





- (f) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give due consideration, in accordance with that Party's domestic law, to a request by an employer, employee or their representatives, or another interested person, for an investigation of an alleged violation of the Party's labour law.

#### **Article 18.5: Private Action**

Each Party shall ensure that a person with a legally-recognised interest under that Party's domestic law has appropriate access to proceedings before a tribunal that can:

- (a) enforce the Party's labour law and give effect to such person's labour rights; and
- (b) remedy breaches of the Party's labour law or rights.

#### **Article 18.6: Procedural Guarantees**

1. Each Party shall ensure that investigations or proceedings referred to in Articles 18.4.1(b), 18.4.1(f), and 18.5:

- (a) are fair, equitable and transparent and to this end that they comply with the due process of law;
- (b) are open to the public except if it is not appropriate for the proper administration of these proceedings; and
- (c) do not entail unreasonable fees, delays or time limits.

2. Each Party shall provide that final decisions on the merits of the case in proceedings referred to in paragraph 1 are in writing, preferably state the reasons on which the decisions are based, and are made available to the parties to the proceedings in a timely manner and, in accordance with its domestic law, to the public.

3. Each Party shall provide that parties to those proceedings have the right, as appropriate and in accordance with applicable domestic law, to seek review in accordance with due process and, if warranted, correction of decisions issued in those proceedings.

#### **Article 18.7: Public Information**

Each Party shall make available to the public information respecting its labour law, including information related to enforcement and compliance procedures.

### **Section B – Institutional Mechanisms**

#### **Article 18.8: Labour Ministerial Council**

1. The Parties hereby establish a Labour Ministerial Council composed of Ministers responsible for labour affairs of the Parties or their designees.

2.



## **Section C – Procedures for Review of Obligations**

### **Article 18.13: Labour Consultations**

1. A Party may request in writing consultations with the other Party at the ministerial level to discuss matters related to obligations in Section A. The Party that is subject to the request shall respond within 60 days.
2. Each Party shall provide the other Party with sufficient information under its control to allow a full examination of the matters raised, subject to a requirement in its domestic law regarding confidentiality of personal and commercial information.
- 3.

3. The Review Panel shall determine, within 30 days after the last panellist is selected, whether the matter is related to trade or investment and shall cease its functions if it determines that the matter is not related to trade or investment.

4. The review shall be conducted in accordance with the procedures set out in Annex 18-D.

#### **Article 18.15: Panellists**

1. A Review Panel shall be composed of three panellists.

2. Panellists shall:

(a) be chosen on the basis of expertise in labour matters or other appropriate disciplines, objectivity, reliability, and sound judgment;

(b) be independent of, and not be affiliated with or take instructions from, either Party; and

(c) comply with the Code of Conduct set out in Annex 21-B (Code of Conduct for Members of Panels) which applies *mutatis mutandis*.

3. If either Party believes that a panellist is in violation of the code of conduct, the Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with the procedures set out in Annex 18-D that were used to select the panellist who was removed. The time limits shall run from the date of their agreement to remove the panellist.

4. Individuals shall not serve as panellists with respect to a review in which they have, or a person or organisation with which they are affiliated has, an interest.

5. The chairperson shall not be a national of either Party.

6. Panellists shall be selected in accordance with the procedures set out in Annex 18-D.

### **Article 18.16: Information for the Review Panel**

1. The Parties shall be entitled to make written and oral submissions to the Review Panel in accordance with the relevant provisions of Annex 21-C (Model Rules of Procedure) which apply *mutatis mutandis*.
2. The Review Panel may invite or receive and consider written submissions and any other information from organisations, institutions, the public and persons with relevant information or expertise.

