue).

15. Labour consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.