

# NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

## PREAMBLE

The Government of the United States of America, the Government of Canada and the Government of the United Mexican States:

**RECALLING** their resolve in the North American Free Trade Agreement (NAFTA) to:

- *create* an expanded and secure market for the goods and services produced in their territories,
- *enhance* the competitiveness of their firms in global markets,
- *create* new employment opportunities and improve working conditions and living standards in their respective territories, and
- *protect, enhance and enforce* basic workers' rights;

**AFFIRMING** their continuing respect for each Party's constitution and law;

**DESIRING** to build on their respective international commitments and to strengthen their cooperation on labor matters;

**RECOGNIZING** that their mutual prosperity depends on the promotion of competition based on innovation and rising levels of productivity and quality;

**SEEKING** to complement the economic opportunities created by the NAFTA with the human resource development, labor-management cooperation and continuous learning that characterize high-productivity economies;

**ACKNOWLEDGING** that protecting basic workers' rights will encourage firms to adopt high-productivity competitive strategies;

**RESOLVED** to promote, in accordance with their respective laws, high-skill, high-productivity economic development in North America by:

- *investing* in continuous human resource development, including for entry into the workforce and during periods of unemployment;
- *promoting* employment security and career opportunities for all workers through referral and other employment services;
- *strengthening* labor-management cooperation to promote greater dialogue between worker organizations and employers and to foster creativity and productivity in the workplace;
- *promoting* higher living standards as productivity increases;
- *encouraging* consultation and dialogue between labor, business and government both in each country and in North America;

- *fostering* investment with due regard for the importance of labor laws and principles;
- *encouraging* employers and employees in each country to comply with labor laws and to work together in maintaining a progressive, fair, safe and healthy working environment;

**BUILDING** on existing institutions and mechanisms in Canada, Mexico and the United States to achieve the preceding economic and social goals; and

**CONVINCED** of the benefits to be gained from further cooperation between them on labor matters;

**HAVE AGREED** as follows:

## **PART ONE OBJECTIVES**

### **Article 1: Objectives**

The objectives of this Agreement are to:

1. improve working conditions and living standards in each Party's territory;
2. promote, to the maximum extent possible, the labor principles set out in Annex 1;
3. encourage cooperation to promote innovation and rising levels of productivity and quality;
4. encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory;
5. pursue cooperative labor-related activities on the basis of mutual benefit;
6. promote compliance with, and effective enforcement by each Party of, its labor law; and
7. foster transparency in the administration of labor law.

## **PART TWO OBLIGATIONS**

### **Article 2: Levels of Protection**

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

### **Article 3: Government Enforcement Action**

1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as:

1. appointing and training inspectors;

2. monitoring compliance and investigating suspected violations, including through on-site inspections;
3. seeking assurances of voluntary compliance;
4. requiring record keeping and reporting;
5. encouraging the establishment of worker-management committees to address labor regulation of the workplace;
6. providing or encouraging mediation, conciliation and arbitration services; or
7. initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law.

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

#### **Article 4: Private Action**

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 law.

2. Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:

1. its labor law, including in respect of occupational safety and health, employment standards, industrial relations and migrant workers, and
2. collective agreements,

can be enforced.

#### **Article 5: Procedural Guarantees**

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

1. such proceedings comply with due process of law;
2. any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;
3. the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and
4. such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

1. in writing and preferably state the reasons on which the decisions are based;
2. made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
3. based on information or evidence in respect of which the parties were offered the opportunity to be heard.

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, 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 administrative, quasi-judicial, judicial or labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.

6. Each Party may, as appropriate, adopt or maintain labor defense offices to represent or advise workers or their organizations.

7. Nothing in this Article shall be construed to require a Party to establish, or to prevent a Party from establishing, a judicial system for the enforcement of its labor law distinct from its system for the enforcement of laws in general.

8. For greater certainty, decisions by each Party's administrative, quasi-judicial, judicial or labor tribunals, or pending decisions, as well as related proceedings shall not be subject to revision or reopened under the provisions of this Agreement.

#### **Article 6: Publication**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. When so established by its law, each Party shall:

1. publish in advance any such measure that it proposes to adopt; and
2. provide interested persons a reasonable opportunity to comment on such proposed measures.

#### **Article 7: Public Information and Awareness**

Each Party shall promote public awareness of its labor law, including by:

1. ensuring that public information is available related to its labor law and enforcement and compliance procedures; and
2. promoting public education regarding its labor law.

## **PART THREE COMMISSION FOR LABOR COOPERATION**

#### **Article 8: The Commission**

1. The Parties hereby establish the Commission for Labor Cooperation.

2. The Commission shall comprise a ministerial Council and a Secretariat. The Commission shall be assisted by the National Administrative Office of each Party.