### **Article 18.17: Initial Report**

1. Unless the Parties otherwise agree, the Review Panel shall base its report on the submissions and arguments of the Parties and on information before it pursuant to Article 18.16.
2. Unless the Parties otherwise agree, the Review Panel shall, within 180 days after the last panellist is selected, issue to the Parties an initial report containing:
  - (a) findings of fact;
  - (b) its determination as to whether the Party that is subject to the request has failed to comply with its obligations under Section A or any other determination requested in the terms of reference; and
  - (c) its recommendations, if any, for addressing the matter.
3. Panellists may furnish separate opinions on matters that are not the subject of unanimous agreement. The Review Panel, however, shall not disclose which panellists are associated with majority or minority opinions.
4. Either Party may submit written comments to the Review Panel on its initial report within 45 days of presentation of the report.





**Article 18.20: Private Rights**

A Party shall

## **Article 18.25: Definitions**

For the purposes of this Chapter:

**due process** means that proceedings are conducted by decision-makers who are impartial and independent and do not have an interest in the outcome of the matter, that the parties to the proceedings are entitled to support or defend their respective positions and to present information or evidence, and that the decision is based on such information or evidence;

**forced or compulsory labour** does not include compulsory military service, certain civic obligations, prison labour not for private purposes and work exacted in cases of emergency;

**labour law** means laws, regulations, and, where applicable, jurisprudence that implement and protect the labour principles and rights set out in Article 18.2;

**mutually-recognised labour law** means labour law that addresses the same general subject matter in a manner in both Parties that provides rights, protections or standards, although for greater certainty the law of a Party need not be substantially similar to the law of the other Party in order to constitute a mutually-recognised labour law; and

**person** means a natural person, an enterprise, or an organisation of employers or workers.

## **Annex 18-A**

### **Cooperative Activities**

1. The NPCs established under Article 18.9 shall serve as the contact points for cooperative labour activities.
2. Officials of the labour ministries and other appropriate agencies and ministries

- (d) human resource development and management: skills development and life-long learning and training;
- (e) programs, methodologies and experience regarding productivity improvement;
- (f) labour

## **Annex 18-B**

### **Public Communications**

Public communication procedures of each Party regarding the right of a person to submit a public communication to the NPC shall indicate, *inter alia*:

- (a) the requirements regarding the acceptance of communications, including that:
  - (i) except in exceptional circumstances, relief before domestic tribunals has been pursued and that matters pending before such tribunals will not be accepted, provided that the tribunal's proceedings conform to Article 18.5;
  - (ii) except in exceptional circumstances, matters pending before an international body will not be accepted;
  - (iii) communications that are trivial, frivolous, or vexatious will not be accepted; and
  - (iv) communication must be substantially different from previous communications or include new or supplemental information not avail

## **Annex 18-C**

### **Extent of Obligations**

1. At the time of entry into force of this Agreement, Canada shall provide to Korea through diplomatic channels a written declaration with a list of any provinces for which Canada is to be bound in respect of matters within their jurisdiction. The declaration shall be effective on delivery to Korea, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify Korea six months in advance of any modification to its declaration.
2. Canada shall not request consultations, or the establishment of a Review Panel, under Section C at the instance, or primarily for the benefit, of the government of a province not included in the declaration made under paragraph 1.
3. Korea shall not request the establishment of a Review Panel, under Section C, concerning a matter related to a labour law of a province unless that province is included in the declaration made under paragraph 1.
4. Canada shall, no later than the date on which the Review Panel is convened pursuant to Article 18.14 respecting a matter within the scope of paragraph 3, notify Korea in writing of whether any recommendation of the Review Panel in a final report under Article 18.18 or monetary assessment determined pursuant to Annex 18-E with respect to Canada shall be addressed to Her Majesty in right of Canada or Her Majesty in right of the province concerned.
5. Canada shall use its best efforts to make this Chapter applicable to as many of its provinces as possible.

