

Canada-Korea Free Trade Agreement entered into force on 1 January 2015

Preamble

Canada (“Canada”) and the Republic of Korea (“Korea”), hereinafter referred to as “the Parties”, resolved to:

Strengthen the special bonds of friendship and cooperation among their peoples;

Contribute to the harmonious development and expansion of world and regional trade and to provide a catalyst to broader international cooperation;

Build on their respective rights and obligations under the WTO Agreement and other multilateral, regional, and bilateral instruments of cooperation to which both Parties are party;

Promote regional integration in the Asia-Pacific region;

Create an expanded and secure market for the goods and services in their territories, as well as new employment opportunities and improve working conditions and living standards in their respective territories;

Recognise that the promotion and the protection of investments of investors of a Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity;

Reduce distortions to trade;

Establish clear, transparent, and mutually advantageous rules to govern their trade;

Ensure a predictable commercial framework for business planning and investment;

Enhance the competitiveness of their enterprises in global markets;

Undertake each of the preceding in a manner that is consistent with environmental protection and conservation, reflecting their desire to enhance the enforcement of environmental laws and regulations, and strengthen cooperation on environmental matters;

Protect, enhance, and enforce basic workers’ rights, and strengthen cooperation on labour matters;

Promote sustainable development;

Preserve their flexibility to safeguard the public welfare;

Promote cultural cooperation and recognise that the Parties have the right to preserve, develop, and implement their cultural policies and to support their cultural industries for the purpose of strengthening the diversity of cultural expressions; and

Affirm their commitment to respect the values and principles of democracy and to protect and promote human rights and fundamental freedoms identified in the Universal Declaration of Human Rights;

Have agreed as follows:

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CHAPTER EIGHTEEN LABOUR

Article 18.1: Statement of Shared Commitments

The Parties affirm their obligations as members of the International Labour Organization (hereinafter referred to as the “ILO”), including those in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (hereinafter referred to as the “ILO Declaration”).

Section A – Obligations

Article 18.2: General Obligations

Affirming full respect for each Party's Constitution and labour law and recognising the right of each Party to establish its own labour standards in its territory, 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 principles concerning the following internationally recognised labour rights¹:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
 - (b) the elimination of all forms of forced or compulsory labour;
 - (c) the effective abolition of child labour and a prohibition on the worst forms of child labour;
 - (d) the elimination of discrimination in respect of employment and occupation;
 - (e) acceptable minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements;
 - (f) the prevention of occupational injuries and illnesses;
 - (g) compensation in cases of occupational injuries or illnesses;
- and
- (h) non-discrimination in respect of working conditions for migrant workers.

Article 18.3: Non-derogation

A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, that Party's labour law implementing Article 18.2 in a matter related to trade or investment, if the waiver or derogation would be inconsistent with the rights set out in that Article.

Article 18.4: Government Enforcement Action²

1. Each Party shall effectively enforce its labour law through appropriate government action, such as:

- (a) appointing and training inspectors;
 - (b) monitoring compliance and investigating suspected violations;
 - (c) requiring record keeping and reporting;
 - (d) encouraging the establishment of worker-management committees to address labour regulation of the workplace;
 - (e) providing or encouraging mediation, conciliation and arbitration services;
- and
- (f) 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 that Party's domestic law, to a 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.

¹ To establish a violation of an obligation under this Article, a Party must demonstrate that the other Party has failed to ensure its labour law embodies and provides protection for the principles concerning the internationally-recognised labour rights referred to in this Article in a matter related to trade or investment.

² To establish a violation under this Article, a Party must demonstrate that the other Party has failed to effectively enforce its labour law through a sustained or recurring course of action or inaction in a matter related to trade or investment, and that the matter of dispute is covered by mutually-recognised labour law.

Article 18.5: Private Action

Each Party shall ensure that a person with a legally-recognised interest under that Party's domestic law has appropriate access to proceedings before a tribunal that can:

(a) enforce the Party's labour law and give effect to such person's labour rights;
and

(b) remedy breaches of the Party's labour law or rights.

