

**AGREEMENT ON LABOUR COOPERATION**

**BETWEEN**

**CANADA**

**AND**

**THE REPUBLIC OF COLOMBIA**

**PREAMBLE**

**CANADA** and **THE REPUBLIC OF COLOMBIA** hereinafter referred to as the “Parties”:

**RECALLING** their resolve in the *Free Trade Agreement between Canada and the Republic of Colombia* (CCOFTA) to:

- (a) protect, enhance and enforce basic workers' rights,
- (b) strengthen cooperation on labour matters, and
- (c) build on their respective international commitments on labour matters;

**SEEKING** to complement the economic opportunities created by the CCOFTA with the human resource development, protection of basic workers' rights, labour-management cooperation and continuous learning that characterize high-productivity economies;

**REAFFIRMING** the obligations of both countries as members of the International Labour Organization (ILO) and their commitments to the *ILO Declaration on Fundamental Principles and Rights at Work* and its Follow-Up (1998) (ILO 1998 Declaration);

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

**DESIRING** to build on their respective international commitments;

**RECOGNIZING** the importance of mutual cooperation to strengthen actions on labour matters, including by:

- (a) encouraging consultation and dialogue between labour, business and government;
- (b) encouraging employers and employees in each country to comply with labour laws and to work together in maintaining a fair, safe and healthy working environment; and

**RECOGNIZING** the importance of protections for the labour rights of migrant workers;

**RECOGNIZING** the importance of encouraging voluntary practices of corporate social responsibility within their territories or jurisdictions, to ensure coherence between labour and economic objectives; and

**BUILDING** on existing institutions and mechanisms in Canada and Colombia to achieve the preceding economic and social goals;

**HAVE AGREED** as follows:

## **PART ONE**

### **OBLIGATIONS**

#### **Article 1: General Obligations**

1. Each Party shall ensure that its statutes and regulations, and practices thereunder, embody and provide protection for the following internationally recognized labour principles and rights:

- (a) freedom of association and the right to collective bargaining (including protection of the right to organize and the right to strike);
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour (including protections for children and young persons);
- (d) the elimination of discrimination in respect of employment and occupation;
- (e) acceptable conditions of work with respect to minimum wages, hours of work and occupational health and safety; and
- (f) providing migrant workers with the same legal protections as the Party's nationals in respect of working conditions.

2. To the extent that the principles and rights stated above relate to the ILO, subparagraphs (a) to (d) above refer only to the ILO 1998 Declaration, whereas those stated in subparagraphs (e) and (f) more closely relate to the ILO's Decent Work Agenda.

## **Article 2: Non-Derogation**

Each Party shall ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour laws in a manner that weakens or reduces adherence to the internationally recognized labour principles and rights referred to in Article 1 as an encouragement for trade between the Parties, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

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

1. Each Party shall, subject to Article 22, promote compliance with and effectively enforce its labour law through appropriate government action, such as:
  - (a) establishing and maintaining labour inspection divisions, including by appointing and training inspectors;
  - (b) monitoring compliance and investigating suspected violations, including through on-site inspections;
  - (c) encouraging the establishment of worker-management committees to address labour regulation of the workplace;
  - (d) providing or encouraging mediation, conciliation and arbitration services; and
  - (e) 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 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 labour law.

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

Each Party shall ensure that a person with a legally-recognized interest under its law has appropriate access to proceedings before a tribunal which can enforce the Party's labour law, give effect to such person's labour rights and remedy breaches of such law or rights.

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

1. Each Party shall ensure that proceedings referred to in Article 3.1(b), 3.1(e) and Article 4 are fair, equitable and transparent and to this end that:

- (a) proceedings are conducted by decision-makers who are impartial and independent and do not have an interest in the outcome of the matter;
- (b) the parties to the proceedings are entitled to support or defend their respective positions and to present information or evidence, with the decision based on such information or evidence and final decisions on the merits of the case in writing;
- (c) the proceedings are open to the public, except where the law and the administration of justice otherwise requires; and
- (d) the proceedings are free and expeditious or at least do not entail unreasonable fees or delays, and the time limits do not impede exercise of the rights.

2. Each Party shall provide that parties to such proceedings have the right, pursuant to its legislation, to seek review and correction of final decisions issued in such proceedings.

