

PART SEVEN

Labor & Environment

Chapter 18

Labor

Article 18.01 Statement of Shared Commitment

The Parties affirm their full respect for their Constitutions. 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 Annex 18.01 and shall strive to improve those standards in that light.

Article 18.02 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 domestic 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 Annex 18.01 as an 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. 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 18.03 Procedural Guarantees and Public Awareness

1. Each Party shall ensure that persons with a legally 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, judicial, or labor tribunals, as provided in the Party's domestic law.
2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent.
3. 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.
4. 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.
5. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under its labor laws.
6. 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.
7. For greater certainty, decisions or pending decisions by each Party's administrative, judicial, or labor tribunals, as well as related proceedings, shall not be subject to revision or be reopened under the provisions of this Chapter.

Article 18.04 Institutional Arrangements

1. The Parties hereby establish a Labor Affairs Committee, comprising cabinet-level or equivalent representatives of the Parties, or their designees.
2. The Committee shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 18.05, and to pursue the labor objectives of this Agreement.
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 carrying out the work of the Committee, including coordination of the Labor Cooperation and Capacity Building Mechanism. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on

matters related to the provisions of this Chapter, and shall make such communications available to the other Party and, as appropriate, to the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures.

4. All decisions of the Committee shall be taken by mutual agreement.

Article 18.05 Labor Cooperation and Capacity Building Mechanism

1. Recognizing that cooperation on labor issues can play an important role in advancing development in the territory of the Parties and in providing opportunities to improve labor standards, and to further advance common commitments regarding labor matters, including the principles embodied in Annex 18.01, the Parties hereby establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 18.05. The Mechanism shall operate in a manner that respects each Party's law and sovereignty.

2. While endeavoring to strengthen each Party's institutional capacity to fulfill the common goals of the Agreement, the Parties shall strive to ensure that the objectives of the Labor Cooperation and Capacity Building Mechanism, and 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 objectives and activities; and
- (c) take into account each Party's economy, culture, and legal system.

Article 18.06 Principles of Corporate Stewardship

Recognizing the substantial benefits brought by international trade and investment as well as the opportunity for enterprises to implement policies for sustainable development that seek to ensure coherence between social, economic and environmental objectives, each Party should encourage enterprises operating within its territory or jurisdiction to voluntarily incorporate sound principles of corporate stewardship in their internal policies, such as those principles or agreements that have been endorsed by both Parties.

Article 18.07 Cooperative 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 that the other Party has designated under Article 18.04.3.

2. The 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 relating 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.

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Committee be convened to consider the matter by delivering a written request to the contact point of the other Party.

5. The Committee 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. Where appropriate, the consulting Parties may agree on a mutually satisfactory action plan to resolve the matter, which normally shall conform to the determinations and recommendations, if any, of the Committee.

7. In cases where the consulting Parties agree that a matter arising under this Chapter would be more appropriately addressed under another agreement to which the consulting Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

Article 18.08 Definitions

For purposes of this Chapter:

labor laws means a Party's statutes or regulations, or provisions thereof, that are directly related to the internationally recognized labor rights set out in Annex 18.01; and

statutes or regulations means:

- (a) for the Republic of Nicaragua, laws of its legislative body or regulations promulgated pursuant to an act of its legislative body that are enforceable by action of the executive body; and
- (b) for the Republic of China (Taiwan), laws of its legislative body or regulations promulgated pursuant to a law of its legislative body that are enforceable by action of the executive body.

Annex 18.01

Labor Principles

The following are guiding principles that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces.

1. Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

2. The right to bargain collectively

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

3. The right to strike

The protection of the right of workers to strike in order to defend their collective interests.

4. Prohibition of forced labor

The prohibition and suppression of all forms of forced or compulsory labor, except for types of compulsory work generally considered acceptable by the Parties, such as compulsory military service, certain civic obligations, prison labor not for private purposes and work exacted in cases of emergency.

5. Labor protections for children and young persons

The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.

6. Minimum employment standards

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

7. Elimination of employment discrimination

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, bona fide occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

8. Equal pay for women and men

Equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

Annex 18.05

Labor Cooperation and Capacity Building Mechanism

Organization and Principal Functions

1. The Labor Affairs Committee working through each Party's contact point shall coordinate the activities of the Labor Cooperation and Capacity Building Mechanism. The contact points shall meet within six months after the date of entry into force of this Agreement and thereafter as often as they consider necessary.
2. The contact points shall cooperate to:
 - (a) establish priorities, with particular emphasis on those subjects identified in paragraph 3 of this Annex, for cooperation and capacity building activities on labor issues;
 - (b) develop specific cooperative and capacity building activities in accordance with such priorities;
 - (c) exchange information regarding each Party's labor laws and practices, including best practices, as well as ways to strengthen them; and
 - (d) seek support, as appropriate, from international organizations, to advance common commitments regarding labor matters.

Cooperation and Capacity Building Priorities

3. The Mechanism may initiate bilateral or regional cooperative activities on labor issues, which may include, but need not be limited to:
 - (a) *internationally recognized labor rights and their effective application:* legislation and practice (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) *employment opportunities:* promotion of new employment opportunities and workforce modernization;
 - (c) *technical issues:* programs, methodologies, and experiences regarding productivity improvement, encouragement of best labor practices, and the effective use of technologies, including those that are Internet-based;
 - (d) *worst forms of child labor:* legislation and practice;

- (e) *labor administration*: institutional capacity of labor administrations and tribunals, especially training and professionalization of human resources, including career civil service;
- (f) *labor inspectorates and inspection systems*: methods and training to improve the level and efficiency of labor law enforcement, strengthen labor inspection systems, and help ensure compliance with labor laws;
- (g) *alternative dispute resolution*: initiatives aimed at establishing alternative dispute resolution mechanisms for labor disputes;
- (h) *labor relations*: forms of cooperation and dispute resolution to ensure productive labor relations among workers, employers, and governments;
- (i) *working conditions*: mechanisms for supervising compliance with statutes and regulations pertaining to hours of work, minimum wages and overtime, occupational safety and health, and employment conditions;
- (j) *migrant workers*: dissemination of information regarding labor rights of migrant workers in each Party's territory;
- (k) *social assistance programs*: human resource development and employee training, among other programs;
- (l) *labor statistics*: development of methods for the Parties to generate comparable labor market statistics in a timely manner; and
- (m) *gender*: gender issues, including the elimination of discrimination in respect of employment and occupation.

Implementation of Cooperative Activities

4. Pursuant to the Mechanism, the Parties may cooperate on labor issues using any means they deem appropriate, including, but not limited to:

- (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, and procedures, and best practices, including pertinent publications and monographs;
- (d) joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;

- (e) collaborative projects or demonstrations; and
- (f) joint research projects, studies, and reports, including by engaging independent specialists with recognized expertise.

Public Participation

5. 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 those of other members of the public.