## **Section A: The Council**

### **Article 9: Council Structure and Procedures**

1. The Council shall comprise labor ministers of the Parties or their designees.
2. The Council shall establish its rules and procedures.
3. The Council shall convene:
  1. at least once a year in regular session, and
  2. in special session at the request of any Party.

Regular sessions shall be chaired successively by each Party.

4. The Council may hold public sessions to report on appropriate matters.
5. The Council may:
  1. establish, and assign responsibilities to, committees, working groups or expert groups; and
  2. seek the advice of independent experts.
6. All decisions and recommendations of the Council shall be taken by consensus, except as the Council may otherwise decide or as otherwise provided in this Agreement.

### **Article 10: Council Functions**

1. The Council shall be the governing body of the Commission and shall:
  1. oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in the light of experience;
  2. direct the work and activities of the Secretariat and of any committees or working groups convened by the Council;
  3. establish priorities for cooperative action and, as appropriate, develop technical assistance programs on the matters set out in Article 11;
  4. approve the annual plan of activities and budget of the Commission;
  5. approve for publication, subject to such terms or conditions as it may impose, reports and studies prepared by the Secretariat, independent experts or working groups;
  6. facilitate Party-to-Party consultations, including through the exchange of information;
  7. address questions and differences that may arise between the Parties regarding the interpretation or application of this Agreement; and
  8. promote the collection and publication of comparable data on enforcement, labor standards and labor market indicators.
2. The Council may consider any other matter within the scope of this Agreement and take such other action in the exercise of its functions as the Parties may agree.

## **Article 11: Cooperative Activities**

1. The Council shall promote cooperative activities between the Parties, as appropriate, regarding:

1. occupational safety and health;
2. child labor;
3. migrant workers of the Parties;
4. human resource development;
5. labor statistics;
6. work benefits;
7. social programs for workers and their families;
8. programs, methodologies and experiences regarding productivity improvement;
9. labor-management relations and collective bargaining procedures;
10. employment standards and their implementation;
11. compensation for work-related injury or illness;
12. legislation relating to the formation and operation of unions, collective bargaining and the resolution of labor disputes, and its implementation;
13. the equality of women and men in the workplace;
14. forms of cooperation among workers, management and government;
15. the provision of technical assistance, at the request of a Party, for the development of its labor standards; and
16. such other matters as the Parties may agree.

2. In carrying out the activities referred to in paragraph 1, the Parties may, commensurate with the availability of resources in each Party, cooperate through:

1. seminars, training sessions, working groups and conferences;
2. joint research projects, including sectoral studies;
3. technical assistance; and
4. such other means as the Parties may agree.

3. The Parties shall carry out the cooperative activities referred to in paragraph 1 with due regard for the economic, social, cultural and legislative differences between them.

## **Section B: The Secretariat**

### **Article 12: Secretariat Structure and Procedures**

1. The Secretariat shall be headed by an Executive Director, who shall be chosen by the Council for a three-year term, which may be renewed by the Council for one additional three-year term. The position of Executive Director shall rotate consecutively between nationals of each Party. The Council may remove the Executive Director solely for cause.

2. The Executive Director shall appoint and supervise the staff of the Secretariat, regulate their powers and duties and fix their remuneration in accordance with general standards to be established by the Council. The general standards shall provide that:

1. staff shall be appointed and retained, and their conditions of employment shall be determined, strictly on the basis of efficiency, competence and integrity;
2. in appointing staff, the Executive Director shall take into account lists of candidates prepared by the Parties;
3. due regard shall be paid to the importance of recruiting an equitable proportion of the professional staff from among the nationals of each Party; and

4. the Executive Director shall inform the Council of all appointments.
3. The number of staff positions shall initially be set at 15 and may be changed thereafter by the Council.
4. The Council may decide, by a two-thirds vote, to reject any appointment that does not meet the general standards. Any such decision shall be made and held in confidence.
5. In the performance of their duties, the Executive Director and the staff shall not seek or receive instructions from any government or any other authority external to the Council. Each Party shall respect the international character of the responsibilities of the Executive Director and the staff and shall not seek to influence them in the discharge of their responsibilities.
6. The Secretariat shall safeguard:
  1. from disclosure information it receives that could identify an organization or person if the person or organization so requests or the Secretariat otherwise considers it appropriate; and
  2. from public disclosure any information it receives from any organization or person where the information is designated by that organization or person as confidential or proprietary.
7. The Secretariat shall act under the direction of the Council in accordance with Article 10(1)(b).

#### **Article 13: Secretariat Functions**

1. The Secretariat shall assist the Council in exercising its functions and shall provide such other support as the Council may direct.
2. The Executive Director shall submit for the approval of the Council the annual plan of activities and budget for the Commission, including provision for contingencies and proposed cooperative activities.
3. The Secretariat shall report to the Council annually on its activities and expenditures.
4. The Secretariat shall periodically publish a list of matters resolved under Part Four or referred to Evaluation Committees of Experts.