3. A Party should implement the above obligations in a manner consistent with its multilateral commitments, and is not required to conform to the above obligations if to do so would result in conflict with its obligations under a multilateral treaty that provides equivalent or greater procedural guarantees.

## **Article 6: Public Information and Awareness**

1. Each Party shall ensure that its labour law, 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 the other Party to become acquainted with them.
  
2. When so required by its law, each Party shall:
  - (a) publish in advance any such measure that it proposes to adopt; and
  
  - (b) provide interested persons a reasonable opportunity to comment on such proposed measures.
  
3. Each Party shall promote public awareness of its labour laws, including by:
  - (a) making available public information related to its labour laws and enforcement and compliance procedures; and
  
  - (b) encouraging education of the public regarding its labour laws.

## **PART TWO**

### **INSTITUTIONAL MECHANISMS**

#### **Article 7: Ministerial Council**

1. The Parties shall create a Ministerial Council, which shall be comprised of Ministers responsible for labour affairs of the Parties or their designees.
2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to discuss matters of common interest, to oversee the implementation of the Agreement and review progress under it. The Council may hold joint meetings with Councils established under similar agreements.
3. Unless the Parties otherwise decide, each meeting of the Council shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Agreement.
4. The Council may consider any matter within the scope of this Agreement and take such other action in the exercise of its functions as the Parties may agree.
5. The Council shall review the operation and effectiveness of the Agreement, including the degree to which progress has been made in implementing the obligations and institutional mechanisms of this Agreement, within five years after the date of entry into force of the Agreement and thereafter within such other period as may be decided by the Council. Such review:
  - (a) may be conducted by one or more independent experts;
  - (b) shall include a literature review and consultation with the members of the public, including representatives of labour and business organizations, as well as an opportunity for the Parties to provide comments;

- (c) may make recommendations for the future; and
- (d) shall be concluded within 180 days of its commencement and made public 30 days thereafter.

#### **Article 8: National Mechanisms**

1. Each Party may convene a new, or consult an existing, national labour committee, comprising members of its public, including representatives of its labour and business organizations, to provide views on any issues related to this Agreement.
2. Each Party shall establish a Point of Contact within its governmental department responsible for labour affairs and provide to the other party its contact information. The functions of the Point of Contact shall include:
  - (a) the coordination of cooperative programs and activities;
  - (b) the review of public communications pursuant to Article 10;
  - (c) to serve as Point of Contact with the other Party;
  - (d) the provision of information to the other Party, the review panels and the public; and
  - (e) any other matters as the Parties or the Council may decide.
3. The Parties shall provide to each other information regarding their established points of contact.

#### **Article 9: Cooperative Activities**

1. Recognizing that labour cooperation is an essential element in raising the level of compliance with labour standards, the Parties shall develop a plan of action for cooperative labour activities for the promotion of the objectives of this Agreement. In particular, they shall define specific projects of cooperation and the timeframe for such projects.

2. Possible areas of cooperation are set out in Annex 1. Most relate directly to the obligations under this Agreement, while some concern the enhancement of labour mobility as the Parties recognize the mutual benefits to be gained by enhancing labour mobility and are committed to exploring avenues for reaching this objective.

3. In carrying out the plan of action, the Parties may cooperate through:

- (a) technical assistance programs, including by providing human, technical, and material resources, as appropriate;
- (b) exchange of official delegations, professionals, and specialists, including through study visits and other technical exchanges;
- (c) exchange of information on standards, regulations, procedures, and best practices;
- (d) exchange or development of pertinent studies, publications, and monographs;
- (e) joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;
- (f) development of joint research projects, studies, and reports, whereby expertise from independent specialists may be solicited;
- (g) exchanges on technical labour matters, including through the use of expertise from academic institutions and other similar entities;
- (h) exchanges on technology issues, including information systems; and
- (i) any other means to which the Parties may agree.

4. The Parties shall carry out the cooperative activities with due regard for the priorities and needs of each Party, as well as the economic, social, cultural and legislative differences between them.