## **Annex 18-D**

### **Procedures Related to Review Panels**

#### *Review Panel Selection Procedures*

1. For the purposes of selecting a panellist, the following procedures shall apply:
  - (a) within 20 days of the receipt of the request for the establishment of a Review Panel, each Party shall select one panellist;
  - (b) if a Party fails to select its panellist within such period, the other Party shall select the panellist from among qualified individuals who are nationals of the Party that has failed to select its panellist; and
  - (c) the following procedures apply to the selection of the chairperson:
    - (i) the Party that is subject to the request shall provide the Party that made the request with the names of three individuals who are qualified to be the chairperson. The names shall be provided no later than 20 days after the receipt of the request for the establishment of a Review Panel;
    - (ii) the Party that made the request may choose one of the individuals to be the chairperson or, if the names were not provided or none of the individuals is acceptable, provide the Party that is subject to the request with the names of three individuals who are qualified to be the chairperson. Those names shall be provided no later than five days after receiving the names under sub-subparagraph (i) or 25 days after the receipt of the request for the establishment of a Review Panel; and
    - (iii) the Party that is subject to the request may choose one of the three individuals to be the chairperson, no later than five days after receiving the names under sub-subparagraph (ii), in default of which the Parties shall immediately request the Director General of the International Labour Office to appoint a chairperson within 25 days.



### *Rules of Procedure*

2. The rules of procedure under Article 21.8 (Rules of Procedure) apply *mutatis mutandis* to Review Panel proceedings under this Chapter.
3. The Parties shall agree on a separate budget for each set of Review Panel proceedings under this Chapter. The Parties shall contribute equally to the budget, unless they agree otherwise.

### *Terms of Reference of Panels*

4. Unless the Parties otherwise agree within 30 days after the Review Panel is convened, the terms of reference shall be:

“To examine, in light of the relevant provisions of this Chapter, whether the Party that was subject to the request has failed to comply with its obligations under Section A, and to make findings, determinations and recommendations in accordance with Articles 18.17.1 and 18.17.2.”

## Annex 18-E

### Monetary Assessments

1. The Review Panel shall be reconvened as soon as possible after delivery of the request pursuant to Article 18.18.4. Within 90 days after being reconvened, the Review Panel shall determine whether the terms of the action plan have been implemented or the non-compliance otherwise remedied.
2. In the event of a negative determination pursuant to paragraph 1 and at the request of the complaining Party, the Review Panel shall assess an annual monetary assessment equivalent to the degree of adverse trade effects related to the non-compliance within the meaning of Article 18.14.1 or the non-compliance with the action plan and the Review Panel may adjust the assessment to reflect:
  - (a) mitigating factors, such as good faith efforts made by the Party to begin remedying such non-compliance after the final report of the Review Panel, *bona fide* reasons for the Party's failure to comply with such obligations; and
  - (b) aggravating factors, such as the pervasiveness and duration of the Party's failure to comply with its obligations.
3. Monetary assessments shall be paid into an interest-bearing fund designated by the Council and shall be expended at the direction of the Council to implement the action plan or other appropriate measures.
4. 90 days from the date on which the Review Panel determines the amount of the monetary assessment pursuant to paragraph 2, or at any time thereafter, the complaining Party may provide notice in writing to the other Party demanding payment of the monetary assessment. The monetary assessment shall be paid in equal, quarterly instalments beginning 120 days after the requesting Party provides such notice and ending upon decision of the Parties or upon the date of the Review Panel determination pursuant to paragraph 5.
5. If the Party that was subject to the review considers that it has eliminated the non-compliance, it may refer the matter to the Review Panel by providing written notice to the other Party. The Review Panel shall be reconvened within 60 days of that notice and issue its report within 90 days thereafter.

6. In Canada, the procedure for enforcement of the monetary assessment is the following:

- (a) Korea may file in a court of competent jurisdiction a certified copy of a Review Panel determination under paragraph 2 above only if Canada has failed to comply with the terms of a notice provided under paragraph 4 within 180 days of the notice being provided;
- (b) when filed, the Review Panel determination, for purposes of enforcement, becomes an order of the court;
- (c) Korea may take proceedings for the enforcement of a Review Panel determination that is made an order of the court, in that court, against the person in Canada against whom the Review Panel determination is addressed in accordance with paragraph 4 of Annex 18-C;
- (d)