#### **Article 14: Secretariat Reports and Studies**

1. The Secretariat shall periodically prepare background reports setting out publicly available information supplied by each Party on:
  1. labor law and administrative procedures;
  2. trends and administrative strategies related to the implementation and enforcement of labor law;
  3. labor market conditions such as employment rates, average wages and labor productivity; and
  4. human resource development issues such as training and adjustment programs.

2. The Secretariat shall prepare a study on any matter as the Council may request. The Secretariat shall prepare any such study in accordance with terms of reference established by the Council, and may

1. consider any relevant information;
2. where it does not have specific expertise in the matter, engage one or more independent experts of recognized experience; and
3. include proposals on the matter.

3. The Secretariat shall submit a draft of any report or study that it prepares pursuant to paragraph 1 or 2 to the Council. If the Council considers that a report or study is materially inaccurate or otherwise deficient, the Council may remand it to the Secretariat for reconsideration or other disposition.

4. Secretariat reports and studies shall be made public 45 days after their approval by the Council, unless the Council otherwise decides.

### **Section C: National Administrative Offices**

#### **Article 15: National Administrative Office Structure**

1. Each Party shall establish a National Administrative Office (NAO) at the federal government level and notify the Secretariat and the other Parties of its location.
2. Each Party shall designate a Secretary for its NAO, who shall be responsible for its administration and management.
3. Each Party shall be responsible for the operation and costs of its NAO.

#### **Article 16: NAO Functions**

1. Each NAO shall serve as a point of contact with:
  1. governmental agencies of that Party;
  2. NAOs of the other Parties; and
  3. the Secretariat.
2. Each NAO shall promptly provide publicly available information requested by:
  1. the Secretariat for reports under Article 14(1);
  2. the Secretariat for studies under Article 14(2);
  3. a NAO of another Party; and
  4. an ECE.
3. Each NAO shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with domestic procedures.

### **Section D: National Committees**

#### **Article 17: National Advisory Committee**



Each Party may convene a national advisory committee, comprising members of its public, including representatives of its labor and business organizations and other persons, to advise it on the implementation and further elaboration of this Agreement.

#### **Article 18: Governmental Committee**

Each Party may convene a governmental committee, which may comprise or include representatives of federal and state or provincial governments, to advise it on the implementation and further elaboration of this Agreement.

#### **Section E: Official Languages**

##### **Article 19: Official Languages**

The official languages of the Commission shall be English, French and Spanish. The Council shall establish rules and procedures regarding interpretation and translation.

## **PART FOUR COOPERATIVE CONSULTATIONS AND EVALUATIONS**

#### **Article 20: Cooperation**

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to resolve any matter that might affect its operation.

#### **Section A: Cooperative Consultations**

##### **Article 21: Consultations between NAOs**

1. A NAO may request consultations, to be conducted in accordance with the procedures set out in paragraph 2, with another NAO in relation to the other Party's labor law, its administration, or labor market conditions in its territory. The requesting NAO shall notify the NAOs of the other Parties and the Secretariat of its request.

2. In such consultations, the requested NAO shall promptly provide such publicly available data or information, including:

1. descriptions of its laws, regulations, procedures, policies or practices,
2. proposed changes to such procedures, policies or practices, and
3. such clarifications and explanations related to such matters,

as may assist the consulting NAOs to better understand and respond to the issues raised.

3. Any other NAO shall be entitled to participate in the consultations on notice to the other NAOs and the Secretariat.

##### **Article 22: Ministerial Consultations**

1. Any Party may request in writing consultations with another Party at the ministerial level regarding any matter within the scope of this Agreement. The requesting Party shall provide specific and sufficient information to allow the requested Party to respond.

2. The requesting Party shall promptly notify the other Parties of the request. A third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on notice to the other Parties.

3. The consulting Parties shall make every attempt to resolve the matter through consultations under this Article, including through the exchange of sufficient publicly available information to enable a full examination of the matter.

## **Section B: Evaluations**

### **Article 23: Evaluation Committee of Experts**

1. If a matter has not been resolved after ministerial consultations pursuant to Article 22, any consulting Party may request in writing the establishment of an Evaluation Committee of Experts (ECE). The requesting Party shall deliver the request to the other Parties and to the Secretariat. Subject to paragraphs 3 and 4, the Council shall establish an ECE on delivery of the request.

2. The ECE shall analyze, in the light of the objectives of this Agreement and in a non-adversarial manner, patterns of practice by each Party in the enforcement of its occupational safety and health or other technical labor standards as they apply to the particular matter considered by the Parties under Article 22.

3. No ECE may be convened if a Party obtains a ruling under Annex 23 that the matter:

1. is not trade-related; or
2. is not covered by mutually recognized labor laws.

4. No ECE may be convened regarding any matter that was previously the subject of an ECE report in the absence of such new information as would warrant a further report.

