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**January 28, 2004**

**Chapter Sixteen**

**Labor**

**Article 16.1: Statement of Shared Commitment**

1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)*.<sup>1</sup> Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 16.8 are recognized and protected by domestic law.
2. The Parties affirm their full respect for their Constitutions. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 16.8 and shall strive to improve those standards in that light.

**Article 16.2: Enforcement of Labor Laws**

1. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
- (b) Each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.

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<sup>1</sup> The Parties recall that paragraph 5 of the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* states that labor standards should not be used for protectionist trade purposes.

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2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 16.8 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

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

**Article 16.3: Procedural Guarantees and Public Awareness**

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's domestic law.

2. Each Party shall ensure that proceedings before such tribunals for the enforcement of its labor laws are fair, equitable, and transparent and, to this end, each Party shall ensure that:

- (a) such proceedings comply with due process of law;
- (b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;
- (c) the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and
- (d) such proceedings do not entail unreasonable charges or time limits or unwarranted delays.

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

- (a) in writing and state the reasons on which the decisions are based;

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- (b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and
  - (c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.
4. Each Party shall provide, as appropriate, that parties to such proceedings have the right to seek review and, where warranted, correction of final decisions issued in such proceedings.
5. 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.
6. Each Party shall provide that the parties to such proceedings may seek remedies to ensure the enforcement of their rights under domestic labor laws. Such remedies may include measures such as orders, fines, penalties, or temporary workplace closures, as provided in the Party's domestic law.
7. Each Party shall promote public awareness of its labor laws, including by:
- (a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and
  - (b) encouraging education of the public regarding its labor laws.
8. For greater certainty, decisions or pending decisions by each Party's administrative, quasi-judicial, judicial, or labor tribunals, as well as related proceedings, shall not be subject to revision or be reopened under the provisions of this Chapter.
9. No Party may provide for a right of action under its law against another Party on the ground that the other Party has acted in a manner inconsistent with this Chapter.<sup>2</sup>

**Article 16.4: Institutional Arrangements**

1. The Parties hereby establish a Labor Affairs Council, comprising cabinet-level officials, who may be represented when necessary by their high-level designees.

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<sup>2</sup> Negotiators' Note: This paragraph will be eliminated if it is redundant with an article in Chapter 20 (Dispute Settlement), subject to legal scrub.

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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 oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation and Capacity Building Mechanism established under Article 16.5, and to pursue the labor objectives of this Agreement. Unless the Parties otherwise agree, 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 Chapter.
3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Parties, and with the public, for purposes of carrying out the work of the Council, including coordination of the Labor Cooperation and Capacity Building Mechanism. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from a person of a Party on matters related to the provisions of this Chapter, and shall make such communications available to the other Parties and, as appropriate, to the public. Each Party shall review such communications, as appropriate, in accordance with domestic procedures. The Council shall develop general guidelines for considering such communications.
4. Each Party may convene a new, or consult an existing, national labor advisory or consultative committee, comprising members of its public, including representatives of its labor and business organizations, to provide views on any issues related to this Chapter.
5. All decisions of the Council shall be taken by consensus of the Parties. All such decisions shall be made public, unless otherwise provided in this Agreement, or unless the Council decides otherwise.
6. The Council may prepare reports on matters related to the implementation of this Chapter, and shall make such reports public.

**Article 16.5: Labor Cooperation and Capacity Building**

1. Recognizing that cooperation on labor issues can play an important role in advancing development in the Parties and in providing opportunities to improve labor standards, and to further advance common commitments, including the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)* and *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999)*, the Parties establish a Labor Cooperation and Capacity Building Mechanism, as set out in Annex 16.5. The Labor Cooperation and Capacity Building Mechanism shall operate within a framework of respect for national sovereignty and the domestic requirements of each Party.

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2. For the purpose of strengthening each Party's institutional capacity to fulfill the common goals of the Agreement, the Parties shall strive to ensure that the objectives of the Labor Cooperation and Capacity Building Mechanism, and the activities undertaken through that Mechanism:

- (a) are consistent with each Party's national programs, development strategies, and priorities;
- (b) provide opportunities for public participation in the development and implementation of such objectives and activities; and
- (c) take into account each Party's economy, culture, and legal system.

**Article 16.6: Cooperative Labor Consultations**

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the contact point that the other Party has designated under Article 16.4.3.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation relating to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the appropriate contact point.<sup>3</sup>

5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting outside experts and having recourse to such procedures as good offices, conciliation, or mediation.

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<sup>3</sup> For purposes of paragraphs 4, 5, and 6, the Council shall consist of the cabinet-level officials of the consulting Parties or their high-level designees. For these purposes, "consensus of the Parties", as that term is used in Article 16.4.5, means consensus of the consulting Parties.

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6. If the matter concerns whether a Party is conforming to its obligations under Article 16.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 20.4 (Consultations) or a meeting of the Commission under Article 20.5 (Commission – Good Offices, Conciliation, and Mediation) and, as provided in Chapter Twenty (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may, as appropriate, provide information to the Commission on consultations held on the matter.
7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 16.2.1(a).
8. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 16.2.1(a) without first pursuing resolution of the matter in accordance with this Article.
9. In cases where the consulting Parties agree that a matter arising under this Chapter can be more appropriately addressed under another agreement to which the consulting Parties are party, they shall refer the matter for appropriate action in accordance with that agreement.

**Article 16.7: Labor Roster<sup>4</sup>**

1. The Parties shall establish within six months after the date of entry into force of this Agreement and maintain a roster of up to [ ] individuals who are willing and able to serve as panelists in disputes arising under Article 16.2.1(a). Unless the Parties otherwise agree, up to [ ] members of the roster shall be nationals of each Party, and up to [ ] members of the roster shall be selected from among individuals who are non-Party nationals. Labor roster members shall be appointed by consensus of the Parties and may be reappointed. Once established, a roster shall remain in effect for a minimum of three years, and shall remain in effect thereafter until the Parties constitute a new roster.
2. Labor roster members shall:
  - (a) have expertise or experience in labor law or its enforcement, international trade, or the resolution of disputes arising under international agreements;
  - (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

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<sup>4</sup> Negotiators' Note: The language of this Article should conform to the language for rosters in Chapter Twenty (Dispute Settlement).

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- (c) be independent of, and not affiliated with or take instructions from, any Party; and
- (d) comply with a code of conduct to be established by the Commission.

3. Where a Party claims that a dispute arises under Article 16.2.1(a), Article 20.\_\_(Dispute Settlement - Panel Selection) shall apply, except that the panel shall be composed entirely of panelists meeting the qualifications in paragraph 2.

**Article 16.8: Definitions**

For purposes of this Chapter:

**labor laws** means a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.

**statutes or regulations** means:

- (a) For Costa Rica, laws of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by the Executive Branch;
- (b) For El Salvador, laws of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by the Executive Branch;

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- (c) For Guatemala, laws of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by the Executive Branch;
- (d) For Honduras, laws of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by the Executive Branch;
- (e) For Nicaragua, laws of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by the Executive Branch; and
- (f) For the United States, acts of the U.S. Congress or regulations promulgated pursuant to an act of the U.S. Congress that are enforceable by action of the federal government.



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**Annex 16.5**

**Labor Cooperation and Capacity Building Mechanism**

*Organization and Principal Functions*

1. The Labor Affairs Council working through the contact point in each Party's labor ministry, shall coordinate the activities of the Labor Cooperation and Capacity Building Mechanism. A group consisting of each Party's contact point shall hold a first meeting within six months after the date of entry into force of this Agreement and thereafter as often it considers necessary.
2. The contact points, together with other appropriate agencies and ministries, shall cooperate to:
  - (a) establish priorities, with particular emphasis on those subjects identified in paragraph 3 of this Annex, for cooperation and capacity building activities on labor issues;
  - (b) develop specific cooperative activities in accordance with such priorities;
  - (c) exchange information regarding each Party's labor laws and practices, including best practices, as well as ways to strengthen them; and
  - (d) seek support, as appropriate, from international organizations such as the International Labor Organization, the Inter-American Development Bank, the World Bank, and the Organization of American States, to advance common commitments.

*Cooperation and Capacity Building Priorities*

3. Cooperative activities, whether bilateral or regional, to be undertaken by the Labor Cooperation and Capacity Building Mechanism may include, but need not be limited to, the following subjects:
  - (a) Fundamental Rights and their Effective Application: Legislation, practice and implementation related to the core elements of the *ILO Declaration on*

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*Fundamental Principles and Rights at Work and its Follow-Up (1998)* (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation);

- (b) Worst Forms of Child Labor: Legislation, practice, and implementation related to compliance with *ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999)*;
- (c) Labor Administration: Institutional capacity of labor administrations and tribunals, especially training and professionalization of human resources, including career civil service;
- (d) Labor Inspectorates and Inspection Systems: Methods and training to improve enforcement, enhance efficiencies, strengthen work inspection systems, and ensure compliance with national labor laws;
- (e) Alternative Dispute Resolution: Initiatives aimed at establishing alternative dispute resolution mechanisms for labor disputes;
- (f) Labor Relations: Forms of cooperation and dispute resolution to ensure productive labor relations among workers, employers, and governments;
- (g) Working Conditions: Mechanisms for supervising compliance with statutes or regulations pertaining to hours of work, minimum wages and overtime, occupational safety and health, and employment conditions;
- (h) Migrant workers: Dissemination of information regarding labor rights of migrant workers in the territory of each Party;
- (i) Social Assistance Programs: Human resource development and employee training, among other programs;
- (j) Labor Statistics: Timely labor market statistics that are comparable across countries;
- (k) Employment Opportunities: Systems for promoting new employment opportunities and workforce modernization;

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- (l) Gender: Gender issues including the elimination of discrimination in respect of employment and occupation;
- (m) Technical issues: Exchange of information on productivity improvement, encouragement of best labor practices, and the effective use of technologies, including those that are Internet-based; and
- (n) Such other matters as the Parties may agree.

*Implementation of Cooperation Activities*

4. The Parties may carry out cooperation activities through any form they deem appropriate, including:

- (a) Technical assistance programs, including the provision, as appropriate, of human, technical, and material resources;
- (b) Exchanges of delegations, professionals and specialists, including study visits and other technical exchanges;
- (c) Exchange of information on standards, regulations and procedures, and best practices, including the exchange of pertinent publications and monographs;
- (d) Organization of joint conferences, seminars, workshops, meetings, training sessions, and outreach and education programs;
- (e) Development of collaborative projects or demonstrations;
- (f) Joint research projects, studies, and reports, including through engagement of independent specialists with recognized expertise; and
- (g) Other forms of technical exchange or cooperation that may be decided.

*Public Participation*

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