Article 18.6: Procedural Guarantees

1. Each Party shall ensure that investigations or proceedings referred to in Articles 18. 4.1(b), 18.4.1(f), and 18.5:

(a) are fair, equitable and transparent and to this end that they comply with the due process of law;

(b) are open to the public except if it is not appropriate for the proper administration of these proceedings;

and

(c) do not entail unreasonable fees, delays or time limits.

2. Each Party shall provide that final decisions on the merits of the case in proceedings referred to in paragraph 1 are in writing, preferably state the reasons on which the decisions are based, and are made available to the parties to the proceedings in a timely manner and, in accordance with its domestic law, to the public.

3. Each Party shall provide that parties to those proceedings have the right, as appropriate and in accordance with applicable domestic law, to seek review in accordance with due process and, if warranted, correction of decisions issued in those proceedings.

Article 18.7: Public Information

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

Section B - Institutional Mechanisms

Article 18.8: Labour Ministerial Council

1. The Parties hereby establish a Labour Ministerial Council composed 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, and to oversee the implementation of and review progress under this Chapter.

3. The Council may consider any matter within the scope of this Chapter and take such other action in the exercise of its functions as the Parties may agree.

4. The Council shall review the operation and effectiveness of the Chapter in the light of experience within five years after the date of entry into force of this Agreement or such other period as may be agreed by the Council.

Article 18.9: National Points of Contact

Each Party shall designate an office within their governmental department responsible for labour affairs that shall serve as a national point of contact (hereinafter referred to as the "NPC") and provide to the other Party its contact information by diplomatic note.

Article 18.10: 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 Section A.
2. Each Party shall review such matters, as appropriate, in accordance with domestic procedures pursuant to Annex 18-B.

Article 18.11: Cooperative Activities

The Parties may initiate cooperative labour activities for the promotion of the objectives of this Chapter, enhancement of workers' welfare and the promotion of better understanding by each Party of the other Party's labour system, as set out in Annex 18-A.

Article 18.12: General Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter.
2. A Party may request consultations with the other Party regarding obligations under this Chapter by delivering a written request to the NPC of the other Party. The Parties shall make every attempt, including through cooperation, consultations and the exchange of information, to address a matter that might affect its operation.
3. If the Parties are unable to resolve the matter, the requesting Party may use the procedures provided under Article 18.13.

Section C - Procedures for Review of Obligations

Article 18.13: Labour Consultations

1. A Party may request in writing consultations with the other Party at the ministerial level to discuss matters related to obligations in Section A. The Party that is subject to the request shall respond within 60 days.
2. Each Party shall provide the other Party with sufficient information under its control to allow a full examination of the matters raised, subject to a requirement in its domestic law regarding confidentiality of personal and commercial information.
3. To facilitate discussion of the matters under consideration, either Party may call upon one or more independent experts to prepare a report, which shall be made public within 90 days of its receipt by the Ministers. The Parties shall make every effort to agree upon selection of the expert or experts and shall cooperate with the expert or experts in the preparation of the report.
4. Labour consultations shall be concluded no later than 180 days after the request unless the Parties otherwise agree.

Article 18.14: Review Panel³⁴

³ Recognising the principle of reciprocity, prior to the request for a Review Panel, each Party shall consider whether the obligations under this Chapter apply to a reasonably meaningful portion of its own labour force in its own territory.

⁴ A Party should resort to dispute settlement under this Article only in cases with merit that are related to trade or investment.

1. Following the conclusion of labour consultations, the Party that requested the consultations may request that a Review Panel be convened if it considers that:
 - (a) the other Party has failed to comply with its obligations under Section A;and
 - (b) the matter has not been satisfactorily addressed through labour consultations.
2. Unless otherwise agreed by the Parties, the Review Panel shall be established and perform its functions in a manner consistent with this Section.
3. The Review Panel shall determine, within 30 days after the last panellist is selected, whether the matter is related to trade or investment and shall cease its functions if it determines that the matter is not related to trade or investment.
4. The review shall be conducted in accordance with the procedures set out in Annex 18-D.

Article 18.15: Panellists

1. A Review Panel shall be composed of three panellists.
2. Panellists 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 the Code of Conduct set out in Annex 21-B (Code of Conduct for Members of Panels) which applies *mutatis mutandis*.
3. If either Party believes that a panellist is in violation of the code of conduct, the Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with the procedures set out in Annex 18-D that were used to select the panellist who was removed. The time limits shall run from the date of their agreement to remove the panellist.
4. Individuals shall not serve as panellists with respect to a review in which they have, or a person or organisation with which they are affiliated has, an interest.
5. The chairperson shall not be a national of either Party.
6. Panellists shall be selected in accordance with the procedures set out in Annex 18-D

Article 18.16: Information for the Review Panel

1. The Parties shall be entitled to make written and oral submissions to the Review Panel in accordance with the relevant provisions of Annex 21-C (Model Rules of Procedure) which apply *mutatis mutandis*.
2. The Review 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.

Article 18.17: 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 information before it pursuant to Article 18.16.
2. Unless the Parties otherwise agree, the Review Panel shall, within 180 days after the last panellist is selected, issue to the Parties an initial report containing:
 - (a) findings of fact;
 - (b) its determination as to whether the Party that is subject to the request has failed to comply with its obligations under Section A or any other determination requested in the terms of reference;

and

(c) its recommendations, if any, for addressing the matter.

3. Panellists may furnish separate opinions on matters that are not the subject of unanimous agreement. The Review Panel, however, shall not disclose which panellists are associated with majority or minority opinions.

4. Either Party may submit written comments to the Review Panel on its initial report within 45 days of presentation of the report.

5. After considering such written comments, the Review 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 18.18: Final Report

1. The Review Panel shall issue to the Parties a final report, including any separate opinions on matters not unanimously agreed to, within 90 days of the issuance of the initial report, unless the Parties otherwise agree.

2. The Parties shall make the final report available to the public within 120 days after it is issued to the Parties.

3. If, in the final report, the Review Panel determines that the Party that was subject to the request has failed to comply with its obligations under Section A, the Parties may develop, within the following 90 days or such longer period as they may decide, a mutually satisfactory action plan to implement the Review Panel's recommendations.

4. Following the expiry of the period pursuant to paragraph 3, if the Parties are unable to decide on an action plan or the Party that was subject to the request is failing to implement the action plan according to its terms, the requesting Party may request in writing that the Review Panel be reconvened with a view to determining whether a monetary assessment needs to be set and paid in accordance with Annex 18-E.

Section D - General Provisions

Article 18.19: Enforcement Principle

This Chapter is not to be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party.

Article 18.20: Private Rights

A Party shall not 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 Chapter.

Article 18.21: Security of Domestic Procedures

The decisions by each Party's tribunals, or pending decisions, as well as related proceedings, shall not be subject to revision or be reopened under this Chapter.

Article 18.22: 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. Confidential or proprietary information provided to the Review Panel under this Chapter shall be treated in accordance with paragraph 32 of Annex 21-C (Confidentiality) which applies *mutatis mutandis*.

Article 18.23: Cooperation with International and Regional Organisations

The Parties may, as appropriate and by agreement, seek the assistance of the International Labour Office or any other competent international and regional organisation that has the necessary expertise and resources to enhance cooperation under this Chapter.

Article 18.24: Dispute Settlement

A Party shall not have recourse to Chapter Twenty-One (Dispute Settlement) for any matter arising under this Chapter, except as otherwise provided in this Chapter.

Article 18.25: Definitions

For the purposes of this Chapter:

due process means that proceedings are conducted by decision-makers who are impartial and independent and do not have an interest in the outcome of the matter, that the parties to the proceedings are entitled to support or defend their respective positions and to present information or evidence, and that the decision is based on such information or evidence;

forced or compulsory labour does not include compulsory military service, certain civic obligations, prison labour not for private purposes and work exacted in cases of emergency;

labour law means laws, regulations, and, where applicable, jurisprudence that implement and protect the labour principles and rights set out in Article 18.2;

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

person means a natural person, an enterprise, or an organisation of employers or workers.

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