### **Article 24: Rules of Procedure**

1. The Council shall establish rules of procedure for ECEs, which shall apply unless the Council otherwise decides. The rules of procedure shall provide that:

1. an ECE shall normally comprise three members;
2. the chair shall be selected by the Council from a roster of experts developed in consultation with the ILO pursuant to Article 45 and, where possible, other members shall be selected from a roster developed by the Parties;
3. ECE members shall
  1. have expertise or experience in labor matters or other appropriate disciplines,
  2. be chosen strictly on the basis of objectivity, reliability and sound judgment,
  3. be independent of, and not be affiliated with or take instructions from, any Party or the Secretariat, and
  4. comply with a code of conduct to be established by the Council;

4. an ECE may invite written submissions from the Parties and the public;
5. an ECE may consider, in preparing its report, any information provided by
  1. the Secretariat,
  2. the NAO of each Party,
  3. organizations, institutions and persons with relevant expertise, and
  4. the public; and
6. each Party shall have a reasonable opportunity to review and comment on information that the ECE receives and to make written submissions to the ECE.

2. The Secretariat and the NAOs shall provide appropriate administrative assistance to an ECE, in accordance with the rules of procedure established by the Council under paragraph 1.

#### **Article 25: Draft Evaluation Reports**

1. Within 120 days after it is established, or such other period as the Council may decide, the ECE shall present a draft report for consideration by the Council, which shall contain:

1. a comparative assessment of the matter under consideration;
2. its conclusions; and
3. where appropriate, practical recommendations that may assist the Parties in respect of the matter.

2. Each Party may submit written views to the ECE on its draft report. The ECE shall take such views into account in preparing its final report.

#### **Article 26: Final Evaluation Reports**

1. The ECE shall present a final report to the Council within 60 days after presentation of the draft report, unless the Council otherwise decides.

2. The final report shall be published within 30 days after its presentation to the Council, unless the Council otherwise decides.

3. The Parties shall provide to each other and the Secretariat written responses to the recommendations contained in the ECE report within 90 days of its publication.

4. The final report and such written responses shall be tabled for consideration at the next regular session of the Council. The Council may keep the matter under review.

## **PART FIVE RESOLUTION OF DISPUTES**

#### **Article 27: Consultations**

1. Following presentation to the Council under Article 26(1) of an ECE final report that addresses the enforcement of a Party's occupational safety and health, child labor or minimum wage technical labor standards, any Party may request in writing consultations with any other Party regarding whether there has been a persistent pattern of failure by that other Party to effectively enforce such standards in respect of the general subject matter addressed in the report.

2. The requesting Party shall deliver the request to the other Parties and to the Secretariat.

3. Unless the Council otherwise provides in its rules and procedures established under Article 9(2), a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to the Secretariat.

4. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations under this Article.

#### **Article 28: Initiation of Procedures**

1. If the consulting Parties fail to resolve the matter pursuant to Article 27 within 60 days of delivery of a request for consultations, or such other period as the consulting Parties may agree, any such Party may request in writing a special session of the Council.

2. The requesting Party shall state in the request the matter complained of and shall deliver the request to the other Parties and to the Secretariat.

3. Unless it decides otherwise, the Council shall convene within 20 days of delivery of the request and shall endeavor to resolve the dispute promptly.

4. The Council may:

1. call on such technical advisers or create such working groups or expert groups as it deems necessary,
2. have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or
3. make recommendations,

as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute. Any such recommendations shall be made public if the Council, by a two-thirds vote, so decides.

5. Where the Council decides that a matter is more properly covered by another agreement or arrangement to which the consulting Parties are party, it shall refer the matter to those Parties for appropriate action in accordance with such other agreement or arrangement.

#### **Article 29: Request for an Arbitral Panel**

1. If the matter has not been resolved within 60 days after the Council has convened pursuant to Article 28, the Council shall, on the written request of any consulting Party and by a two-thirds vote, convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards is:

1. trade-related; and
2. covered by mutually recognized labor laws.

2. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party on delivery of written notice of its intention to participate to the disputing Parties and the Secretariat. The notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of the vote of the Council to convene a panel.

3. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

### **Article 30: Roster**

1. The Council shall establish and maintain a roster of up to 45 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

2. Roster members shall:

1. have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical or professional expertise or experience;
2. be chosen strictly on the basis of objectivity, reliability and sound judgment;
3. be independent of, and not be affiliated with or take instructions from, any Party or the Secretariat; and
4. comply with a code of conduct to be established by the Council.

### **Article 31: Qualifications of Panelists**

1. All panelists shall meet the qualifications set out in Article 30.

2. Individuals may not serve as panelists for a dispute where:

1. they have participated pursuant to Article 28(4) or participated as members of an ECE that addressed the matter; or
2. they have, or a person or organization with which they are affiliated has, an interest in the matter, as set out in the code of conduct established under Article 30(2)(d).

