

AGREEMENT ON LABOUR COOPERATION

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA

AND

THE GOVERNMENT OF CANADA

PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA AND THE GOVERNMENT OF CANADA:

RECALLING their resolve to:

- create an expanded and secure market for the goods produced in their territories,
- 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 other's Constitution and law;

REAFFIRMING that both countries are members of the International Labour Organisation (ILO);

ACKNOWLEDGING that technical cooperation on labour matters ensures that in the context of a strategy for economic and social development, economic and social policies are mutually reinforcing components of sustainable development;

RECOGNIZING that differences exist in their respective levels of development and sizes of their economies;

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

HAVE AGREED as follows:

PART ONE - OBJECTIVES

ARTICLE 1

Objectives

The objectives of this Agreement are to:

- (a) improve working conditions and living standards in each Party's territory;
- (b) promote, to the maximum extent possible, the labour principles and rights set out in Annexes 1 and 2;
- (c) encourage cooperation to promote innovation and rising levels of productivity and quality in each Party's territory;
- (d) encourage publication and exchange of information and joint studies in order to enhance understanding of the labour law and institutions in each Party's territory;
- (e) pursue cooperative labour-related activities on the basis of mutual benefit;
- (f) promote compliance with and effective enforcement by each Party of its labour law; and
- (g) foster full and open exchange of information between the Parties in regard to the application of their labour law.

PART TWO - OBLIGATIONS

ARTICLE 2

General Commitments

Affirming full respect for each Party's Constitution and labour law and recognizing the right of each Party to establish its own labour standards in its territory and to adopt or modify accordingly its labour law, and set its priorities in the execution of its labour policies, each Party shall ensure that its labour law embodies and provides protection for the labour principles and rights set out in Annexes 1 and 2.

ARTICLE 3

Scope of the Agreement

Labour law is considered to fall within the scope of this Agreement if it is directly related to the labour principles and rights set out in Annexes 1 and 2.

ARTICLE 4

Government Enforcement Action

1. Each Party shall, subject to Article 24, promote compliance with and effectively enforce its labour law through appropriate government action, such as:

- (a) appointing and training inspectors;
- (b) monitoring compliance and investigating suspected violations; and
- (c) 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 another interested person, for an investigation of an alleged violation of the Party's labour law.

ARTICLE 5

Private Action

Each Party shall ensure that persons with a legally-recognized interest under its law have appropriate access to administrative, quasi-judicial, and judicial tribunals for the enforcement of rights protected by the Party's labour law.

ARTICLE 6

Procedural Guarantees

1. Each Party shall ensure that:
 - (a) its administrative, quasi-judicial and judicial tribunal proceedings for the enforcement of its labour law are fair, equitable and transparent; and
 - (b) the tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

2. Furthermore, each Party shall provide that:
 - (a) administrative, quasi-judicial and judicial tribunal proceedings for the enforcement of its labour law 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;
 - (d) such proceedings are not unnecessarily complicated and are handled in a timely manner;
 - (e) time limits for and, if applicable, any charges related to such proceedings are reasonable;
 - (f) the parties to such proceedings may seek remedies to enforce their labour rights;
 - (g) final decisions on the merits of the case in such proceedings are:
 - (i) in writing and state the reasons on which the decisions are based;
 - (ii) made available to the parties to the proceedings in a timely manner and, consistent with applicable law, to the public; and
 - (iii) based on information or evidence in respect of which the parties were offered the opportunity to be heard; and
 - (h) parties to such proceedings have the right, as appropriate and in accordance with applicable law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

ARTICLE 7

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 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.

ARTICLE 8

Public Information

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

PART THREE - INSTITUTIONAL MECHANISMS

ARTICLE 9

Ministerial Council

1. There shall be a Ministerial Council that comprises Ministers responsible for labour affairs of the Parties or their designees. The Council shall meet from time to time and shall oversee the implementation of this Agreement and review progress under it.
2. 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.

ARTICLE 10

National Points of Contact (NPC)

Each Party shall designate an office within their governmental department responsible for labour affairs that shall serve as a point of contact with the other Party. Until a Party gives a notice of change of NPC, its NPC is that set out in Annex 7.

ARTICLE 11

Public Communications

1. Each Party shall provide for the submission and receipt and periodically make available a list of public communications on labour law matters that:
 - (a) are raised by a national of the Party or an entity that is established in the territory of the Party;
 - (b) arise in the territory of the other Party; and
 - (c) pertain to obligations under this Agreement.
2. Each Party shall review such matters, as appropriate, in accordance with domestic procedures.