#### **Article 10: Public Communications**

1. Each Party shall provide for the submission, acceptance and review of public communications on labour law matters that:

- (a) are raised by a national or by an enterprise or organization established in the territory of the Party;
- (b) arise in the territory of the other Party; and
- (c) pertain to any matters related to this Agreement.

2. Each Party shall make such communications publicly available upon acceptance for review and shall accept and review such matters in accordance with domestic procedures as provided for in Annex 2.

#### **Article 11: General Consultations**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement.

2. The Parties shall make every attempt, through consultations and the exchange of information, with a particular emphasis on cooperation, to address any matter that might affect its operation.

3. A Party may request consultations with the other Party regarding any matter arising under this Agreement by delivering a written request to the Point of Contact.

4. If the Parties fail to resolve the matter through the Point of Contact, the requesting party may use the procedures provided under Article 12.

## **PART THREE**

### **PROCEDURES FOR REVIEW OF OBLIGATIONS**

#### **Article 12: Ministerial Consultations**

1. A Party may request in writing consultations with the other Party at the ministerial level regarding any obligation under this Agreement. The Party that is the object of the request shall respond within 60 days of receiving the request, or within such other period as the Parties may agree.
2. Each Party shall provide the other with sufficient information in its possession to allow a full examination of the matters raised.
3. To facilitate discussion of the matters under consideration, either Party may call upon one or more independent experts to prepare a report. The Parties shall make every effort to agree upon the selection of the expert or experts and shall cooperate with the expert or experts in the preparation of the report. Any publication of the report will indicate how to obtain access to any response of the other Party.
4. The Parties shall make every effort to reach a mutually satisfactory agreement of the matter, and may resolve it by developing a plan of cooperative activities related to issues raised through the consultations.
5. Ministerial consultations shall be concluded no later than 180 days after the request unless the Parties agree to another date.

#### **Article 13: Review Panel**

Following the conclusion of Ministerial Consultations, the Party that requested the consultations may request that a review panel be convened if it considers that:

- (a) the matter is trade-related; and

- (b) the other Party has failed to comply with its obligations under this agreement through:
  - (i) a persistent pattern of failure to effectively enforce its labour law; or
  - (ii) failure to comply with its obligations under Articles 1 and 2 to the extent that they refer to the ILO 1998 Declaration.

#### **Article 14: Panelists**

1. A review panel comprised of three panelists shall be appointed in accordance with the procedures set out in Annex 3.
2. Panelists 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 a code of conduct to be established by the Parties.
3. If either Party believes that a panelist is in violation of the code of conduct, the Parties shall consult. If they agree, the panelist shall be removed and a new panelist shall be selected in accordance with the procedures set out in Annex 3 that were used to select the panelist who was removed. The time limits shall run from the date of their decision to remove the panelist. The Model Rules of Procedure may provide procedures for resolving the situation if the Parties do not agree.

4. Individuals may not serve as panelists with respect to a review in which they have, or a person or organization with which they are affiliated has, an interest.

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

#### **Article 15: Conduct of Review**

1. Unless otherwise decided by the Parties, the review panel shall:

(a) be established and perform its functions in a manner consistent with the provisions of this Part, including the procedures set out in Annex 3; and

(b) within 30 days of its establishment present a ruling on whether the matter is trade-related.

2. The panel shall cease its functions upon presentation of a ruling that the matter is not trade-related.

#### **Article 16: Information for the Review Panel**

1. The Parties shall be entitled to make written and oral submissions to a review panel in accordance with the Model Rules of Procedure.

2. A 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.

3. Unless the Parties otherwise decide, proceedings before a review panel shall be open to the public, except to the extent necessary to protect information that the Model Rules of Procedure require be confidential.

