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CHAPTER NINETEEN
LABOR

ARTICLE 19.1: STATEMENT OF SHARED COMMITMENT

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”).¹ Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 19.7 are recognized and protected by its law.
2. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 19.7 and shall strive to improve those standards in that light.

ARTICLE 19.2: APPLICATION AND ENFORCEMENT OF LABOR LAWS

1.
 - (a) Neither Party shall 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) The Parties recognize 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 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 its 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 set forth in Article 19.7 as an

¹ The Parties recall that paragraph 5 of this ILO Declaration states that labor standards should not be used for protectionist trade purposes.

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encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

3. 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 19.3: 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

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- (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. Each Party shall provide that the 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 19.4: INSTITUTIONAL ARRANGEMENTS

1. The Parties hereby establish a Labor Affairs Council (“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 of entry into force of this Agreement, and thereafter as necessary, to oversee the implementation of this Chapter, including activities of the Labor Cooperation Mechanism established under Article 19.5. 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.

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6. The Council may prepare reports on matters related to the implementation of this Chapter and shall make such reports public.

ARTICLE 19.5: 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 19.6: 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 designated by the other Party under Article 19.4.3. 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 deem 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 matter concerns whether a Party is conforming to its obligations under Article 19.2.1(a), and the Parties have failed to resolve the matter within 60 days of 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 any matter arising under any provision of this Chapter other than Article 19.2.1(a).

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6. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 19.2.1(a) without first seeking to resolve the matter in accordance with this Article.

ARTICLE 19.7: 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;
- (d) labor 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 labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work,² and occupational safety and health.

statutes or regulations means:

- (a) 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
- (b) for the Republic of 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.

² For greater certainty, hours of work does not include paid annual leave or holidays.

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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.

Principal Functions and Organization

2. The contact points established under Article 19.4.3 shall serve as the contact points for the Labor Cooperation Mechanism.

3. Officials of each Party's ministry of labor 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) compare the Parties' labor laws to further understand the scope of each Party's laws covered by Article 19.7; and
- (g) develop recommendations, for consideration by the Council, of actions to be taken by each Party.

Cooperative Activities

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

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- (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

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- (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.