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**Draft 8 May 2006**

**Chapter Seventeen**

**Labor**

**Article 17.1: Statement of Shared Commitments**

1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* (ILO Declaration).<sup>1</sup> Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 17.7 are recognized and protected by its law.

2. The Parties reaffirm their full respect for their Constitutions and recognize the right of each Party to adopt or modify its labor laws and standards. Each Party shall strive to ensure that it provides for labor standards consistent with the internationally recognized labor rights set forth in Article 17.7 and shall strive to improve those standards in that light.

**Article 17.2: Enforcement of Labor Laws**

1. (a) A Party shall not fail to effectively enforce its labor 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) 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 labor matters determined to have higher priorities. 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 recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective labor 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 recognized labor rights referred to in Article 17.7 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

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<sup>1</sup> The Parties recall that paragraph 5 of the ILO Declaration states that labor standards should not be used for protectionist trade purposes.

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

**Article 17.3: Procedural Guarantees and Public Awareness**

1. Each Party shall ensure that persons with a legally recognized interest 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, as provided in the Party's law.

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 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; and
- (d) such proceedings do not entail unreasonable charges, or time limits, or unwarranted delays.

3. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

- (a) in writing and state the reasons on which the decisions are based;
- (b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
- (c) based on information or evidence in respect of which the parties to the proceedings were offered the opportunity to be heard.

4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.

5. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

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6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws. Such remedies may include measures such as orders, fines, penalties, or temporary workplace closures.
7. Each Party shall promote public awareness of its labor laws, including by:
  - (a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and
  - (b) encouraging education of the public regarding its labor laws.

**Article 17.4: Institutional Arrangements**

1. The Parties hereby establish a Labor Affairs Council (Council) comprising cabinet-level or equivalent representatives of the Parties, who may be represented on the Council by their deputies or high-level 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. The Council shall:
  - (a) oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 17.5;
  - (b) develop general guidelines for consideration of communications referred to in paragraph 5(c);
  - (c) prepare reports, as appropriate, on matters related to the implementation of this Chapter and make such reports available to the public;
  - (d) endeavor to resolve matters referred to it under Article 17.6.4; and
  - (e) perform any other functions as the Parties may agree.
3. All decisions of the Council shall be taken by consensus, and shall be made public unless the Council otherwise decides.
4. Unless the Council otherwise decides, each of its meetings shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.

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5. Each Party shall designate an office within its labor ministry or equivalent entity that shall serve as a contact point with the other Parties and with the public. The contact points of each Party shall meet as often as they consider necessary or at the request of the Council. Each Party's contact point shall:

- (a) assist the Council in carrying out its work, including coordination of the Labor Cooperation and Capacity Building Mechanism;
- (b) cooperate with the other Parties' contact points and with relevant government organizations and agencies to:
  - (i) establish priorities, with a particular emphasis on the issues identified in paragraph 2 of Annex 17.5, regarding cooperative activities on labor matters,
  - (ii) develop specific cooperative and capacity-building activities according to such priorities,
  - (iii) exchange information on the labor laws and practices of each Party, including best practices and ways to improve them, and
  - (iv) seek support, as appropriate, from international organizations such as the ILO, the Inter-American Development Bank, the World Bank, and the Organization of American States, to advance common commitments regarding labor matters;
- (c) provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to this Chapter and make such communications available to the other Party and, as appropriate, to the public; and
- (d) provide for the receipt of cooperative consultation requests referred to in Article 17.6.1 and 17.6.4.

6. Each Party shall review communications received under paragraph 5(c) in accordance with domestic procedures.

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7. Each Party may convene a new, or consult an existing, national labor advisory or consultative committee comprising representatives of its labor and business organizations and other members of its public to provide views on any issues related to this Chapter.

**Article 17.5: Labor Cooperation and Capacity Building Mechanism**

1. Recognizing that cooperation on labor issues plays an important role in advancing development in the territory of the Parties and in enhancing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in the ILO Declaration and *ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)*, the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 17.5. This Mechanism shall operate in a manner that respects each Party's law and sovereignty.

2. The Parties shall strive to ensure that the activities undertaken through that Mechanism:

- (a) are consistent with each Party's national programs, development strategies, and priorities;
- (b) provide opportunities for public participation in the development and implementation of such activities; and
- (c) take into account each Party's economy, culture, and legal system.

**Article 17.6: Cooperative Labor Consultations**

1. A Party may request cooperative labor consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 17.4.5.

2. The cooperative labor consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation related to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

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4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the Parties.<sup>2</sup>

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

6. If the matter concerns whether a Party is conforming to its obligations under Article 17.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 17.2.1(a).

8. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 17.2.1(a) without first seeking to resolve the matter in accordance with this Article.

**Article 17.7: Definitions**

For purposes of this Chapter:

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

- (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 labor;

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<sup>2</sup> For purposes of paragraphs 4, 5, and 6, the Council shall consist of the cabinet-level representatives of the consulting Parties or their high-level designees.

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- (d) labor protections for children and minors, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.

**statutes or regulations** means:

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.

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**Annex 17.5**

**Labor Cooperation and Capacity Building Mechanism**

1. *Coordination and Oversight*

The Council shall oversee the implementation of the Mechanism and, through each Party's contact point designated pursuant to Article 17.4.5, coordinate its activities.

2. *Cooperation and Capacity Building Priorities*

The Parties' contact points shall carry out the work of the Mechanism by developing and pursuing bilateral or regional cooperation activities on labor issues, which may include, but need not be limited to:

- (a) *fundamental rights at work and their effective application*: cooperation on law and practice related to implementation and public awareness of the principles and rights contained in the ILO Declaration:
  - (i) freedom of association and the effective recognition of the right to collective bargaining,
  - (ii) elimination of all forms of forced or compulsory labor,
  - (iii) the effective abolition of child labor, and
  - (iv) the elimination of discrimination in respect of employment and occupation;
- (b) *worst forms of child labor*: programs or other cooperation to promote compliance with ILO Convention 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor;
- (c) *labor administration*: activities aimed at strengthening the institutional capacity of labor administrations and labor tribunals, especially professionalization of personnel and training, including with respect to technological skills;
- (d) *labor inspectorates*: activities to improve labor law enforcement and compliance, including training and initiatives to strengthen and improve the efficiency of labor inspection systems;

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- (e) *alternative dispute resolution*: initiatives aimed at establishing and strengthening alternative dispute resolution mechanisms for labor disputes;
- (f) *labor relations*: forms of cooperation to improve social dialogue among workers, employers, and governments, ensure productive labor relations, and contribute to efficiency and productivity in the workplace;
- (g) *occupational safety and health*: forms of cooperation to improve preventive measures and reduce hazardous conditions in the workplace and measures to promote best practices and compliance with statutes and regulations;
- (h) *working conditions*: forms of cooperation to increase public awareness and develop innovative methods for supervising compliance with statutes and regulations pertaining to hours of work, minimum wages, and overtime, and other conditions of work;
- (i) *migrant workers*: mechanisms and best practices to protect and promote the rights and welfare of migrant workers of the Parties, including joint efforts with relevant organizations and dissemination of information regarding labor rights of migrant workers in each Party's territory;
- (j) *social assistance and training*: programs for social assistance, skills development, training, and worker adjustment, as well as other relevant programs;
- (k) *technology and information exchange*: programs to exchange information and share experiences on methods to improve productivity, on the promotion of best labor practices, and on the effective use of technologies, including those that are Internet-based;
- (l) *labor statistics*: development of methods for the Parties to generate comparable labor market statistics in a timely manner, including improvement of data collection systems;
- (m) *employment opportunities*: development of programs to promote new employment opportunities and workforce modernization, including employment services;
- (n) *gender*: development of programs on gender issues, including the elimination of discrimination in respect of employment and occupation;

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- (o) *best labor practices*: dissemination of information and promotion of best labor practices, including corporate social responsibility, that enhance competitiveness and worker welfare; and
- (p) *issues related to small, medium, and micro-enterprises, and artisans*: promotion of fundamental rights at work, improvement of working conditions, competitiveness, and productivity levels, and public awareness of relevant laws.

3. *Implementation of Cooperative Activities*

The Parties shall use any means they deem appropriate to carry out activities pursued under paragraph 2, including:

- (a) technical assistance programs, including by providing human, technical, and material resources, as appropriate;
- (b) exchange of official delegations, professionals, and specialists, including through study visits and other technical exchanges;
- (c) exchange of information on standards, regulations, procedures, and best practices;
- (d) exchange or development of pertinent studies, publications, and monographs;
- (e) joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;
- (f) development of joint research projects, studies, and reports, whereby expertise from independent specialists may be solicited;
- (g) exchanges on technical labor matters, including through the use of expertise from academic institutions and other similar entities; and
- (h) exchanges on technology issues, including information systems.

4. *Public Participation*

In identifying areas for labor cooperation and capacity building and in carrying out cooperative activities, each Party shall consider the views of its worker and employer representatives, as well as the views of other members of the public.

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