## **Article 17: Initial Report**

1. Unless the Parties otherwise decide, the Review Panel shall base its report on relevant provisions of this Agreement, the submissions and arguments of the Parties and on any information before it pursuant to Article 16.
2. Unless the Parties otherwise decide, the panel shall present to the Parties an initial report containing:
  - (a) findings of fact;
  - (b) its determination as to whether the Party that is the object of the review has engaged in non-compliance through a persistent pattern of failure to effectively enforce its labour law or failure to comply with its obligations under Articles 1 and 2 relating to the ILO 1998 Declaration, or any other determination requested in the terms of reference; and,
  - (c) in the event the panel makes an affirmative determination under subparagraph (b), its recommendations for the resolution of the matter, which normally shall be that the Party that is the object of the review adopt and implement an action plan sufficient to remedy the pattern of non-compliance.
3. The panel shall present its initial report within 120 days after the last panelist is selected unless:
  - (a) the Model Rules of Procedure provide for another time period; or,
  - (b) the panel considers that it cannot provide its report within 120 days, in which case it may extend the time period by a further 60 days upon giving written notice to both Parties setting out the reasons for the extension of time.
4. Panelists may furnish separate opinions on matters that are not the subject of unanimous decision. A panel, however, may not disclose which panelists are associated with majority or minority opinions.

5. Either Party may submit written comments to the panel on its initial report within 30 days of presentation of the report or within such other period as the Parties may agree.

6. In light of such written comments, the panel, on its own initiative or on the request of either Party, may:

- (a) request the views of the other Party;
- (b) reconsider its report; and
- (c) make any further examination that it considers appropriate.

### **Article 18: Final Report**

1. The review panel shall present to the Parties a final report, including any separate opinions on matters not unanimously agreed to, within 60 days of the presentation of the initial report, unless the Parties otherwise agree. The Parties shall release the final report to the public in the three official languages within 21 days thereafter, subject to the protection of confidential information.

2. Panelists may furnish separate opinions on matters that are not the subject of unanimous decision. A review panel, however, may not disclose which panelists are associated with majority or minority opinions.

### **Article 19: Implementation of Final Report**

If, in its final report, a review panel determines that there has been non-compliance within the meaning of Article 17.2(b) by the Party that was the object of the review, the Parties may agree on a mutually satisfactory action plan to implement the panel's recommendations.

## **Article 20: Review of Implementation**

1. If, in its final report, a review panel determines that there has been non-compliance within the meaning of subparagraph 2 (b) of Article 17 by the Party that was the object of the review and the Parties:

- (a) are unable to reach agreement on an action plan pursuant to Article 19 within 60 days of receiving the final report; or
- (b) have agreed on an action plan pursuant to Article 19 and the requesting Party considers that the other Party has failed to observe the terms of the action plan,

the requesting Party may at any time thereafter request in writing that the review panel be reconvened to impose an annual monetary assessment on the other Party. The panel shall reconvene as soon as possible after delivery of the request.

2. Where a panel has been reconvened under paragraph 1, it shall determine:

- (a) whether the action plan has been implemented or the non-compliance within the meaning of subparagraph 2 (b) of Article 17 has been otherwise remedied;
- (b) in the event that the panel makes a negative determination under subparagraph (a) above, the panel shall determine the amount of the monetary assessment in U.S. dollars, or its equivalent in the currency of the Party that was the object of the review, in accordance with Annex 4 and within 90 days after it reconvenes under paragraph 1.

3. The provisions of Article 18 regarding the release of the final report and separate opinions apply to determinations under paragraph 2, which shall be issued in Spanish and either English or French.

4. The requesting Party may demand payment of the monetary assessment in accordance with Annex 4. A panel determination under paragraph 2 may be enforced in accordance with Annex 4.

5. Monetary assessments shall be paid into an interest-bearing fund designated by the Council and expended at the direction of the Council for appropriate labour initiatives in the territory of the Party that was the object of the review. In deciding how to expend monies paid into the fund, the Council may consider the views of interested persons in the Parties' territories.

#### **Article 21: Compliance Review**

1. If the Party that was the object of the review considers that it has eliminated the non-compliance found by the panel, it may refer the matter to the panel by providing written notice to the requesting Party. The panel shall issue its report on the matter within 90 days after the Party that was the object of the review provides notice.

2. If the panel decides that the Party that was the object of the review has eliminated the non-compliance, the Party that was the object of the review shall no longer be required to pay any monetary assessment that has been imposed on it under Article 20.

## **PART FOUR**

### **GENERAL PROVISIONS**

#### **Article 22: Enforcement Principle**

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

#### **Article 23: Private Rights**

Neither Party may provide for a right of action under its domestic law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Agreement.