### **Article 32: Panel Selection**

1. Where there are two disputing Parties, the following procedures shall apply:

1. The panel shall comprise five members.
2. The disputing Parties shall endeavor to agree on the chair of the panel within 15 days after the Council votes to convene the panel. If the disputing Parties are unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days a chair who is not a citizen of that Party.
3. Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.
4. If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

1. The panel shall comprise five members.
2. The disputing Parties shall endeavor to agree on the chair of the panel within 15 days after the Council votes to convene the panel. If the disputing Parties are unable to agree

on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.

3. Within 30 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.
4. If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 30 days after the individual has been proposed.

4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

### **Article 33: Rules of Procedure**

1. The Council shall establish Model Rules of Procedure. The procedures shall provide:

1. a right to at least one hearing before the panel;
2. the opportunity to make initial and rebuttal written submissions; and
3. that no panel may disclose which panelists are associated with majority or minority opinions.

2. Unless the disputing Parties otherwise agree, panels convened under this Part shall be established and conduct their proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties otherwise agree within 20 days after the Council votes to convene the panel, the terms of reference shall be:

"To examine, in light of the relevant provisions of the Agreement, including those contained in Part Five, whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards, and to make findings, determinations and recommendations in accordance with Article 36(2)."

### **Article 34: Third Party Participation**

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties and the Secretariat, shall be entitled to attend all hearings, to make written and oral submissions to the panel and to receive written submissions of the disputing Parties.

### **Article 35: Role of Experts**

On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

### **Article 36: Initial Report**

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the disputing Parties and on any information before it pursuant to Article 35.

2. Unless the disputing Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the disputing Parties an initial report containing:

1. findings of fact;
2. its determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards in a matter that is trade-related and covered by mutually recognized labor laws, or any other determination requested in the terms of reference; and
3. in the event the panel makes an affirmative determination under subparagraph (b), its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of non-enforcement.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. A disputing Party may submit written comments to the panel on its initial report within 30 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:

1. request the views of any participating Party;
2. reconsider its report; and
3. make any further examination that it considers appropriate.

### **Article 37: Final Report**

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 60 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. The disputing Parties shall transmit to the Council the final report of the panel, as well as any written views that a disputing Party desires to be appended, on a confidential basis within 15 days after it is presented to them.

3. The final report of the panel shall be published five days after it is transmitted to the Council.

### **Article 38: Implementation of Final Report**

If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards, the disputing Parties may agree on a mutually satisfactory action plan, which normally shall conform with the determinations and recommendations of the panel. The disputing Parties shall promptly notify the Secretariat and the Council of any agreed resolution of the dispute.

### **Article 39: Review of Implementation**

1. If, in its final report, a panel determines that there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards, and:

1. the disputing Parties have not agreed on an action plan under Article 38 within 60 days of the date of the final report, or
2. the disputing Parties cannot agree on whether the Party complained against is fully implementing
  1. an action plan agreed under Article 38,
  2. an action plan deemed to have been established by a panel under paragraph 2, or
  3. an action plan approved or established by a panel under paragraph 4,

any disputing Party may request that the panel be reconvened. The requesting Party shall deliver the request in writing to the other Parties and to the Secretariat. The Council shall reconvene the panel on delivery of the request to the Secretariat.

2. No Party may make a request under paragraph 1(a) earlier than 60 days, or later than 120 days, after the date of the final report. If the disputing Parties have not agreed to an action plan and if no request was made under paragraph 1(a), the last action plan, if any, submitted by the Party complained against to the complaining Party or Parties within 60 days of the date of the final report, or such other period as the disputing Parties may agree, shall be deemed to have been established by the panel 120 days after the date of the final report.

3. A request under paragraph 1(b) may be made no earlier than 180 days after an action plan has been:

1. agreed under Article 38,
2. deemed to have been established by a panel under paragraph 2, or
3. approved or established by a panel under paragraph 4,

and only during the term of any such action plan.

4. Where a panel has been reconvened under paragraph 1(a), it:

1. shall determine whether any action plan proposed by the Party complained against is sufficient to remedy the pattern of non-enforcement and
  1. if so, shall approve the plan, or
  2. if not, shall establish such a plan consistent with the law of the Party complained against, and
2. may, where warranted, impose a monetary enforcement assessment in accordance with Annex 39,

within 90 days after the panel has been reconvened or such other period as the disputing Parties may agree.

5. Where a panel has been reconvened under paragraph 1(b), it shall determine either that:

1. the Party complained against is fully implementing the action plan, in which case the panel may not impose a monetary enforcement assessment, or
2. the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 39,



within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

6. A panel reconvened under this Article shall provide that the Party complained against shall fully implement any action plan referred to in paragraph 4(a)(ii) or 5(b), and pay any monetary enforcement assessment imposed under paragraph 4(b) or 5(b), and any such provision shall be final.