ARTICLE 12

Cooperative Activities

1. The Parties may develop programs of cooperative activities to promote the achievement of the objectives of this Agreement. An indicative list of areas of possible cooperation between the Parties is set out in Annex 3 to this Agreement.
2. In carrying out the cooperative activities, the Parties may, commensurate with the availability of resources of each Party, cooperate through:
 - (a) seminars, training sessions, working groups and conferences;
 - (b) joint research projects, including sector studies;
 - (c) technical assistance; and
 - (d) other means to which the Parties may agree.
3. The Parties shall carry out the cooperative activities with due regard for the economic, social, cultural and legislative differences between them.

ARTICLE 13

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, including through cooperation, consultations and the exchange of information, to address any matter that might affect its operation.

PART FOUR - REVIEW OF EFFECTIVE ENFORCEMENT

ARTICLE 14

Ministerial Consultations

1. In the event that either Party has a concern regarding the other Party's effective enforcement of its labour law directly related to principles and rights set out in Annex 1, that Party may request in writing consultations with the other Party at the ministerial level. The Party that is the object of the request shall respond in a timely manner.
2. The Party that made the request shall provide the other Party with any publicly-available information in its possession that would allow a full examination of the matters underlying the concern.
3. Ministerial consultations shall be concluded no later than 180 days after the request unless both Parties agree to another date.

ARTICLE 15

Review Panel

1. A Party may request that a Review Panel be convened if the Party considers that:
 - (a) there is a persistent pattern of failure by the other Party to effectively enforce its labour law directly related to principles and rights set out in Annex 1;
 - (b) the matter has not been satisfactorily addressed through ministerial consultations;
 - (c) the matter is trade-related; and
 - (d) the matter is covered by mutually-recognized labour law.
2. Unless otherwise agreed by the Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Part.

ARTICLE 16

Panelists

1. A Review Panel shall comprise three panelists.
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 and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with the procedures set out in Annex 6 that were used to select the panelist who was removed. The time limits shall run from the date of their agreement to remove the panelist.
 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 17

Panel Selection Procedures

Panelists shall be selected in accordance with the procedures set out in Annex 6.

ARTICLE 18

Rules of Procedure

The review shall be conducted in accordance with the procedures set out in Annex 6.

ARTICLE 19

Information for the Review Panel

The Review Panel may consider written submissions or any information from organisations, institutions and persons with relevant information or expertise.

ARTICLE 20

Initial Report

1. Unless the Parties otherwise agree, the Review Panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 19.
2. Unless the Parties otherwise agree, the panel shall, within 180 days after the last panelist is selected, present to the Parties an initial report containing:
 - (a) findings of fact;

- (b) its determination as to whether the matter is trade-related and covered by mutually-recognized labour law;
 - (c) in the event of a positive determination under subparagraph (b), its determination as to whether there has been a persistent pattern of failure by the Party that is the object of the request to effectively enforce its labour law directly related to principles and rights set out in Annex 1 or any other determination requested in the terms of reference; and
 - (d) in the event the panel makes an affirmative determination under subparagraph (c), its recommendations, if any, for addressing the matter.
3. For greater certainty, the recommendations shall take into account the existing differences in the level of development and size of the economies of the Parties.
4. Panelists may furnish separate opinions on matters that are not the subject of unanimous agreement.
5. Either Party may submit written comments to the panel on its initial report within 45 days of presentation of the report.
6. After considering such written comments, the panel, on its own initiative or on the request of either Party, may:
- (a) request the views of the Parties;
 - (b) reconsider its report; and
 - (c) make any further examination that it considers appropriate.

ARTICLE 21

Final Report

1. The Review Panel shall present to the Ministers responsible for labour affairs of both Parties a final report, including any separate opinions on matters not unanimously agreed to, within 90 days of the presentation of the initial report, unless the Parties agree to make it available at another date.
2. The Parties shall make the final report available to the public in the three official languages 120 days after it is transmitted to the Ministers.

ARTICLE 22

Implementation of Final Report

If, in its final report, a Review Panel determines that there has been a persistent pattern of failure by the Party that was the object of the request to effectively enforce its labour law directly related to the principles and rights set out in Annex 1, that Party shall make best efforts to remedy the pattern of failure, including by responding positively to the recommendations of the panel.