#### **Article 24: Protection of Information**

1. A Party that receives information identified by the other Party as confidential or proprietary information shall protect such information as confidential or proprietary.
2. A review panel that receives confidential or proprietary information under this Agreement shall treat it in accordance with the Model Rules of Procedure.

#### **Article 25: Cooperation with International and Regional Organisations**

The Parties may establish cooperative arrangements with the International Labour Organization and other competent international and regional organisations to draw on their expertise and resources in order to achieve the objectives of this Agreement.

## Article 26: Definitions

For purposes of this Agreement:

A Party has not failed to “**effectively enforce its labour law**” or comply with Article 3 in a particular case where the action or inaction by agencies or officials of that Party:

- (a) reflects a reasonable exercise of the agency's or the official's discretion with respect to investigatory, prosecutorial, regulatory or compliance matters; or
- (b) results from bona fide decisions to allocate resources to:
  - (i) enforcement in respect of other labour matters determined to have higher priorities; or
  - (ii) emergency needs arising as a result of urgent temporary social or economic priorities.

“**days**” means calendar days, including weekends and holidays;

“**enterprise**” means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

“**labour law**” means laws, regulations and jurisprudence, as applicable, that implement and protect, the labour principles and rights set out in Article 1;

“**national**” means:

- (a) with respect to Canada: a permanent resident of Canada or a citizen of Canada under Canadian legislation;
- (b) with respect to the Republic of Colombia: a natural person who is a Colombian by birth or naturalization, in accordance with Article 96 of the *Constitución Política de Colombia*;

“**persistent pattern**” means a sustained or recurring course of action or inaction beginning after the date of entry into force of this Agreement, and does not include a single instance or case;

“**person**” means a natural person, an enterprise, or an organization of employers or workers;

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

“**territory**” means:

- (a) with respect to Canada:
  - (i) the land territory, air space, internal waters and territorial sea of Canada;
  - (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* of 10 December 1982 (UNCLOS); and
  - (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS; and,
- (b) with respect to the Republic of Colombia, its land territory, both continental and insular, its air space and the maritime areas over which it exercises sovereignty, sovereign rights or jurisdiction in accordance with its domestic law and international law;

## **PART FIVE**

### **FINAL PROVISIONS**

#### **Article 27: Annexes**

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

#### **Article 28: Official Languages**

The official languages for the purposes of this Agreement shall be English, French and Spanish.

#### **Article 29: Entry into Force**

Each Party shall notify the other Party in writing of the completion of the domestic procedures required for the entry into force of this Agreement. This Agreement shall enter into force from the date of the second of these notifications, or the date that the *Free Trade Agreement between the Government of Canada and the Government of the Republic of Colombia* enters into force, whichever is later.

#### **Article 30: Amendments**

1. The Parties shall agree in writing to any amendment to this Agreement.
2. At the request of either Party, the Parties shall meet with a view to reviewing and amending this Agreement to reflect developments in their multilateral or bilateral relations on matters covered by this Agreement.
3. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement.

**Article 31: Termination**

1. This Agreement shall remain in force as long as the CCOFTA continues in force. Should the CCOFTA be terminated, either Party may terminate this Agreement by giving written notice to the other Party. Such termination shall take effect 14 days after the date of the receipt of the written notice.
2. This Agreement may terminate upon the mutual written agreement of the Parties and upon such conditions and within such timeframe as may be mutually agreed upon.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto, have signed this Agreement.

**DONE** in duplicate at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 2008,  
in the English, French and Spanish languages, each version being equally authentic.

\_\_\_\_\_  
**FOR CANADA**

\_\_\_\_\_  
**FOR THE REPUBLIC OF  
COLOMBIA**

## ANNEX 1

### COOPERATIVE ACTIVITIES

1. The following lists possible areas for cooperative activities directly related to the obligations under this Agreement, that the Parties may develop pursuant to Article 9:

- (a) information sharing: exchanging of information and sharing of best practices on issues of common interest and on relevant events, activities, and initiatives organized in their respective territories;
- (b) international fora: cooperation within international and regional fora such as the International Labour Organization and the Inter-American Conference of Ministers of Labour on labour-related issues;
- (c) fundamental rights and their effective application: legislation and practice related to the core elements of the ILO 1998 Declaration (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation);
- (d) elimination of the worst forms of child labour: legislation and practice related to compliance with ILO Convention 182;
- (e) labour administration: institutional capacity of labour administrations and tribunals, especially training and professionalization of human resources, including career civil service;
- (f) labour inspectorates and inspection systems: methods and training to improve the level and efficiency of labour law enforcement, strengthen labour inspection systems, and help ensure compliance with labour laws;