#### **Article 40: Further Proceeding**

A complaining Party may, at any time beginning 180 days after a panel determination under Article 39(5)(b), request in writing that a panel be reconvened to determine whether the Party complained against is fully implementing the action plan. On delivery of the request to the other Parties and the Secretariat, the Council shall reconvene the panel. The panel shall make the determination within 60 days after it has been reconvened or such other period as the disputing Parties may agree.

#### **Article 41: Suspension of Benefits**

1. Subject to Annex 41A, where a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by a panel:

1. under Article 39(4)(b), or
2. under Article 39(5)(b), except where benefits may be suspended under paragraph 2(a),

any complaining Party or Parties may suspend, in accordance with Annex 41B, the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment.

2. Subject to Annex 41A, where a panel has made a determination under Article 39(5)(b) and the panel:

1. has previously imposed a monetary enforcement assessment under Article 39(4)(b) or established an action plan under Article 39(4)(a)(ii), or
2. has subsequently determined under Article 40 that a Party is not fully implementing an action plan,

the complaining Party or Parties may, in accordance with Annex 41B, suspend annually the application to the Party complained against of NAFTA benefits in an amount no greater than the monetary enforcement assessment imposed by the panel under Article 39(5)(b).

3. Where more than one complaining Party suspends benefits under paragraph 1 or 2, the combined suspension shall be no greater than the amount of the monetary enforcement assessment.

4. Where a Party has suspended benefits under paragraph 1 or 2, the Council shall, on the delivery of a written request by the Party complained against to the other Parties and the Secretariat, reconvene the panel to determine whether the monetary enforcement assessment has been paid or collected, or whether the Party complained against is fully implementing the action plan, as the case may be. The panel shall submit its report within 45 days after it has been reconvened. If the panel determines that the assessment has been paid or collected, or that the Party complained against is fully implementing the action plan, the suspension of benefits under paragraph 1 or 2, as the case may be, shall be terminated.

5. On the written request of the Party complained against, delivered to the other Parties and the Secretariat, the Council shall reconvene the panel to determine whether the suspension of benefits by the complaining Party or Parties pursuant to paragraph 1 or 2 is manifestly excessive. Within 45 days of the request, the panel shall present a report to the disputing Parties containing its determination.

## **PART SIX GENERAL PROVISIONS**

### **Article 42: Enforcement Principle**

Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.

### **Article 43: Private Rights**

No Party may provide for a right of action under its domestic law against any other Party on the ground that another Party has acted in a manner inconsistent with this Agreement.

### **Article 44: Protection of Information**

1. If a Party provides confidential or proprietary information to another Party, including its NAO, the Council or the Secretariat, the recipient shall treat the information on the same basis as the Party providing the information.

2. Confidential or proprietary information provided by a Party to an ECE or a panel under this Agreement shall be treated in accordance with the rules of procedure established under Articles 24 and 33.

### **Article 45: Cooperation with the ILO**

The Parties shall seek to establish cooperative arrangements with the ILO to enable the Council and Parties to draw on the expertise and experience of the ILO for purposes of implementing Article 24(1).

### **Article 46: Extent of Obligations**

Annex 46 applies to the Parties specified in that Annex.

### **Article 47: Funding of the Commission**

Each Party shall contribute an equal share of the annual budget of the Commission, subject to the availability of appropriated funds in accordance with the Party's legal procedures. No Party shall be obligated to pay more than any other Party in respect of an annual budget.

### **Article 48: Privileges and Immunities**

The Executive Director and staff of the Secretariat shall enjoy in the territory of each of the Parties such privileges and immunities as are necessary for the exercise of their functions.

### **Article 49: Definitions**

1. For purposes of this Agreement:

A Party has not failed to "**effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards**" or comply with Article 3(1) in a particular case where the action or inaction by agencies or officials of that Party:

1. reflects a reasonable exercise of the agency's or the official's discretion with respect to investigatory, prosecutorial, regulatory or compliance matters; or
2. results from *bona fide* decisions to allocate resources to enforcement in respect of other labor matters determined to have higher priorities;

"**labor law**" means laws and regulations, or provisions thereof, that are directly related to:

1. freedom of association and protection of the right to organize;
2. the right to bargain collectively;
3. the right to strike;
4. prohibition of forced labor;
5. labor protections for children and young persons;
6. minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements;
7. elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws;
8. equal pay for men and women;
9. prevention of occupational injuries and illnesses;
10. compensation in cases of occupational injuries and illnesses;
11. protection of migrant workers;

"**mutually recognized labor laws**" means laws of both a requesting Party and the Party whose laws were the subject of ministerial consultations under Article 22 that address the same general subject matter in a manner that provides enforceable rights, protections or standards;

