

FTAA – Free Trade Area of the Americas

Draft Agreement

**[Chapter VII Labor Provisions and Non-Implementation Procedures
for Environment and Labor Provisions]**

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[Labor Issues

[1. Labor issues are not contemplated in the TCI mandate or in the FTAA negotiation mandate. Therefore, no provisions on this issue should exist in the FTAA Agreement.]

[2. Labor issues shall not be utilized as conditionalities or subject to disciplines, the non-compliance of which can be subject to trade restrictions or sanctions.]]]

[CHAPTER VII Labor Provisions and Non-Implementation Procedures for Environment and Labor Provisions

Article 1. Statement of Shared Commitment

1.1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the *1998 ILO Declaration on Fundamental Principles and Rights at Work*. Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 7.1. (Definitions) of this Chapter, are recognized and protected by domestic labor laws.

1.2. Recognizing the right of each Party to establish its own labor standards, and to adopt or modify its labor laws accordingly, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 7.1. (Definitions) of this Chapter, and shall strive to improve those standards.

Article 2. Application and Enforcement of Labor Laws

2.1. 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.

2.2. 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 Article 2.1. 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.

2.3. 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 Article 7.1. (Definitions) of this Chapter, 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.

Article 3. Opportunities for Public Participation

3.1. Each Party shall designate an office that shall serve as a point of contact with other Parties, and with the public, for purposes of carrying out the work of this Article. Each Party's point of contact shall provide for the submission, receipt, and consideration of public communications on matters related to the provisions of this Chapter, and shall make such communications available to other Parties and, as appropriate, to the public. Each Party shall review and respond to such communications in accordance with its domestic procedures.

3.2. Each Party may convene, or consult an existing, national consultative or 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.

Article 4. Labor Cooperation

4.1. The Parties recognize that dialogue and cooperation provide enhanced opportunities to promote respect for the principles embodied in the *1998 ILO Declaration on Fundamental Principles and Rights at Work* and compliance with *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*, and to further advance other common commitments.

4.2. Cooperative activities and capacity building in support of the objectives of this Chapter may include, but need not be limited to the following subjects:

- a) Fundamental labor rights and their effective application;
- b) Elimination of the worst forms of child labor;
- c) Labor administration;
- d) Labor inspectorates and inspection systems;
- e) Labor justice;
- f) Labor-management relations; and
- g) Working conditions: hours of work, minimum wages, and occupational safety and health.

4.3. The Parties further recognize that cooperation may be implemented through various forms of technical exchange, consultations or technical assistance programs, including in coordination with the Inter-American Conference of Ministers of Labor.

Article 5. Labor Consultations

5.1. A Party may request consultations with another Party regarding any matter arising under this Article. Unless the Parties otherwise agree, consultations shall commence within 30 (thirty) days of a Party's delivery of a request for consultations to the contact point of the other Party.

5.2. The consulting 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.

5.3. If a Party considers that another Party has failed to carry out its obligations under Article 2.1 (Application and Enforcement of Labor Laws) of this Chapter, the Party may request consultations pursuant to Chapter XX (Dispute Settlement) or under Article 5.1.

5.4. If a Party requests consultations pursuant to Chapter XX (Dispute Settlement) at a time when the Parties are engaged in consultations on the same matter under Article 5.1., the Parties shall discontinue their efforts to resolve the matter under Article 5.1. Once consultations have begun under Chapter XX (Dispute Settlement), no consultations on the same matter may be entered into under Article 5.1.

5.5. Chapter XX (Dispute Settlement) shall not apply to a matter arising under any provision of this Chapter other than Article 2.1. (Application and Enforcement of Labor Laws).

Article 6. Procedural Guarantees and Public Awareness

6.1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial, or labor tribunals for the enforcement of the Party's labor laws and that such tribunals are impartial and independent and do not have any substantial interest in the outcome of the matter.

6.2. Each Party shall ensure that its proceedings for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires.

6.3. Each Party shall ensure that the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence, and that such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

6.4. Each Party shall provide that final decisions in such proceedings are in writing and state the reasons on which the decisions are based, made available without undue delay to the parties to the proceedings and, consistent with its law, to the public, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. Parties to such proceedings shall have the appropriate right to seek review and, where warranted, correction of final decisions issued in such proceedings.

6.5. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under domestic labor laws. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions, or emergency workplace closures.

6.6. Each Party shall promote public awareness of its labor laws, including by ensuring the availability of public information related to its labor laws and enforcement and compliance procedures, and promoting public education regarding its labor laws.

Article 7. Definitions

7.1. 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, 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.

7.2. For:

- a) Country XX: **statutes or regulations** means . . .
- b) Country XX: **statutes or regulations** means . . .
- c) Country XX: **statutes or regulations** means . . .
- d) The United States, **statutes or regulations** means acts of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by action of the federal government.

Article 8. Non-implementation in certain disputes

8.1. If, in its final report issued pursuant to Chapter XX (Dispute Settlement), Article XX a panel determines that a Party has not conformed with its obligations under Chapter XX (Environment Provisions), Article 2.1. (Application and Enforcement of Environmental Laws), or Chapter XX (Labor Provisions and Non-Implementation Provisions), Article 2.1. (Application and Enforcement of Labor Laws), and the disputing Parties:

- a) are unable to reach agreement on a resolution within forty-five (45) days of receiving the final report, or
- b) have agreed on a resolution and a complaining Party considers that the Party complained against has failed to observe the terms of the agreement,

such complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the Party complained against. The complaining Party shall deliver its request in writing to the Party complained against. The panel shall reconvene as soon as possible after delivery of the request.

8.2. The panel shall determine the amount of the monetary assessment in U.S. dollars within ninety (90) days after it reconvenes under Article 8.1. In determining the amount of the assessment, the panel shall take into account:

- a) the bilateral trade effects of the Party's failure to effectively enforce the relevant law;
- b) the pervasiveness and duration of the Party's failure to effectively enforce the relevant law;

- c) the reasons for the Party's failure to effectively enforce the relevant law;
- d) the level of enforcement that could reasonably be expected of the Party given its resource constraints;
- e) the efforts made by the Party to begin remedying the non-enforcement after the final report of the panel; and
- f) any other relevant factors.

The amount of the assessment shall not exceed fifteen (15) million U.S. dollars annually, adjusted for inflation as specified in Annex XX.

8.3. On the date on which the panel determines the amount of the monetary assessment under Article 8.2., or at any other time thereafter, the complaining Party may provide notice in writing to the Party complained against demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. currency, or in an equivalent amount of the currency of the Party complained against, in equal, quarterly installments beginning sixty (60) days after the complaining Party provides such notice.

8.4. Assessments shall be paid into a fund established by the Parties and shall be expended at the direction of the Parties for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law. In deciding how to expend monies paid into the fund, the Parties shall consider the views of interested persons in the disputing Parties' territories.

8.5. If the Party complained against fails to pay a monetary assessment, and if the Party has created and funded an escrow account to ensure payment of any assessments against it, the complaining Party shall, before having recourse to any other measure, seek to obtain the funds from the account.

8.6. If the complaining Party cannot obtain the funds from the escrow account of the Party complained against within thirty (30) days of the date on which payment is due, or if the Party complained against has not created an escrow account, the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.]