ARTICLE 23

Review of Implementation

1. On the second anniversary of the publication of the final report of the Review Panel, the Party that made the request for the establishment of the panel may request that the panel be reconvened to review the implementation of the recommendations. If the original panel cannot be reconvened, the Party may request that another panel be convened in its place.
2. Where a panel has been reconvened or convened under paragraph 1, it shall determine whether the persistent pattern of failure to effectively enforce its labour law directly related to principles and rights set out in Annex 1 has been remedied.
3. The panel shall present to the Ministers responsible for labour affairs its follow-up report within 90 days of being convened.
4. The Parties shall make the follow-up report available to the public in the three official languages 120 days after it is transmitted to the Ministers.
5. If the panel determines that the Party that was the object of the request has not remedied its persistent pattern of failure to effectively enforce its labour law directly related to principles and rights set out in Annex 1, the Party that made the request may take reasonable and appropriate measures, exclusive of fines or any measure affecting trade, but including the modification of cooperative activities pursuant to Article 12, to encourage the other Party to remedy that persistent pattern, in keeping with the panel's determinations and recommendations.

PART FIVE - GENERAL PROVISIONS

ARTICLE 24

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 25

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 26

Security of Domestic Procedures

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

ARTICLE 27

Protection of Information

1. A Party that receives confidential or proprietary information from the other Party shall keep such information as confidential or proprietary as permitted by its domestic law.
2. Confidential or proprietary information provided by a Party to a Review Panel under this Agreement shall be treated in accordance with the Model Rules of Procedure.

ARTICLE 28

Cooperation with International and Regional Organisations

The Parties may, as appropriate, draw on the expertise and resources of competent international and regional organisations to enhance their cooperation.

ARTICLE 29

Extent of Obligations

Each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement in its territory in accordance with Annex 4.

ARTICLE 30

Definitions

For purposes of this Agreement:

A Party has not failed to “**effectively enforce its labour law**” or comply with Article 4 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;

"**labour law**" includes jurisprudence, laws and regulations directly related to the labour principles and rights set out in Annexes 1 and 2;

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

"**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;

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

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

"**territory**" means, for a Party, the territory of that Party as set out in Annex 5; and

"trade-related" means related to a situation in a Party involving workplaces, firms, companies or sectors that produce goods:

- (a) traded between the territories of the Parties; or
- (b) that compete, in the territory of that Party, with goods produced by persons of the other Party.

PART SIX - FINAL PROVISIONS

ARTICLE 31

Annexes

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

ARTICLE 32

Official Languages

The official languages for the purposes of this Agreement shall be English, French and Spanish. The Parties shall, no later than one year after the entry into force of this Agreement, establish rules and procedures regarding interpretation and translation.

ARTICLE 33

Entry into Force

This Agreement shall enter into force following an exchange of written notifications certifying the completion of necessary legal procedures. The Parties agree on the desirability of an exchange of such notifications by January 1, 2002.

ARTICLE 34

Amendments

1. The Parties may agree on any amendment to this Agreement.
2. 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 35

Termination

Either Party may terminate this Agreement by giving written notice to the other Party. Such termination shall take effect 180 days after the date of receipt of the written notice.

ARTICLE 36

Authentic Texts

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

ANNEX 1 - FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

The Parties are committed to respecting and promoting the principles and rights recognized in the ILO *Declaration on Fundamental Principles and Rights at Work*. The Parties shall reflect these in their laws, regulations, procedures and practices:

- freedom of association and protection of the right to organize;
- the right to bargain collectively;
- the right to strike;
- prohibition of forced labour;
- labour protections for children and young persons;
- elimination of discrimination; and
- equal pay for women and men.

ANNEX 2 - ADDITIONAL LABOUR PRINCIPLES AND RIGHTS

The following are the guiding principles and rights 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 cover broad areas of concern where the Parties have developed, each in its own way, jurisprudence, laws, regulations, procedures and practices that protect the rights and interests of their respective workers:

- minimum employment standards;
- prevention of occupational injuries and illnesses; and
- compensation in cases of occupational injuries or illnesses.