- (g) alternative dispute resolution: initiatives aimed at establishing alternative dispute resolution mechanisms for labour disputes;
- (h) labour relations: forms of cooperation and dispute resolution to ensure productive labour relations among workers, employers, and governments;
- (i) working conditions: mechanisms for supervising compliance with statutes and regulations pertaining to hours of work, minimum wages and overtime, occupational safety and health, and employment conditions;
- (j) migrant workers: dissemination of information regarding labour rights of migrant workers in each Party's territory;
- (k) gender: gender issues, including the elimination of discrimination in respect of employment and occupation;
- (l) technical issues: programs, methodologies, and experiences regarding productivity improvement, encouragement of best labour practices, including through the promotion of good Corporate Social Responsibility practices, and the effective use of technologies, including those that are internet-based;
- (m) vulnerable workers: support for the design of specific activities directed at vulnerable workers within each Party;
- (n) such other matters as the Parties may agree.

2. In furtherance of the Parties' recognition of the mutual benefits to be gained by enhancing labour mobility, they are also committed to exploring reciprocal mechanisms and cooperation activities to facilitate labour mobility by:

- (a) exchanging labour market information to enhance worker and employer awareness of labour needs and labour force availability;
- (b) facilitating public-private sector partnership initiatives regarding labour market intermediation; and,
- (c) facilitating initiatives that will allow training institutions to develop curricula tailored to the standards of receiving countries.

3. In identifying areas for labour cooperation and capacity building, and in carrying out cooperative activities, each Party may consider the views of its worker and employer representatives, as well as those of other members of the public.

## ANNEX 2

### PUBLIC COMMUNICATIONS

1. Public communication procedures of each Party regarding the right of a national, organization or enterprise to submit a public communication to the Point of Contact shall indicate, inter alia,
  - (a) the criteria regarding the acceptance of communications, including:
    - (i) that normally relief before domestic tribunals shall have been attempted or pursued and that any public communication related to such pending proceedings will not be accepted, provided that the proceedings conform to Article 5;
    - (ii) that matters pending before an international body will normally not be accepted;
    - (iii) that communications that are trivial, frivolous or vexatious will not be accepted;
  - (b) that there will be early consultation with the other Party;
  - (c) that the final report will consider relevant information, including that provided by the submitter, the other Party and other interested persons, as well as indicate how to obtain access to that information; and,
  - (d) that the public notification of the acceptance for review and of the release of the final report will indicate how to obtain access to any response of the other Party.

## ANNEX 3

### PROCEDURES RELATED TO REVIEW PANELS

#### Panel Selection Procedures

1. For purposes of selecting a review panel, the following procedures shall apply:
  - (a) within 20 days of the receipt of the request for the establishment of a panel, each Party shall select one panelist;
  - (b) if one Party fails to select its panelist within such period, the other Party shall select that panelist from among qualified individuals who are nationals of the Party that has failed to select its panelist;
  - (c) the following procedures shall apply to the selection of the chairperson:
    - (i) the Party that is the object of 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 the 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 the object of 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 subparagraph (i) or 25 days after the receipt of the request for the establishment of the panel;
    - (iii) the Party that is the object of the request may choose one of the three individuals to be the chairperson, no later than five days after receiving the names under 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 Parties shall, no later than one year after the entry into force of this Agreement, establish Model Rules of Procedure, which shall be used for the establishment and conduct of proceedings under Part Three. The Model Rules will include:

- (a) a code of conduct for the purposes of Article 14;
- (b) rules, for the purposes of Article 16, that provide that written submissions may be made only on such terms and conditions as the panel may specify and that persons seeking to present oral information within the meaning of paragraph 2 of Article 16 may do so only if the panel determines that such information may assist the panel in performing its functions; and,
- (c) rules for the protection of information under Article 24.

3. The Parties shall agree on a separate budget for each set of panel proceedings pursuant to Articles 13 to 21. 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 Parties convene the panel, the terms of reference shall be:

"To examine, in light of the relevant provisions of this Agreement, whether the Party that was the object of the request has engaged, in a trade-related matter, in a persistent pattern of failure to effectively enforce its labour law or has failed to comply with its obligations under Articles 1 and 2 to the extent that they refer to the ILO 1998 Declaration, and to make findings, determinations and recommendations in accordance with paragraph 2 of Article 17."

## ANNEX 4

### MONETARY ASSESSMENTS

1. In determining the amount of the monetary assessment, the panel shall take into account:
  - (a) the pervasiveness and duration of the Party's failure to comply with its obligations within the meaning of subparagraph 2(b) of Article 17;
  - (b) the reasons for the Party's failure to comply with such obligation, including, where relevant, its failure to observe the terms of an action plan;
  - (c) the level of compliance that could reasonably be expected of the Party given its resource constraints;
  - (d) the efforts made by the Party to begin remedying such non-compliance after the final report of the panel, including through the implementation of any mutually agreed action plan; and
  - (e) any other relevant factors.

The amount of the assessment shall not exceed 15 million U.S. dollars annually, or its equivalent in the currency of the Party complained against.

2. On the date on which the panel determines the amount of the monetary assessment under paragraph 2 of Article 20, or at any time thereafter, the requesting Party may provide notice in writing to the other Party demanding payment of the monetary assessment. The monetary assessment shall be payable in U.S. dollars, or in an equivalent amount of the currency of the other Party, in equal, quarterly instalments beginning 60 days after the requesting Party provides such notice and ending on the date of any panel determination under paragraph 2 of Article 21.

3. In Canada, the procedures for enforcement of the monetary assessment shall be the following:

- (a) Colombia may file in a court of competent jurisdiction a certified copy of a panel determination under Article 20(2) only if Canada has failed to comply with a notice provided under Article 20(4) within 180 days of it being made;
- (b) when filed, the panel determination, for purposes of enforcement, shall become an order of the court;
- (c) Colombia may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person in Canada against whom the panel determination is addressed in accordance with paragraph 4 of Annex 5;
- (d) proceedings to enforce a panel determination that has been made an order of the court shall be conducted in Canada by way of summary proceedings, provided that the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the determination, and the decision of the panel shall be binding on the court;
- (e) a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and
- (f) 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.

4. In Colombia, the procedures for enforcement of the monetary assessment shall be the following. If Colombia has failed to comply with a notice provided under paragraph 4 of Article 20 within 180 days of it being made, the panel determination in Colombia shall be executed:

- (a) as if it were a decision ordering the payment of a set amount by an international court constituted by a treaty ratified by Colombia; or,
- (b) Canada may present to the State Council (Consejo de Estado) or other competent body a certified copy of a panel determination under Article 20.2(b) and may demand compliance with the panel determination. Canada will be entitled to execute directly the panel determination in Colombia as if it were a final ruling issued by a court in Colombia, and will not be subject to domestic review or appeal. The panel determination will be a clear, express and executable obligation pursuant to the rules on the execution of rulings in force in Colombia and therefore will not require to be recognized and follow an exequatur in Colombia.

5. Any change by the Parties to the procedures adopted and maintained by each of them pursuant to this Article that has the effect of undermining the provisions of this Article shall be considered a breach of this Agreement.

## ANNEX 5

### EXTENT OF OBLIGATIONS

1. On the exchange of written notifications under Article 29, 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 Colombia, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify Colombia six months in advance of any modification to its declaration.
2. Canada may not request the establishment of a review panel under Part Three at the instance of the government of a province not included in the declaration made under paragraph 1.
3. Colombia may not request the establishment of a review panel under Part Three, 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 a panel is convened pursuant to Article 13 respecting a matter within the scope of paragraph 3 of this Annex, notify Colombia in writing of whether any recommendation of a panel in a report under Article 18 or any monetary assessment imposed by a panel under Article 20(2) with respect to Canada shall be addressed to Her Majesty in right of Canada or to Her Majesty in right of the province concerned.
5. Canada shall use its best efforts to have as many of its provinces as possible agree to be added to the declaration, and therefore accept to apply the obligations of this agreement.