"**pattern of practice**" means a course of action or inaction beginning after the date of entry into force of the Agreement, and does not include a single instance or case;

"**persistent pattern**" means a sustained or recurring pattern of practice;

"**province**" means a province of Canada, and includes the Yukon Territory and the Northwest Territories and their successors;

"**publicly available information**" means information to which the public has a legal right under the statutory laws of the Party;

"**technical labor standards**" means laws and regulations, or specific provisions thereof, that are directly related to subparagraphs (d) through (k) of the definition of **labor law**. For greater certainty and consistent with the provisions of this Agreement, the setting of all standards and levels in respect of minimum wages and labor protections for children and young persons by each Party shall not be subject to obligations under this Agreement. Each Party's obligations under this Agreement pertain to enforcing the level of the general minimum wage and child labor age limits established by that Party;

"**territory**" means for a Party the territory of that Party as set out in Annex 49; and

**"trade-related"** means related to a situation involving workplaces, firms, companies or sectors that produce goods or provide services:

1. traded between the territories of the Parties; or
2. that compete, in the territory of the Party whose labor law was the subject of ministerial consultations under Article 22, with goods or services produced or provided by persons of another Party.

## **PART SEVEN FINAL PROVISIONS**

### **Article 50: Annexes**

The Annexes to this Agreement constitute an integral part of the Agreement.

### **Article 51: Entry into Force**

This Agreement shall enter into force on January 1, 1994, immediately after entry into force of the NAFTA, on an exchange of written notifications certifying the completion of necessary legal procedures.

### **Article 52: Amendments**

1. The Parties may agree on any modification of or addition to this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

### **Article 53: Accession**

Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Council and following approval in accordance with the applicable legal procedures of each country.

### **Article 54: Withdrawal**

A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

### **Article 55: Authentic Texts**

The English, French and Spanish texts of this Agreement are equally authentic.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized by the respective Governments, have signed this Agreement.

## **ANNEX 1 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.

#### **9. Prevention of occupational injuries and illnesses**

Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

#### **10. Compensation in cases of occupational injuries and illnesses**

The establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

#### **11. Protection of migrant workers**

Providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions.

### **ANNEX 23 INTERPRETIVE RULING**

1. Where a Party has requested the Council to convene an ECE, the Council shall, on the written request of any other Party, select an independent expert to make a ruling concerning whether the matter is:

1. trade-related; or
2. covered by mutually recognized labor laws.

2. The Council shall establish rules of procedure for the selection of the expert and for submissions by the Parties. Unless the Council decides otherwise, the expert shall present a ruling within 15 days after the expert is selected.

### **ANNEX 39 MONETARY ENFORCEMENT ASSESSMENTS**

1. For the first year after the date of entry into force of this Agreement, any monetary enforcement assessment shall be no greater than 20 million dollars (U.S.) or its equivalent in the currency of the Party complained against. Thereafter, any monetary enforcement assessment shall be no greater than .007 percent of total trade in goods between the Parties during the most recent year for which data are available.

2. In determining the amount of the assessment, the panel shall take into account:

1. the pervasiveness and duration of the Party's persistent pattern of failure to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards;
2. the level of enforcement that could reasonably be expected of a Party given its resource constraints;
3. the reasons, if any, provided by the Party for not fully implementing an action plan;

4. efforts made by the Party to begin remedying the pattern of non-enforcement after the final report of the panel; and
5. any other relevant factors.

3. All monetary enforcement assessments shall be paid in the currency of the Party complained against into a fund established in the name of the Commission by the Council and shall be expended at the direction of the Council to improve or enhance the labor law enforcement in the Party complained against, consistent with its law.

## **ANNEX 41A**

### **CANADIAN DOMESTIC ENFORCEMENT AND COLLECTION**

1. For the purposes of this Annex, "**panel determination**" means:

1. a determination by a panel under Article 39(4)(b) or 5(b) that provides that Canada shall pay a monetary enforcement assessment; and
2. a determination by a panel under Article 39(5)(b) that provides that Canada shall fully implement an action plan where the panel:
  1. has previously established an action plan under Article 39(4)(a)(ii) or imposed a monetary enforcement assessment under Article 39(4)(b); or
  2. has subsequently determined under Article 40 that Canada is not fully implementing an action plan.

2. Canada shall adopt and maintain procedures that provide that:

1. subject to subparagraph (b), the Commission, at the request of a complaining Party, may in its own name file in a court of competent jurisdiction a certified copy of a panel determination;
2. the Commission may file in court a panel determination that is a panel determination described in paragraph 1(a) only if Canada has failed to comply with the determination within 180 days of when the determination was made;
3. when filed, the panel determination, for purposes of enforcement, shall become an order of the court;
4. the Commission may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person against whom the panel determination is addressed in accordance with paragraph 6 of Annex 46;
5. proceedings to enforce a panel determination that has been made an order of the court shall be conducted by way of summary proceedings;
6. in proceedings to enforce a panel determination that is a panel determination described in paragraph 1(b) and that has been made an order of the court, the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the panel determination, and the decision of the panel shall be binding on the court;
7. a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and
8. an order made by the court in proceedings to enforce a panel determination that has been made an order of the court shall not be subject to review or appeal.