ANNEX 3 - COOPERATIVE ACTIVITIES

The Parties have established the following indicative list of areas for cooperative activities that they may develop pursuant to Article 12:

- (a) strengthen the institutional capacity of the governmental departments responsible for labour affairs particularly in regard to information statistics, studies and research;
- (b) strengthen and modernize labour inspectorates, by providing them with the appropriate normative frameworks, as well as the structures, functions and means for effective performance;
- (c) strengthen the departments and bodies with jurisdiction over social security matters, particularly those responsible for the administration of policies and programs for working women, persons with disabilities and the protection of young persons at work; and
- (d) modernize systems for alternative dispute resolution as well as for the mediation and conciliation of individual and collective labour conflicts, by providing Parties to such conflicts with timely proceedings and trained staff.

ANNEX 4 – EXTENT OF OBLIGATIONS

1. On the date of signature of this Agreement, or of the exchange of written notifications under Article 33, 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 Costa Rica, and shall carry no implication as to the internal distribution of powers within Canada. Canada shall notify Costa Rica 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 National Point of Contact shall identify the province of the residence or establishment of the author of any communication regarding the labour law of Costa Rica that it forwards to the Costa Rican National Point of Contact. The Costa Rican National Point of Contact may choose not to respond if that province is not included in the declaration made under paragraph 1.
3. Canada may not request consultations, or the establishment of a Review Panel, under Part Four at the instance, or primarily for the benefit, of the government of a province not included in the declaration made under paragraph 1.
4. Canada may not request consultations, or the establishment of a panel, under Part Four, unless Canada states in writing that the matter would be under federal jurisdiction if it were to arise within the territory of Canada, or:
 - (a) Canada states in writing that the matter would be under provincial jurisdiction if it were to arise within the territory of Canada; and
 - (b) the federal government and the provinces included in the declaration account for at least 35 percent of Canada's labour force for the most recent year in which data are available; and
 - (c) 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. Costa Rica may not request consultations, or the establishment of a panel, under Part Four, concerning a matter related to a labour 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 a panel is convened pursuant to Article 15 respecting a matter within the scope of paragraph 5 of this Annex, notify Costa Rica in writing of whether any recommendation of a panel in a report under Article 21 with respect to 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 this Agreement applicable to as many of its provinces as possible.

ANNEX 5 - COUNTRY-SPECIFIC DEFINITIONS

For purposes of this Agreement:

"national" means:

- (a) with respect to Canada, a citizen of Canada within the meaning of the *Citizenship Act, R.S.C. 1985, c. C-29* or a permanent resident within the meaning of the *Immigration Act, R.S.C. 1985, c. I-2*; and
- (b) with respect to Costa Rica:
 - (i) Costa Ricans by birth, according to Article 13 of the Political Constitution of the Republic of Costa Rica;
 - (ii) Costa Ricans by naturalization, according to Article 14 of the Political Constitution of the Republic of Costa Rica; or
 - (iii) a person that, according to Costa Rican legislation, is a permanent resident of Costa Rica.

"territory" means:

- (a) 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; and
- (b) with respect to Costa Rica, the territory and air space, and the maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which it exercises, in accordance with international law and its domestic law, sovereign rights with respect to the natural resources of such areas.

ANNEX 6 - 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 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 the 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 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 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 panelists shall select the chairperson, by agreement or by lot, from among the three or six individuals.

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 Four. The Model Rules will include a code of conduct for the purposes of Article 16 and rules for the protection of information under Article 27.
3. Expenses for each set of panel proceedings pursuant to Articles 15 to 23 shall be paid by the Party requesting the panel unless the Parties agree to establish a joint fund for the purpose of supporting panel proceedings.

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 there has been a persistent pattern of failure by the Party that was the object of the request to effectively enforce its labour law directly related to principles and rights set out in Annex 1, and to make findings, determinations and recommendations in accordance with paragraph 2 of Article 20."

ANNEX 7 - NATIONAL POINTS OF CONTACT

The Canadian National Point of Contact is:

Director
Office for Inter-American Labour Cooperation
Labour Program
Human Resources Development Canada
Phase II, Place du Portage
8th floor
165, Hôtel de Ville Street
Hull, Québec
Canada

Mailing Address:

Director
Office for Inter-American Labour Cooperation
Phase II, Place du Portage
165, Hôtel de Ville Street
Ottawa, Ontario
Canada K1A 0J2

Tel.: (819) 953-8860

Fax: (819) 953-8494

The Costa Rican National Point of Contact is:

Oficina de Asuntos Internacionales
Departamento Legal
Ministerio de Trabajo y Seguridad Social
Barrio Tournón, Edificio Presbítero Benjamín Nuñez
San José, Costa Rica

Tel: (506) 233-0216

Fax: (506) 222-8085