

CHAPTER 17

LABOUR

ARTICLE 17.1: GENERAL PRINCIPLES

1. Each Party affirms its obligations as a member of the International Labour Organization (hereinafter referred to as the “ILO”) and its commitments under the *Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)* (hereinafter referred to as the “ILO Declaration”). Each Party shall endeavour to adopt or maintain in its laws, regulations, policies and practices the following fundamental principles and rights as stated in the ILO Declaration:

- (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
- (d) the elimination of discrimination in respect of employment and occupation.

2. Each Party shall respect the other Party’s right to establish its own policies and national priorities and to adopt and administer its own labour laws, regulations and practices in accordance with those policies and priorities.

3. Neither Party shall fail to enforce its labour laws and regulations, including:

- (a) those it adopts or maintains in accordance with paragraph 1; and
- (b) those adopted to implement ILO instruments that it has ratified,

through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties. Each Party retains the right to exercise reasonable discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters in the enforcement of its labour laws and to make bona fide decisions regarding the allocation of resources to enforcement.

4. Each Party shall endeavour to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from its labour laws, regulations, policies and practices in a manner that weakens or reduces adherence to the fundamental principles and rights referred to in paragraph 1 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.

5. Each Party recognises that it is inappropriate to use its labour laws, regulations, practices or policies for trade protectionist purposes.

ARTICLE 17.2: PROCEDURAL GUARANTEES

Any matter relating to this Chapter which arises under Chapter 19 (Transparency) shall be subject to Article 17.4.

ARTICLE 17.3: INSTITUTIONAL MECHANISM

Contact Point

1. Each Party shall designate a contact point for labour matters to facilitate communication between the Parties. For the purposes of this paragraph, the contact point shall be, unless otherwise notified:

- (a) for Australia, the Department of Employment, or its successor;
- (b) for Korea, the Ministry of Employment and Labor, or its successor.

Ad hoc Committee

2. A Party may request the establishment of an *ad hoc* Committee to discuss any matter related to this Chapter by delivering a written request to the contact point of the other Party and the other Party shall give due consideration to the request. The *ad hoc* Committee shall comprise appropriate senior officials from the labour ministry and/or other appropriate agencies and ministries of each Party. The *ad hoc* Committee shall discuss the matter at a time and place agreed to by the Parties.⁸⁷

ARTICLE 17.4: 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 of the other Party. Consultations shall commence promptly after a Party delivers a request for consultations to the contact point of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

2. If consultations under paragraph 1 fail to resolve the matter, and a Party deems that the matter needs further discussion, that Party may request the establishment of an *ad hoc* Committee under Article 17.3.2 to consider the matter. Where the establishment of such an *ad hoc* Committee is requested under this paragraph, that *ad hoc* Committee shall be established without undue delay and shall endeavour to agree on a resolution of the matter.

ARTICLE 17.5: COOPERATION

⁸⁷ Where convenient, the *ad hoc* Committee may meet at meetings of the ILO or other appropriate international bodies at which both Parties are represented.

1. Recognising the importance of cooperating on trade-related aspects of labour policies in order to achieve the objectives of this Agreement, the Parties commit to enhancing close cooperation through cooperative activities in areas of mutual interest as set out in paragraphs 2 and 3.

2. Areas of cooperation may include, but should not be limited to, labour-management relations, working conditions, occupational safety and health, vocational training and human resources development, and labour statistics.

3. Cooperative activities may include, but should not be limited to, exchanges of people and information, cooperation in relevant regional and international fora,⁸⁸ conferences and seminars, development of joint research or collaborative projects, and funding of technical cooperation within the ILO with the aim of raising labour standards in the Asia-Pacific region, taking into account each Party's available resources.

ARTICLE 17.6: DISPUTE SETTLEMENT

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Chapter, including such matters as referred to in Article 17.2.

⁸⁸ Relevant regional and international fora include ILO government groups such as the Asia-Pacific Government Group and Industrialised Market Economies Group, and the Asia-Pacific Economic Cooperation.