3. Where Canada is the Party complained against, the procedures adopted and maintained by Canada under this Annex shall apply and the procedures set out in Article 41 shall not apply.

4. Any change by Canada to the procedures adopted and maintained by Canada under this Annex that have the effect of undermining the provisions of this Annex shall be considered a breach of this Agreement.

## **ANNEX 41B SUSPENSION OF BENEFITS**

1. Where a complaining Party suspends NAFTA tariff benefits in accordance with this Agreement, the Party may increase the rates of duty on originating goods of the Party complained against to levels not to exceed the lesser of:

1. the rate that was applicable to those goods immediately prior to the date of entry into force of the NAFTA, and
2. the Most-Favored-Nation rate applicable to those goods on the date the Party suspends such benefits,

and such increase may be applied only for such time as is necessary to collect, through such increase, the monetary enforcement assessment.

2. In considering what tariff or other benefits to suspend pursuant to Article 41(1) or (2):

1. a complaining Party shall first seek to suspend benefits in the same sector or sectors as that in respect of which there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards; and
2. a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

## **ANNEX 46 EXTENT OF OBLIGATIONS**

1. On the date of signature of this Agreement, or of the exchange of written notifications under Article 51, Canada shall set out in a declaration 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 the other Parties, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify the other Parties six months in advance of any modification to its declaration.

2. Unless a communication relates to a matter that would be under federal jurisdiction if it were to arise within the territory of Canada, the Canadian NAO shall identify the province of residence or establishment of the author of any communication regarding the labor law of another Party that it forwards to the NAO of another Party. That NAO may choose not to respond if that province is not included in the declaration made under paragraph 1.

3. Canada may not request consultations under Article 22, the establishment of an Evaluation Committee of Experts under Article 23, consultations under Article 27, the initiation of procedures under Article 28 or the establishment of a panel or join as a complaining Party under Article 29 at the instance, or primarily for the benefit,

of any government of a province not included in the declaration made under paragraph 1.



4. Canada may not request consultations under Article 22, the establishment of an Evaluation Committee of Experts under Article 23, consultations under Article 27, the initiation of procedures under Article 28 or the establishment of a panel or join as a complaining Party under Article 29, unless Canada states in writing that the matter would be under federal jurisdiction if it were to arise within the territory of Canada, or:

1. Canada states in writing that the matter would be under provincial jurisdiction if it were to arise within the territory of Canada; and
2. the federal government and the provinces included in the declaration account for at least 35 percent of Canada's labor force for the most recent year in which data are available, and
3. where the matter concerns a specific industry or sector, at least 55 percent of the workers concerned are employed in provinces included in Canada's declaration under paragraph 1.

5. No other Party may request consultations under Article 22, the establishment of an Evaluation Committee of Experts under Article 23, consultations under Article 27, the initiation of procedures under Article 28 or the establishment of a panel or join as a complaining Party under Article 29, concerning a matter related to a labor law of a province unless that province is included in the declaration made under paragraph 1 and the requirements of subparagraphs 4(b) and (c) have been met.

6. Canada shall, no later than the date on which an arbitral panel is convened pursuant to Article 29 respecting a matter within the scope of paragraph 5 of this Annex, notify in writing the complaining Parties and the Secretariat of whether any monetary enforcement assessment or action plan imposed by a panel under Article 39(4) or (5) against Canada shall be addressed to Her Majesty in right of Canada or Her Majesty in right of the province concerned.

7. Canada shall use its best efforts to make the Agreement applicable to as many of its provinces as possible.

8. Two years after the date of entry into force of this Agreement, the Council shall review the operation of this Annex and, in particular, shall consider whether the Parties should amend the thresholds established in paragraph 4.

## **ANNEX 49 COUNTRY-SPECIFIC DEFINITIONS**

For purposes of this Agreement:

**"territory"** means:

1. with respect to Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources;
2. with respect to Mexico,
  1. the states of the Federation and the Federal District,
  2. the islands, including the reefs and keys, in adjacent seas,
  3. the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,
  4. the continental shelf and the submarine shelf of such islands, keys and reefs,

5. the waters of the territorial seas, in accordance with international law, and its interior maritime waters,
  6. the space located above the national territory, in accordance with international law, and
  7. any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the *United Nations Convention on the Law of the Sea*, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources; and
3. with respect to the United States,
    1. the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico,
    2. the foreign trade zones located in the United States and Puerto Rico, and
    3. any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources.