

## **TENTH PROTOCOL OF AMENDMENT**

The undersigned, Parties to the Agreement on Internal Trade, hereby agree to make the following additions, revisions and corrections to the Agreement on Internal Trade.

Note: All changes relate to both the English and French versions of the Agreement, except where noted.

### **A. DISPUTE RESOLUTION**

#### **1. Chapter Seventeen (Dispute Resolution Procedures)**

1.1 Replace the Chapter with the new Chapter Seventeen that is found as Attachment 1 to this Protocol of Amendment.

#### **2. Chapter Eighteen (Final Provisions)**

2.1 Amend Annex 1813 by adding a new section at the end, as follows:

“12. Time limits imposed by this Agreement shall be calculated as follows:

##### **Time limits and holidays**

- Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

##### **Number of days between two events**

- Where there is a reference to “at least” a number of days between two events, in calculating that number of days the days on which the events happen are excluded.
- Where there is a reference to a number of days between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included.

##### **Beginning and ending of prescribed periods**

- Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

##### **After specified day**

- Where a time is expressed to begin after or to be from a specified day, the time does not include that day.

**Within a time**

- Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.”

## Chapter Seventeen

### Dispute Resolution Procedures

#### Article 1700: Cooperation

1. The Parties undertake to resolve disputes in a conciliatory, cooperative and harmonious manner.
2. The Parties shall make every attempt through cooperation, consultations and other dispute avoidance and resolution processes available to them to arrive at a mutually satisfactory resolution of any matter that may affect the operation of this Agreement.

#### Article 1701: Application and Enforcement Mechanisms

1. Subject to paragraphs 2 and 3, this Chapter applies to the avoidance and resolution of disputes between Parties, or persons and Parties, regarding the interpretation or application of this Agreement.
2. This Chapter does not apply to Annex 405.2 (*Regulatory Measures and Regulatory Regimes*), to Annex 502.3 (*Procurement for Commercial Entities*), to Annex 502.4 (*Procurement for MASH sector*), or to Annex 903.1 (*MOU re Elimination of Barriers to Trade in Agricultural Products*). With respect to paragraphs 8 and 9 of Annex 608.3 (*Incentives*), only Article 1702.1 (*Consultations*) of this Chapter applies.
3. Articles 1702.1 through 1707.5 (*Government –to-Government Dispute Resolution*) do not apply to bid protests initiated under Article 513 (*Complaint Procedures - Provinces*). Articles 1710 through 1718 (*Person-to-Government Dispute Resolution*) do not apply to bid protests initiated under Article 514 (*Bid Protest Procedures - Federal Government*). For greater certainty, a Party may not institute a bid protest procedure on behalf of a supplier under Articles 1702.1 through 1707.5 or 1710 through 1718.
4. Within eighteen months of the Effective Date, each Party shall take steps necessary to:
  - (a) ensure that any order for Tariff Costs made by a Presiding Body may be enforced in the same manner as an order for costs against the Crown in that Party's superior courts, and
  - (b) ensure that any order for monetary penalties made by a Compliance Panel may be enforced,
    - (i) in the same manner as an order against the Crown in that Party's superior courts; or

(ii) through a Standby deposited with the Secretariat.

5. Each Party shall notify the Secretariat and all other Parties of the enforcement mechanism it has put in place pursuant to Article 1701(4).

6. Eighteen months after the Effective Date, the Secretariat shall begin to report annually to the Committee on the Parties that have not filed a notification pursuant to Article 1701(5).

7. A Party that fails to comply with Article 1701(4) is subject to the application of Article 1707.3(1) and (2) (*Removal of Dispute Resolution Privileges*) until such time as it notifies the Secretariat that the required mechanism has been put in place.

## **PART A: Government-to-Government Dispute Resolution**

### **Article 1702: Transitional Provisions - Summary Panel**

1. For purposes of this Article,

**Effective Date** has the meaning ascribed to it in Article 1722 (*Definitions*).

**Pre-existing Dispute** means a dispute for which a panel report has been issued and which remains unresolved as of the Effective Date; and

**Transition Period** is the period that commences upon the Effective Date and terminates 180 days after that date.

2. During the Transition Period, a Disputing Party to a Pre-existing Dispute may request that a Summary Panel be established to determine whether or not the measure that was the subject of a Pre-existing Dispute is or would be inconsistent with this Agreement. From the day after the end of the Transition Period, resolution of any dispute regarding a measure that was the subject of a Pre-Existing Dispute must be sought under Articles 1702.1 to 1704, inclusive.

3. A Disputing Party to a Pre-existing Dispute may continue to participate in Proceedings before a Summary Panel even if it has not complied with Article 1701(4).

4. A Summary Panel shall be established in accordance with procedures set out in Article 1704 (*Establishment of Presiding Body*). Members of the Panel that heard the Pre-Existing Dispute may not be appointed to the Summary Panel.

5. All Summary Panel Proceedings shall be conducted in accordance with the provisions of Annex 1702.

#### **Article 1702.1: Consultations**

1. Subject to Article 1707.3 (*Removal of Dispute Resolution Privileges*), a Party that considers that a measure of another Party is or would be inconsistent with that

other Party's obligations under this Agreement may request consultations with that other Party by delivering written notice to that other Party, to all other Parties and to the Secretariat. The notice shall specify the actual or proposed measure complained of, the relevant provisions of this Agreement and provide a brief summary of the complaint.

2. A Party may not make a request for consultations under this Part in the case of a matter arising under Annex 608.3 (*Incentives*) if more than two years have elapsed from the date when the Party first acquired, or should have first acquired, knowledge of an incentive and knowledge that the Party had incurred injury.

3. No Party may request consultations under this Article with respect to a measure that is or has been the subject of a request for a Panel pursuant to Article 1703 until three years after whichever of the following applies:

(a) the date on which written notice of a mutually satisfactory resolution regarding that measure was filed with the Secretariat pursuant to Article 1707(3);

(b) the date of a Report regarding that measure issued pursuant to Article 1706 from which no appeal has been taken; or

(c) the date of a final decision regarding that measure following an appeal made pursuant to Article 1706.1(1).

4. Any Party that considers itself to have a substantial interest in the matter, within the meaning of Article 1703(10), may participate in the consultations by delivering written notice of its intention to participate to all other Parties and to the Secretariat within 10 days of the delivery by the Initiating Party to the Replying Party of a request made pursuant to paragraph 1.

5. The Initiating Party and Replying Party may, by agreement, request the assistance of one or more relevant working groups in resolving the dispute. A list of working groups shall be filed by the Parties with the Secretariat.

6. A request for assistance made pursuant to paragraph 5 shall be delivered in writing to each working group being requested to assist, to all Consulting Participants and to the Secretariat.

7. A working group, in giving assistance requested pursuant to paragraph 5, shall consider any matter referred to it as expeditiously as possible, particularly matters regarding perishable goods.

8. Where the matter is not resolved to the satisfaction of the Initiating Party and Replying Party within 60 days of delivery by the Initiating Party to the Replying Party of a request made pursuant to paragraph 1, the Initiating Party and Replying Party may, by agreement, request the assistance of relevant responsible Ministers or members of the Committee whose assistance they consider would be helpful in resolving the dispute.

9. A request for assistance from the Initiating Party and Replying Party made pursuant to paragraph 8 shall be delivered in writing to such Ministers or members of the Committee, to all Consulting Participants and to the Secretariat.

10. In providing assistance requested pursuant to paragraph 8, such Ministers or members of the Committee may seek the advice of technical experts, establish other working groups or fact-finding bodies, facilitate the use of conciliation, mediation and other dispute resolution mechanisms, and make recommendations.

11. Consultations shall be confidential and without prejudice to the rights of the Consulting Parties in any Proceedings.

12. The Consulting Parties shall exchange all information necessary to enable a full examination to be made of how the actual or proposed measure or other matter may affect the operation of this Agreement. In so doing, the Consulting Parties shall treat any confidential information received on the same basis as the Party providing the confidential information treats it.

#### **Article 1703: Request for Panel**

1. Where the matter in question has not been resolved to the satisfaction of the Initiating Party or to the satisfaction of a Consulting Participant, the Initiating Party, or the Initiating Party and Consulting Participant jointly, may make a written request to the Secretariat, with a copy to the Committee, to establish a Panel. No request to establish a Panel may be made sooner than 120 days after the Initiating Party delivered a request for consultations to the Replying Party pursuant to Article 1702.1(1).

2. With respect to a dispute arising under Annex 608.3 (*Incentives*), a request may not be made after 2 years from the date of delivery by the Initiating Party of a request for consultations to the Replying Party pursuant to Article 1702.1(1) without the consent of the Replying Party.

3. A request to establish a panel shall:

- (a) specify the actual or proposed measure complained of;
- (b) list the relevant provisions of this Agreement;
- (c) provide a brief summary of the complaint;
- (d) explain how the measure has impaired or would impair internal trade;  
and
- (e) identify the actual or potential injury or denial of benefit caused by the actual or proposed measure.

4. The Panel shall be established in accordance with Article 1704 and shall be composed of three members unless the Disputing Parties agree to a Panel

composed of one member.

5. Where a Complainant Party requests that a Panel be established on behalf of a person, the Complainant Party shall, at the beginning of the Panel hearing, demonstrate to the satisfaction of the Panel that it has a substantial and direct connection with that person, within the meaning of paragraphs 6, 7 or 8. If the Complainant Party fails to do so, the Panel shall immediately dismiss the complaint for lack of standing.

6. Where the Complainant Party is a Province, it shall be deemed to have a substantial and direct connection with a person if:

- (a) the person resides or carries on business in the Province;
- (b) the person has suffered an economic injury or denial of benefit; and
- (c) the consequences of that economic injury or denial of benefit are being felt in the Province.

7. With respect to disputes arising out of Chapter Seven (Labour Mobility), a Party shall also be deemed to have a substantial and direct connection with a person if the person holds an occupational or professional certificate from that Party and the person has suffered an economic injury or denial of benefit.

8. Where the complaining Party is the Federal Government, it shall be deemed to have a substantial and direct connection with a person if the person has suffered an economic injury or denial of benefit as a result of being treated inconsistently with this Agreement by reason of:

- (a) its status as a federally-constituted entity; or
- (b) its carrying on business that is a work, undertaking, business or service that is under federal regulatory authority.

9.1 Any Party that has a substantial interest in the matter in dispute within the meaning of paragraph 10, is entitled to join the Panel Proceeding as an Intervenor on delivery of written notice to all other Parties and to the Secretariat within 15 days after the date of delivery by a Complainant Party to the Secretariat of a request to establish a Panel.

9.2 A Consulting Participant, whether or not it has a substantial interest in the matter in dispute within the meaning of paragraph 10, is entitled to be added as a Complainant Party to a Panel Proceeding on delivery of written notice containing the information set out in Article 1703(3)(a) through (e) to all other Parties and to the Secretariat within 15 days after the date of delivery by a Complainant Party to the Secretariat of a request to establish a Panel. Any other Party may only be added as a Complainant Party to a Panel Proceeding if permitted to do so by the Panel.

10. A Party shall be deemed to have a substantial interest in the matter in dispute where:

- (a) the Party maintains a measure that is analogous to the one at issue; or
- (b) the Party is a Province and has a significant number of persons carrying on business in the Province who are or will be affected by the measure at issue.

**Article 1704: Establishment of Presiding Body**

1. Unless inconsistent with, or otherwise required by, provisions in this Chapter, a Presiding Body shall be established in accordance with paragraphs (2) to (8).
2. The Parties shall maintain a roster of individuals qualified in accordance with Annex 1704(2) to be panellists. The Parties shall maintain a roster of individuals qualified in accordance with Annex 1704(2) to be Appellate Panellists.
3. Within 30 days after the date of delivery by the Complaining Party to the Secretariat of a request to establish a Presiding Body, each Disputing Party shall appoint one panellist from the roster. If the Parties have agreed to a Presiding Body composed of one member, they shall agree, within the 30 days, on a panellist from the roster with administrative law experience as identified pursuant to paragraph 4 of Annex 1704(2).
4. If a Disputing Party fails to appoint a panellist within the 30 days, or, if the Parties have agreed to a Presiding Body composed of one member and the Parties fail to agree on a panellist within the 30 days, the Secretariat shall select the panellist by lot.
5. The appointed panellists shall, within 10 days after the last of them has been appointed, select the chairperson of the Presiding Body from the roster. If they are unable to agree within that period, the Secretariat shall select the chairperson by lot from the roster.
- 6.1 If neither of the panellists appointed or selected pursuant to this Article has administrative law experience as identified pursuant to paragraph 4 of Annex 1704(2), the panellists or the Secretariat, as the case may be, shall select a person with administrative law experience to be the chairperson.
- 6.2 If a Disputing Party requests that the chairperson of a Presiding Body be bilingual (French and English), the chairperson selected pursuant to the procedures set out in paragraph 5 or 6.1, as the case may be, must be bilingual (French and English).
7. Unless the Disputing Parties otherwise agree, the panellists or the Secretariat, as the case may be, shall not appoint or select as the chairperson of a Presiding Body any roster member who has been appointed to the roster by a Disputing Party, or is resident in a Disputing Party's Province.

8. Unless otherwise specified or unless the Disputing Parties otherwise agree, the terms of reference for a Presiding Body shall be to examine whether the actual or proposed measure or other matter at issue is or would be inconsistent with this Agreement.

**Article 1705: Presiding Body Rules of Procedure**

1. The Panel, Compliance Panel and Appellate Panel Rules of Procedure in Annex 1705(1) shall apply to all Proceedings unless modified, where appropriate, by a Presiding Body.

2. A Presiding Body may seek information and expert advice from any person or body that it considers appropriate, provided that the Participating Parties so agree and subject to the following and to such other terms and conditions as the Participating Parties may agree:

(a) If a procedural question arises, the Presiding Body shall first seek advice from the Participating Parties. If the procedural question is not resolved to the satisfaction of the Presiding Body, the Presiding Body may request that the Secretariat obtain independent legal advice on the procedural question.

(b) A request pursuant to paragraph (a) shall be in writing to the Secretariat, with copies to the Participating Parties, and shall outline the procedural question on which advice is sought. The Secretariat shall retain appropriate counsel and transmit the advice immediately to the Presiding Body, with copies to the Participating Parties.

3. All Proceedings before a Presiding Body shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit.

4. The Parties shall make every effort to avoid parallel Proceedings regarding the same measure. Should multiplicity of Proceedings become an issue, any Party may refer the matter to the Committee for consideration and action.

**Article 1706: Report of Panel**

1. The Panel shall issue a Report based on the submissions of the Disputing Parties and any other information received during the course of the Proceeding.

2. If the Panel cannot release its final Report within the period stipulated in Rule 39 of Annex 1705(1), it does not lose jurisdiction and shall inform the Participating Parties in writing of the reasons for the delay together with an estimate of the date by which it will issue its Report.

3. The Report shall contain:

(a) findings of fact;

- (b) a determination, with reasons, as to whether the measure in question is or would be inconsistent with this Agreement;
  - (c) if an affirmative determination has been made under (b), a determination, with reasons, as to whether the measure has impaired or would impair internal trade and has caused or would cause injury;
  - (d) recommendations, if requested by a Disputing Party, to assist in resolving the dispute;
  - (e) where applicable, and at the discretion of the Panel, a stipulation of the period within which the Complaint Recipient must comply with this Agreement, and
  - (f) a determination as to apportionment of Operational Costs as provided in Annex 1705(1) (*Rules of Procedure*).
4. The Panel retains jurisdiction for the purpose of assessing a cost order after it issues its Report, and may at the request of a Disputing Party or on its own initiative, make an order for Operational Costs specifying the amount payable by a Participating Party to the Secretariat.
5. Within 10 days after the receipt of the Report, any Participating Party may, with notice to the chairperson of the Panel, the Secretariat and all other Participating Parties, request that the Panel:
- (a) clarify one or more aspects of its Report, in which case the Panel shall, within 15 days of receipt of the notice, provide the clarification; or
  - (b) correct in its Report any errors in computation or translation, any clerical or typographical errors, or any errors of a similar nature, in which case the Panel may, within 15 days of receipt of the notice, make such corrections as it considers appropriate.

**Article 1706.1: Appellate Panel: Jurisdiction and Process**

1. A Disputing Party may appeal a Panel Report to an Appellate Panel on the grounds that the Panel erred in law, failed to observe a principle of natural justice or acted beyond or refused to exercise its jurisdiction. An Intervenor may not appeal a Panel Report.
2. Where a Disputing Party provides a notice of appeal as provided in Annex 1705.1, an Appellate Panel shall be established in accordance with Article 1704 (*Establishment of Presiding Body*) and, notwithstanding Article 1704(3), shall be composed of three members.
3. Upon receipt by the Secretariat of a notice of appeal, any requirement for a Complaint Recipient to comply with this Agreement within a stipulated time or to pay Operational Costs is suspended until such time as the appeal, and any subsequent re-hearing by the Panel that may be required, are concluded.

4. The Appellate Panel shall, on the completion of the hearing, issue a report with reasons which:
  - (a) may confirm, vary, rescind, or substitute the Report of the Panel in whole or in part, or refer the matter back to the Panel for re-hearing; and
  - (b) shall award Operational Costs in accordance with Rule 47, and may, in its discretion, award Tariff Costs in which case they shall be made in accordance with Rules 48 and 49, of Annex 1705(1).
5. If the Appellate Panel cannot release its final report within the period stipulated in Rule 46 of Annex 1705(1), it does not lose jurisdiction and shall inform the Parties in writing of the reasons for the delay together with an estimate of the date by which it will issue its decision.
6. The Appellate Panel retains jurisdiction for the purposes of assessing an Operational Costs or Tariff Costs order after it issues its decision, and may, at the request of a Disputing Party or on its own initiative, order Operational Costs or Tariff Costs to be paid, specifying the amount payable by a Participating Party, and to whom it is payable.
7. If a matter is not referred back for re-hearing, the Appellate Report is deemed to be a Panel Report for purposes of determining compliance under Articles 1707(9) to 1707(14) (*Compliance Panel Process*) or matters under Article 1709 (*Retaliatory Action*), together with those parts of the Panel Report which have not been superseded by the Appellate Report.
8. If an Appellate Panel refers a matter back to the Panel for re-hearing, the Secretariat shall fix a date to reconvene the Panel forthwith.
9. Within 10 days after receipt of the Appellate Report, any Appellant or Respondent may, with notice to the Secretariat and all other Appellants and Respondents, request that the Appellate Panel:
  - (a) clarify one or more aspects of its report, in which case the Appellate Panel shall, within 15 days of receipt of the notice, provide the clarification; or
  - (b) correct in its report any errors in computation or translation, any clerical or typographical errors, or any errors of a similar nature, in which case the Appellate Panel may, within 15 days of receipt of the notice, make such corrections as it considers appropriate.

**Article 1707: Mutually Satisfactory Resolution, Confirmation of Compliance and Request for Compliance Panel**

1. The Parties agree that the prompt resolution of disputes is for the benefit of all Parties.
2. Wherever possible, a dispute shall be resolved by removing, amending or not implementing the measure that is or would be inconsistent with this Agreement.

3. Where the Disputing Parties resolve the dispute at any stage of a Proceeding, written notice of such resolution shall be delivered to the other Parties and to the Secretariat. Upon receipt of such notification by the Secretariat, the Proceeding shall be terminated.
4. Proceedings may be suspended, either at the request of the Disputing Parties or by order of the Presiding Body, in order to negotiate a mutually satisfactory resolution.
5. Where a Proceeding has been suspended pursuant to Article 1707(4), if no Disputing Party has made an application to end the suspension within 36 months of the date of suspension, the complaint that initiated the Proceeding is deemed to have been withdrawn and the Proceeding shall be terminated.
6. After a Panel has determined in a Report that a Complaint Recipient has not complied with this Agreement, the Complaint Recipient may notify the Complaining Party that the Complaint Recipient has complied with the Agreement in respect of the matters addressed in the Report. Such notice shall be in writing, shall include a description of the manner of such compliance, and shall be delivered to the Complaining Party, to all other Participating Parties and to the Secretariat.
7. A Complaining Party may, within 30 days of delivery to it of the notice pursuant to Article 1707(6), object to the notice. Such objection shall be in writing, shall include a description of the reasons for its objection, and shall be delivered to the Complaint Recipient, to all other Participating Parties and to the Secretariat.
8. Where no objection has been delivered pursuant to Article 1707(7), a Party that provides notice pursuant to Article 1707(6) is deemed to have complied with the Agreement in respect of the matters addressed in the Report.
9. Upon the expiry of one year following the issuance of a Report, or, where applicable, upon the expiry of an alternate implementation period stipulated by the Panel in its Report, a Disputing Party may request that the Secretariat reconvene the Panel as a Compliance Panel to make a determination as to whether the Complaint Recipient has complied with this Agreement in respect of the matters addressed in the Report.
10. Notwithstanding Article 1707(9), a Complaint Recipient may request a Compliance Panel immediately upon the delivery by the Complaining Party to the Complaint Recipient of an objection made pursuant to Article 1707(7).
11. The Compliance Panel shall issue a Compliance Report containing:
  - (a) a determination on whether or not the Complaint Recipient has, with regard to the matter in dispute, brought itself into compliance with this Agreement;
  - (b) where the determination is that there has not been compliance, a monetary penalty order made in accordance with Articles 1707.1(1) and (2), and, where there is more than one Complaining Party, the amount of the monetary penalty payable by the Complaint Recipient to each;

- (c) at the discretion of the Compliance Panel, an order apportioning Operational Costs, as provided for in Rules 54 to 57 of Annex 1705(1); and
- (d) if an order for a monetary penalty has been made, a form of order that
  - (i) is enforceable in the same manner as an order against the Crown in the superior court of a Party against whom the order is made; or
  - (ii) the Secretariat will rely on when, in accordance with Rule 10.3 of Annex 1705(1), it demands payment by a financial institution having provided a Standby on behalf of a Party against whom the order is made.

12. The Compliance Panel retains jurisdiction for the purposes of assessing an Operational Costs order after it issues its Compliance Report, and may, at the request of a Disputing Party or on its own initiative, make an order for Operational Costs specifying the amount payable by a Participating Party to the Secretariat.

13. Within 10 days after receipt of the Compliance Report, a Disputing Party, with notice to the chairperson of the Compliance Panel, the Secretariat and all other Disputing Parties, may request that the Compliance Panel:

- (a) clarify one or more aspects of its Compliance Report, in which case the Compliance Panel shall, within 15 days of receipt of the notice, provide the clarification; or
- (b) correct in the Compliance Report any errors in computation or translation, any clerical or typographical errors, or any errors of a similar nature, in which case the Compliance Panel may, within 15 days of receipt of the notice, make such corrections as it considers appropriate.

14. If the Compliance Panel cannot release its final report within the period mentioned in Rule 50.5 of Annex 1705(1), it does not lose jurisdiction and shall inform the Participating Parties in writing of the reasons for the delay together with an estimate of the date by which it will issue its report.

#### **Article 1707.1: Monetary Penalty**

1. In determining the amount of a monetary penalty, the Compliance Panel shall be guided by the primary purpose of a monetary penalty which is to encourage compliance with this Agreement, and the Compliance Panel shall also consider:

- (a) the seriousness of the inconsistency with the Complaint Recipient's obligations under the Agreement;
- (b) the magnitude of the impact of the inconsistency on the market or markets;
- (c) where the Complaint Recipient has previously been found by a Presiding Body in a Proceeding not to have been compliant with this Agreement, whether the complaint has been resolved or remains outstanding;

- (d) whether the Complaint Recipient has made efforts, in good faith, to comply with the Agreement in respect of the matters addressed in the Report before the Compliance Panel; and
- (e) any other factor the Compliance Panel considers relevant.

2. Notwithstanding anything else in this Part, the amount of a monetary penalty ordered against a Complaint Recipient shall not exceed the maximum amount set out for such Party in Annex 1707.1(2). If there are two or more Complaining Parties in a Proceeding, the monetary penalty shall be allocated among them in amounts determined by the Compliance Panel.

**Article 1707.2: Enforcement of Monetary Penalty Order and Tariff Costs Order**

1. Where a Compliance Panel has made an order for a monetary penalty, the monetary penalty is immediately due and payable. The Complaint Recipient shall pay a Complaining Party the amount stated in the order to be paid by the Complaint Recipient to the Complaining Party, and shall confirm in writing to the Secretariat when it has done so.

2. Where the Complaint Recipient is a Party that has implemented the enforcement mechanism for monetary penalties referred to in Article 1701(4)(b)(i) (Court Enforcement), a complaining party in whose favour a monetary penalty has been ordered shall:

- (a) promptly take such registration, filing or other action as is required by the legislation and administrative practice of the Complaint Recipient to commence the process of enforcing the monetary penalty in the same manner as an order against the Crown in that Party's superior courts; and

- (b) immediately advise the Complaint Recipient that such action has been taken, but may not take any further action to enforce the order until 60 days after the date of the order unless the Complaint Recipient consents to further action before such time.

3. If a Complaint Recipient that has deposited a Standby with the Secretariat has not paid a monetary penalty within 60 days of the date of the monetary penalty order, the Secretariat shall demand payment in accordance with Rule 10 of Annex 1705(1).

4. Within 20 days of receiving notice pursuant to Rule 10 of Annex 1705(1) that its Standby has been drawn upon, a Complaint Recipient shall replenish the Standby and deposit with the Secretariat written confirmation signed by the Complaint Recipient's financial institution and addressed to the Secretariat that the Standby has been replenished to the amount required under Annex 1707.1(2).

5. Unless a Party that has filed a Standby has confirmed to the Secretariat and all other Parties that it has taken the steps necessary to ensure enforcement of monetary penalties pursuant to Article 1701(4)(b)(i) (Court Enforcement), the Party shall file with the Secretariat no later than 60 days prior to the expiry of its Standby, a new Standby to take effect upon the expiry of the former Standby.

6. Where an Appellate Panel has made an order for Tariff Costs, the Tariff Costs are immediately due and payable. The Party against which the order was made shall pay the amount stated in the order to the Party in whose favour the order was made, and shall confirm in writing to the Secretariat when it has done so.

7. Where the Party against which an order for Tariff Costs has been made is a Party that has implemented the enforcement mechanism for Tariff Costs referred to in Article 1701(4)(a) (Court Enforcement), a Party in whose favour the order was made shall:

(a) promptly take such registration, filing or other action as is required by the legislation and administrative practice of the Party against which the order was made to commence the process of enforcing the order in the same manner as an order for costs against the Crown in that Party's superior courts; and

(b) immediately advise the Party against which the order was made that such action has been taken, but may not take any further action to enforce the order until 60 days after the date of the order unless the Party against which the order was made consents to further action before such time.

### **1707.3: Removal of Access to Dispute Resolution and Other Remedies for Non-Compliance**

1. Subject to Article 1702(3) (Pre-existing Dispute exception), a Party, and its persons, are prohibited from initiating or participating in consultations or in Proceedings, whether as a Complaining Party, Consulting Party, Intervenor, Appellant or person, if:

(a) the Party has failed to ensure that both monetary penalty and Tariff Costs enforcement mechanisms referred to in Article 1701(4) (enforcement of Tariff Costs awards and monetary penalties) are in place and 18 months have elapsed since the Effective Date, until the Party complies with these obligations;

(b) the Party has failed to comply with Article 1707.2(4) (requirement to replenish Standby) or 1707.2(5) (requirement to file new Standby before expiry), until the Party complies with these obligations;

(c) a Compliance Panel has determined that the Party has not brought itself into compliance with this Agreement and 180 days have elapsed since the date on which the Compliance Report was issued, until the Party complies with this Agreement notwithstanding that the Party may have paid the monetary penalty or Operational Costs ordered by the Compliance Panel, or that the Party has also had benefits suspended or retaliatory measures imposed against it pursuant to Article 1709(3); or

(d) the Party has failed to pay the monetary penalty as required by Article 1707.2(1);

(e) the Party has failed to pay Tariff Costs as required by Article 1707.2(6); or

(f) the Party has failed to pay Operational Costs ordered against it by a Panel pursuant to Article 1706(3)(f) or by a Compliance Panel pursuant to Article 1707(11)(c), or by an Appellate Panel pursuant to Article 1706.1(4)(b), within 60 days of the date on which the Panel Report, Compliance Panel report or Appellate Report, as the case may be, was issued, until the Party pays such Costs.

2. Where

(a) the Complaint Recipient is a Party that has implemented the enforcement mechanism for monetary penalties referred to in Article 1701(4)(b)(i) (Court Enforcement), or

(b) the Party against which an order for Tariff Costs has been made is a Party that has implemented the enforcement mechanism for Tariff Costs referred to in Article 1701(4)(a) (Court Enforcement)

notwithstanding paragraphs 1(d) and (e), and notwithstanding that the required time for payment of the monetary penalty or Tariff Costs has passed, the prohibition from initiating or participating in consultations or a Proceeding mentioned in paragraph 1 shall not take effect until the Party in whose favour the order was made has taken such registration, filing or other action as is required by the legislation and administrative practice of the Party against whom the order was made to commence the process of enforcing the monetary penalty or tariff costs order in the same manner as an order against the Crown, or as an order for costs against the Crown, as the case may be, in that Party's superior court and taken such further action as is available in that court to enforce the order.

3. While the prohibition pursuant to paragraph 1 is in effect, ongoing consultations or Proceedings initiated by the Party shall be suspended until the Party complies with the obligations it has failed to comply with under paragraph 1

4. For greater certainty, a person to government proceeding initiated under article 1711 shall not be suspended if initiated prior to the determination that the Party of the complaining person is in breach of the obligations referenced in paragraph 1.

5. A Party that has been prohibited from initiating or participating in consultations or a Proceeding because it has failed to comply with the obligations referenced in Article 1707.3(1)(c), (d), (e) or (f) may, at any time, request the Secretariat to reconvene the Presiding Body that originally determined the Party's non-compliance or that ordered the monetary penalty, Operational Costs or Tariff Costs, as the case may be, for the Presiding Body to determine whether the Party has brought itself into compliance, and if it has, to lift the prohibition.

**Article 1707.4: Limiting Judicial Review/Privative Clause**

1. Unless appealed pursuant to Article 1706.1(1), a Report of a Panel is final and is not subject to judicial review.

2. A report of a Compliance Panel or Appellate Panel is final and is not subject to judicial review.

**Article 1707.5: Failure to Participate/Discontinuance**

The failure of any Disputing Party to participate, or to continue its participation, in any Proceedings shall not affect the jurisdiction of a Presiding Body which may proceed in that Disputing Party's absence. A Presiding Body may make an Operational Cost award against a Disputing Party that fails to participate or to continue its participation.

**Article 1708: Publication, Committee Agenda**

1. The Secretariat shall make the report of a Presiding Body public 30 days after the date on which it was issued, or sooner if the Disputing Parties agree.
2. A Disputing Party may request the Secretariat to add a dispute which was the subject of a report issued by a Presiding Body to the Committee's agenda for its next annual meeting. However, such a request may not be made sooner than 30 days after the date on which the report was issued. The dispute shall remain on the agenda for every annual Committee meeting thereafter until the matter is resolved.
3. Where a dispute has been added to the Committee's agenda pursuant to Article 1708(2), the Complaint Recipient shall, at least 10 days before each annual Committee meeting whose agenda includes the dispute, provide the Committee with a written status report on the Complaint Recipient's progress in implementing the Panel's recommendations in the Report or in arriving at a resolution of the dispute.

**Article 1709: Non-Implementation - Retaliatory Action**

1. If, in its Report, a Panel has determined that an actual measure is inconsistent with this Agreement and the matter has not been resolved within one year after the date on which the Panel issued its Report, or if the Panel has stipulated an alternate implementation period, by the end of such alternate period, the Complaining Party may make a written request for a meeting of the Committee.
2. The Committee or a subcommittee thereof shall, within 30 days after the date of delivery of the request for a meeting, convene to discuss with the Complaining Party the option of taking retaliatory action in respect of the Complaint Recipient.
3. Subject to having discussed the matter with the Committee under paragraph 2, the Complaining Party may suspend benefits of equivalent effect or, where this is impracticable, impose retaliatory measures of equivalent effect against the Complaint Recipient until such time as a mutually satisfactory resolution of the dispute is achieved.
4. In considering what benefits to suspend or retaliatory measures to impose, the Complaining Party shall:
  - (a) suspend benefits or impose retaliatory measures in the same sector as the measure found to be inconsistent with this Agreement; and

- (b) only if such suspension or imposition would be impracticable or ineffective, suspend benefits or impose retaliatory measures in other sectors covered by this Agreement.
- 5. On the written request of either Disputing Party delivered to the other Parties and the Secretariat, with a copy to the Committee, the Committee shall convene a panel, composed of the original panellists, where possible, within 30 days after the date of delivery of the request to the Secretariat, to determine whether the suspension of benefits or the imposition of retaliatory measures by a Complaining Party under paragraph 3 is manifestly excessive.
- 6. The Parties recognize that any suspension of benefits or imposition of retaliatory measures under paragraph 3 will be temporary and shall only be applied until the Complaint Recipient has amended or removed the inconsistent measure or has otherwise taken action to resolve the dispute.
- 7. On the written request of either Disputing Party delivered to the other Parties and the Secretariat, with a copy to the Committee, the Committee shall convene a panel, composed of the original panellists, where possible, within 30 days after the date of delivery of the request to the Secretariat, to determine whether any action taken by the Complaint Recipient to resolve the dispute is sufficient or satisfactory.
- 8. Where the panel determines that the action taken by the Complaint Recipient to resolve the dispute is sufficient or satisfactory, the Complaining Party shall terminate the suspension of benefits or remove the retaliatory measures.
- 9. Paragraphs 1 through 8 apply to an Intervenor that has participated in the Panel Proceeding and has been found by the original Panel to be adversely affected by the inconsistent measure.
- 10. For greater certainty, and in view of Article 300 (*Reaffirmation of Constitutional Powers and Responsibilities*), the Parties agree that:
  - (a) this Article does not allow a Party to take retaliatory action that is inconsistent with the Constitution of Canada; and
  - (b) no Party shall be prevented from challenging in a court of competent jurisdiction any retaliatory action on the ground that the action is inconsistent with the Constitution of Canada.
- 11. No separate Panel shall be established under Article 1709(5) or Article 1709(7) where a Compliance Panel has been established under Article 1707(59) in respect of the Report referred to in Article 1709(1).
- 12. If a Compliance Panel has been established under Article 1707(9), it shall have the jurisdiction of a panel established under Article 1709(5) or Article 1709(7).

## **PART B: Person-to-Government Dispute Resolution**

### **Article 1710: Initiation of Proceedings by Government on Behalf of Persons**

1. A person of a Party may request that a Party with which the person has a substantial connection, within the meaning of Articles 1703(5), (6) or (7), initiate on the person's behalf dispute resolution Proceedings under Part A with another Party.
2. The request shall be in writing and shall:
  - (a) specify the actual measure complained of;
  - (b) list the relevant provisions of this Agreement; and
  - (c) provide a brief summary of the complaint.
3. Prior to initiating such Proceedings on behalf of the person, the Party may require the person to exhaust all administrative remedies available to the person.
4. The Party shall decide whether to initiate Proceedings on behalf of the person within 30 days after the date of delivery of the person's request and shall, within that period, provide written notice to the person of the decision. If the Party chooses to initiate Proceedings, it shall do so within 10 days after it has provided notice to the person. If the Party chooses not to initiate Proceedings, the notice shall include reasons for the decision. Failure to provide such notice to the person within the 30 day period is deemed to be notice for the purposes of Article 1711(1)(a).
5. Where a complaining Party initiating Proceedings on behalf of a person chooses not to request the establishment of a panel under Article 1703(1), it shall provide written notice to the person within the relevant period specified in that Article, setting out reasons for the decision. Failure to provide such notice to the person within that period is deemed to be notice for purposes of Article 1711(1)(b).
6. For the purposes of this Part, "person", as defined in Article 200 (*Definitions of General Application*), includes a trade union as recognized by the applicable legislation of a Party.

### **Article 1711: Initiation of Proceedings by Persons**

1. A person of a Party may commence dispute resolution Proceedings in respect of all matters, other than those covered by Chapter Five (*Procurement*), where the person has received:
  - (a) notice under Article 1710(4) that a Party will not initiate dispute resolution Proceedings on the person's behalf; or
  - (b) notice under Article 1710(5) that a Party will not request the establishment of a panel.
2. A person of a Party may commence dispute resolution Proceedings in

respect of matters covered by Chapter Five (*Procurement*) where the person has received notice under Article 513(5) (*Complaint Procedures - Provinces*) that the contact point of the Province where the person is located will not make representations on the person's behalf or will not request the establishment of a review panel.

3. The person requesting the commencement of dispute resolution Proceedings shall provide written notice to the Party that refused to initiate Proceedings or request a panel, to the Party complained against and to the Secretariat.

4. A person may not commence Proceedings under this Article if the person has failed to:

(a) request a Party to initiate dispute resolution Proceedings under Article 1710(1); or

(b) request a contact point to initiate dispute resolution Proceedings under Article 513(4) (*Complaint Procedures - Provinces*)

within two years after the date on which the person acquired, or should have acquired, knowledge of the alleged inconsistent measure and knowledge that the person incurred loss or damage or suffered a denial of benefit.

5. In the case of a dispute under Chapter 10 (*Alcoholic Beverages*), a producer may not initiate Proceedings pursuant to this Article before 90 days have elapsed from the date of a complaint being made pursuant to Article 1009.

#### **Article 1712: Screening**

1. Each Party shall, before the date of entry into force of this Agreement, appoint an individual (the "screener") to review requests made under Article 1711(1) or (2). The screener shall be independent of government and capable of making an independent decision on the merits of the request. Notice of the appointment shall be delivered to the other Parties and the Secretariat.

2. The screener shall follow the Screener Process Guidelines filed with the Secretariat.

3. Where notice is provided under Article 1711(3), the screener of the Party that delivered notice to a person under Article 1710(4) or (5) or Article 513(5) or (6) (*Complaint Procedures - Provinces*) shall, within 30 days after the date of its delivery, review the request to determine whether the person should be permitted to commence dispute resolution Proceedings.

4. In deciding whether the person should be permitted to commence dispute resolution Proceedings, the screener shall take into account the following:

(a) whether the complaint is frivolous or vexatious;

- (b) whether the complaint has been instituted merely to harass the Party complained against; and
  - (c) whether there is a reasonable case of injury or denial of benefit to the person or, in the case of a trade union, injury or denial of benefit to its members.
5. Where a dispute resolution Proceeding is commenced under Article 1711(1)(a), the screener shall also determine the chapter of Part IV under which the person shall proceed.
6. The screener shall decide whether to accept or reject the person's request within 30 days after the date of delivery of the request. If the screener rejects the person's request, the screener shall, within that 30 day period, provide written notice to the person of the screener's decision, including the reasons for the decision. If the screener determines that the person may proceed, the screener shall, within that 30 day period, provide written notice, including the reasons, to the person, the Party that refused to initiate Proceedings or request a panel, the Party complained against and the Secretariat. Failure to provide such notice to the person within the 30 day period is deemed to be an approval.
7. If the screener determines under paragraph 6 that the person may proceed, then the person and the Party complained against may agree to proceed directly under Article 1714.

**Article 1713: Consultations**

1. A person that has received approval from the screener to proceed to dispute resolution may request consultations with the Party complained against respecting the complaint approved by the screener by delivering written notice to that other Party, and to the Secretariat. The notice shall specify the actual measure complained of, the relevant provisions of this Agreement and a brief summary of the complaint.
2. A person that has received a notice under Article 513(5)(a) (*Complaint Procedures - Provinces*) shall request consultations under this Article.
3. Where a dispute is not resolved to the satisfaction of the disputing Parties within 60 days of delivery of a request made pursuant to paragraph 1, the person and the Party complained against may, by agreement, request the assistance of relevant responsible Ministers or members of the Committee whose assistance they consider would be helpful in resolving the dispute.
4. A request for assistance made pursuant to paragraph 3 shall be delivered in writing to the Ministers or members of the Committee and to the Secretariat.
5. In providing assistance pursuant to paragraph 3, the Ministers or members of the Committee may seek the advice of technical experts, establish other working groups or fact-finding bodies, facilitate the use of conciliation, mediation and other dispute resolution mechanisms, and make recommendations.

6. Consultations shall be confidential and without prejudice to the rights of the person and the Party complained against in any further Proceedings.

**Article 1714: Request for Panel**

1. Subject to Article 1712(7), where the matter in dispute has not been resolved to the satisfaction of the person and Party complained against within 120 days of delivery of a request made pursuant to Article 1713(1), or within such other time as the disputing Parties may agree, the person or Party complained against may make a written request to the Secretariat, with a copy to the Committee, for the establishment of a panel.

2. The request for the establishment of the panel shall be delivered to the Secretariat and the person or Party complained against, as applicable, and shall:

- (a) specify the actual measure complained of;
- (b) list the relevant provisions of this Agreement;
- (c) provide a brief summary of the complaint;
- (d) explain how the measure has impaired internal trade; and
- (e) identify the injury or denial of benefit caused by the measure.

3. The panel shall be established in accordance with Article 1715 and shall be composed of three members unless the person and Party complained against agree to a panel composed of one member.

**Article 1715: Establishment of Panel**

1. Within 30 days after the date of delivery of the request for the establishment of a panel, the person and the Party complained against shall each appoint one panellist from the roster. The Party may not appoint a panellist which it has nominated to the roster.-\_Where the person and the Party have agreed to a panel composed of one member, they shall agree, within the 30 days, on a panellist from the roster with administrative law experience as identified pursuant to paragraph 4 of Annex 1704(2).

2. If the person fails to appoint a panellist within the 30 days, then the complaint shall proceed no further. If the Party fails to appoint a panellist within the 30 days, or, where the person and the Party have agreed to a panel composed of one member and they fail to agree on a panellist within the 30 days, then the Secretariat shall select the panellist by lot-excluding from selection any person appointed to the roster by the Party.

3. The appointed panellists shall, within 10 days after their appointment, select the chairperson of the panel from the roster. If they are unable to agree within that

period, the Secretariat shall select the chairperson by lot from the roster.

4. If neither of the panellists selected has administrative law experience as identified pursuant to paragraph 4 of Annex 1704(2), the panellists or the Secretariat, as the case may be, shall select a person with administrative law experience to be the chairperson excluding from selection any person appointed to the roster by the Party.

5. The rules of procedure for the panel shall be those established under Article 1705 with such changes as the circumstances may require.

6. The terms of reference for a panel shall be to examine whether the actual measure at issue is inconsistent with this Agreement.

**Article 1716: Report of Panel**

1. The panel shall issue a report based on the submissions of the person and Party complained against and any other information received during the course of the Proceeding.

2. The report shall contain:

(a) findings of fact;

(b) a determination, with reasons, as to whether the actual measure in question is inconsistent with this Agreement;

(c) a determination, with reasons, as to whether the actual measure has impaired internal trade and has caused injury; and

(d) recommendations, if requested by either the person or the Party complained against, to assist in resolving the dispute.

3. The Panel may award Tariff Costs to a person in accordance with Annex 1706.1(4)(b) and 1716(3).

4. Within 10 days after the receipt of the report the person or the Party complained against may, with notice to the chairperson of the panel, to the Secretariat and to the Person or Party as the case may be, request that the panel:

(a) provide a clarification of one or more aspects of its report, in which case the panel shall, within 15 days of receipt of the notice, provide the clarification; or

(b) correct in its report any errors in computation or translation, any clerical or typographical errors, or any errors of a similar nature, in which case the panel may, within 15 days of receipt of the notice, make such corrections as it considers appropriate.

**Article 1717: Implementation of Panel Report**

1. On receipt of the panel report, the person and the Party complained against shall agree on a resolution of the dispute which shall normally conform with the recommendations of the panel. The person and Party shall agree to such resolution within 60 days after the issuance of the panel report. The person and the Party complained against may agree to extend this time period, but in no case shall such extension exceed an additional 60 days.
2. Wherever possible, the resolution of the dispute shall be the non-implementation, removal or amendment of the measure that is inconsistent with this Agreement.
3. Each Party shall amend its laws in order to permit any Tariff Costs awarded under Article 1716(3) to be paid in the same manner as an order for costs against the Crown in that Party's superior courts.
4. Where the person believes that the recommendations of the panel have not been implemented after 60 days of the issuance of the panel report, the person may request a compliance review by the panel that issued the report. Such a request shall be delivered in writing to the person, to the Party complained against, to the chairperson of the panel and to the Secretariat and shall include written submissions supporting the allegation.
5. The Party complained against may provide a written reply to submissions delivered pursuant to paragraph 4 and shall deliver them to the person, to the chairperson of the panel and to the Secretariat within 10 days of receiving notice of a request pursuant to paragraph 4.
6. A panel receiving a request pursuant to paragraph 4 shall issue a determination of whether the Party complained against has implemented the recommendations made in the original panel report within thirty days of receiving a request pursuant to paragraph 4. The panel shall consider submissions from the person and the Party complained against and may seek further written clarification from them. The panel may also, at its discretion, convene a hearing with the person and Party complained against and may postpone its determination under this Article for a further 60 days if such a hearing is convened.

**Article 1718: Publication, Committee Agenda**

1. The Secretariat shall make the panel report public after the time set out in Article 1717(1).
2. After the time period set out in Article 1717(1), the dispute if unresolved shall be added by the Secretariat to the Committee's agenda for its annual meetings, where it shall remain until the matter is resolved.
3. The Party complained against shall, at least 10 days before each subsequent annual Committee meeting, provide the Committee with a written status report on its

progress in implementing the panel's recommendations or in arriving at a resolution of the dispute.

## **PART C: General**

### **Article 1719: Code of Conduct**

Members, including prospective and former members, of a Presiding Body shall conduct themselves in accordance with Annex 1719.

### **Article 1720: Limit on Jurisdiction**

For greater certainty, a Presiding Body has no jurisdiction to rule on any constitutional issue.

### **Article 1721: Contact Points**

1. Where this Chapter requires a notice, request, report or other document to be sent to a Party, it shall be sent to that person identified to the Secretariat by the Party as being responsible for the Chapter of Part IV of this Agreement that is relevant to the notice, request, report or other document. Where no such person is identified, the notice, request, report or other document shall be sent to that Party's Internal Trade Representative.

2. Where this Chapter requires a notice, request, report or other document to be sent to the Committee, a panel or a working group, it shall be sent to the chairperson of the Committee, panel or working group, as the case may be. Where a panel consists of only one individual, the notice, request, report or other document shall be sent to that individual.

### **Article 1722: Definitions**

1. In this Chapter, words in the singular include the plural, and words in the plural include the singular.

2. In this Chapter:

**Appellant** means the Disputing Party appealing a Panel decision pursuant to Article 1706.1(1).

**Appellate Panel** means a panel established pursuant to Article 1706.1(2).

**Appellate Report** means a report issued by an Appellate Panel pursuant to Article 1706.1(2).

**Compliance Panel** means a panel convened pursuant to a request made in accordance with Article 1707(9).

**Compliance Report** means a report issued by a Compliance Panel pursuant to Article 1707(11).

**Complaining Party** means the Party that has requested a Panel pursuant to Article 1703(1);

**Complaint Recipient** means the Party complained against by a Complaining Party pursuant to Article 1703(1) or by a person of a Party under Part B of this Chapter.

**Consulting Participant** means a Party that has given notice of its intention to participate in consultations in accordance with 1702.1(4).

**Consulting Parties** means the Initiating Party, Replying Party and Consulting Participant.

**Disputing Parties** means the Complaining Party and the Complaint Recipient.

**Effective Date** means the date on which the last Party to have signed the 10<sup>th</sup> Protocol of Amendment to this Agreement, signs.

**Initiating Party** means a Party that has requested consultations pursuant to Article 1702.1(1).

**Intervenor** means a Party that has joined a Panel Proceeding in accordance with Article 1703(9.1).

**Operational Costs** has the same meaning as set out in Rule 54 of Annex 1705(1).

**Panel** unless otherwise specified means the panel established pursuant to Article 1703(1).

**Participating Parties** means the Disputing Parties and all Intervenors (if any) to a Proceeding.

**Presiding Body** means, as the case may be, a Panel, Summary Panel, Compliance Panel or Appellate Panel.

**Proceeding** means a Proceeding before a Panel, Summary Panel, Compliance Panel or Appellate Panel, as the case may be.

**Report** means the report of a Panel issued pursuant to Article 1706(1) and includes any amendments made to, or substitutions made for, that report as a result of an appeal.

**Replying Party** means the Party with which an Initiating Party has requested consultations pursuant to Article 1702.1(1).

**Respondent** means the Disputing Party against which an appeal of a Panel decision is taken pursuant to Article 1706.1(1).

**Standby** means an irrevocable standby letter of credit issued by a Canadian chartered bank or credit union at the request of a Party and for the benefit of the Secretariat acting

as trustee for the Parties to this Agreement, and containing the terms set out in Annex 1701(4)(b)(ii).

**Summary Panel** means the panel convened pursuant to Articles 1702(2) and (3).

**Tariff Costs** means costs, other than Operational Costs, awarded by an Appellate Panel pursuant to Article 1706.1(4)(b), or by a Panel pursuant to Article 1716(3).

**ANNEX 1701(4)(b)(ii)**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

*(To be printed on Bank letterhead)*

Month xx, 20\_\_

TO : Internal Trade Secretariat Corporation -Corporation du Secrétariat du commerce intérieur=) ("ITS"), Trustee for the beneficiaries

Re: Irrevocable Standby Letter of Credit No. X.

At the request of the PROVINCE of \_\_\_\_\_, \_\_\_\_\_ (*name and address of the bank or financial institution*) (the "Bank") hereby issues in favour of the Internal Trade Secretariat Corporation - Corporation du Secrétariat du commerce intérieur - ("ITS"), acting as trustee for the Signatories listed in Exhibit "A" (the "Signatories") to THE AGREEMENT ON INTERNAL TRADE dated July 18, 1994, as amended from time to time ("AIT"), this irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the "Standby") in the total amount of \_\_\_\_\_ (*the maximum amount for the Province set out in AIT Annex 1707.1(2)*) (the "Available Amount") which is available upon receipt by the Bank of:

- (a) a written demand from the ITS for payment addressed to the Bank bearing the clause "drawn under irrevocable Standby Letter of Credit No. \_\_\_\_\_, issued by the Bank";
- (b) a certified copy of the Compliance Panel Order for a monetary penalty in the form attached in Exhibit "B";
- (c) a Certificate of the Executive Director of ITS stating that it has the right to present a demand for payment in accordance with the AIT; and
- (d) a Direction executed by the Executive Director of ITS instructing the Bank to pay the amount or amounts drawn therein to the Beneficiaries in accordance with the Certificate of Penalty.

The Bank agrees to pay to the Signatories identified as the Complaining Party or Parties in the aforementioned Certificate of Penalty and in the Direction an amount up to \_\_\_\_\_ (*Available Amount*), and to provide the ITS written confirmation and details of payment.

The Bank will honour any demand for payment under this Standby without any enquiry on its part as to whether ITS is entitled to make such demand and notwithstanding any disputes or objections between the Province of \_\_\_\_\_ and/or ITS and/or any of the Signatories. ITS shall not have any obligation to institute legal proceedings against the Province before presenting a

demand for payment pursuant to this Standby.

#### EXPIRY DATE

This Standby shall expire at \_\_\_\_\_ on \_\_\_\_\_ (insert date corresponding to 5 years from the date of its issuance) (the "Expiry Date").

#### IRREVOCABILITY

This Standby shall remain in full force and effect until the earlier of the Expiry Date or the date on which the Bank receives:

- (a) from ITS, a written notice confirming
  - (i) that the Province of \_\_\_\_\_ has withdrawn from the AIT in accordance with Article 1811; or
  - (ii) that the Standby is no longer required,

or

- (b) from ITS solely or from the Province of \_\_\_\_\_ and at least one other Signatory, notice confirming that the AIT has been terminated.

#### DRAWS

Partial and multiple draws are permitted under this Standby and with each such draw, the Bank will, concurrently, with the payment requested by ITS, note on this Standby the amount of such draw, and this Standby with such annotation thereon shall be returned afterwards to ITS except if the draw is effected by facsimile as described below.

All correspondence and/or drawing documents shall be presented to the Bank at (address) between 08:30 and 17:00 (local time) on or before the Expiry Date and shall refer to its Standby No. \_\_\_\_\_. If drawing documents are presented by facsimile, the Bank shall solely consider and examine the drawing documents so transmitted. ITS is not to further present any original drawing document. Payment shall be made in Canadian currency by wire transfer to the account designated for such purpose by ITS in its demand for payment.

This Standby is not transferable. ITS may not assign all or part of the proceeds of any draws hereunder without the prior consent of the Bank.

Any disputes related to this Standby will be decided in accordance with the laws of the Province of \_\_\_\_\_. This Standby is subject to the "International Standby Practices ISP98" (1 January 1999) of the International Chamber of Commerce, Publication Number 590 (the "Publication") and for all issues not covered by the Publication, the laws applicable in the Province of \_\_\_\_\_ shall apply. In case of conflict, the Publication shall prevail. The courts of the Province

of \_\_\_\_\_ shall have exclusive jurisdiction over any dispute arising from this Standby.

THIS CREDIT IS NON-TRANSFERABLE.

THE BANK

INTERNAL TRADE SECRETARIAT CORPORATION

\_\_\_\_\_  
Executive Vice President

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Vice President

## **EXHIBIT "A"**

The signatories of the Agreement on Internal Trade are the following:

Government of Alberta  
Government of British Columbia  
Government of Canada  
Government of Manitoba  
Government of New Brunswick  
Government of Newfoundland and Labrador  
Government of Northwest Territories  
Government of Nova Scotia  
Government of Ontario  
Government of Prince Edward Island  
Government of Quebec  
Government of Saskatchewan  
Government of Yukon

**EXHIBIT "B"**

**(Form of Certification of Order for Monetary Penalty)**

*{At the end of a copy of a Compliance Panel Order, the Executive Director of ITS will add the following certification:*

I, \_\_\_\_\_, Executive Director of Internal Trade Secretariat Corporation, certify that I have compared this document with the original Compliance Panel Order dated \_\_\_\_\_ and certify that it is a true copy thereof.

Signed in \_\_\_\_\_ (city), in \_\_\_\_\_ (province or territory) on \_\_\_\_\_ (date of signing).

\_\_\_\_\_  
Executive Director

Internal Trade Secretariat Corporation  
Suite 850/ pièce 850  
444 St. Mary Ave/444 avenue St. Mary  
Winnipeg MB  
R3C 3T1

**Annex 1702**  
**SUMMARY PANEL PROCEEDING**

1. Once a Summary Panel has been established, the Secretariat shall provide each Summary Panel member with a copy of the record of the Pre-existing Dispute.
2. The record of the Pre-existing Dispute is admissible in a Summary Panel Proceeding.
3. In a Summary Panel Proceeding, the onus is on the Complaint Recipient to demonstrate that the measure is not inconsistent with its obligations under this Agreement.
4. The Summary Panel shall endeavour to issue its report within 90 days of the conclusion of the hearing. In its report, it shall include the following:
  - (a) findings of fact;
  - (b) a determination, with reasons, as to whether the measure in question is or would be inconsistent with this Agreement;
  - (c) if an affirmative determination has been made in (b), a determination, with reasons, as to whether the measure has impaired or would impair internal trade and has caused or would cause injury;
  - (d) recommendations, if requested by a Disputing Party, to assist in resolving the dispute; and
  - (e) a determination as to apportionment of Operational Costs in accordance with Rules 54 to 57 of Annex 1705(1).

The report shall be delivered to the Secretariat for distribution according to Rule 9 of Annex 1705(1).

5. Except as otherwise provided in this Annex, the provisions of Chapter Seventeen applicable to government-to-government dispute resolution, including the Rules of Procedure in Annex 1705(1), apply, with such modifications as may be required, to a Summary Panel Proceeding.
6. For the purposes of applying Article 1707(9), a Disputing Party may request that the Secretariat reconvene the Summary Panel as a Compliance Panel 60 days after the date on which a Summary Panel report is issued, or, where an alternate implementation period has been ordered or permitted by the Summary Panel, on the expiry of such alternate implementation period.
7. A report issued by the Summary Panel under this Annex is final and is not subject to judicial review or to appeal pursuant to Article 1706.1(1).
8. For purposes of applying Rule 24 of Annex 1705(1), the reference to Article 1703 shall be replaced by "Article 1702(2)".
9. For purposes of applying Rule 50.5 of Annex 1705(1), the Summary Panel, when acting as a Compliance Panel, shall issue its report no later than 45 days from the conclusion of the hearing.

## **Annex 1704(2)**

### **Panel, Compliance Panel and Appellate Panel Rosters**

#### **Panel and Compliance Panel Roster**

1. Rules 2 to 6 apply to the Panel and Compliance Panel roster only.
2. Each Party shall be entitled to appoint up to 5 members to the roster.
3. Roster members shall:
  - (a) have expertise or experience in matters covered by this Agreement;
  - (b) be independent of and not take instructions from any Party; and
  - (c) serve for a term of five years, with the possibility of reappointment.
- 4.1 At least one member of each Party's roster shall have expertise in Canadian administrative law or the resolution of disputes arising under Canadian administrative law. Each Party shall identify which of its members have this experience and shall make available details of that experience upon request of another Party.
- 4.2 Each Party shall endeavour to appoint at least one bilingual (English and French) member to the roster. Each Party shall identify which of its roster members are bilingual.
5. If there are fewer than 18 bilingual roster members appointed by the Parties to the Panel and Compliance Panel roster, the Secretariat shall develop a supplementary list of bilingual individuals qualified to be Panel or Compliance Panel roster members. The Secretariat shall submit such list to the internal trade representatives for approval, and those individuals approved by the internal trade representatives will be added to, and form part of, the Panel or Compliance Panel roster. The Secretariat may add Panel and Compliance Panel roster members in this manner whenever there are fewer than 18 bilingual roster members appointed to the Panel and Compliance Panel roster by the Parties.
6. Where a roster member becomes unable to sit on the roster or a roster member's term expires, the Party that appointed the member shall appoint a replacement member to the roster.

#### **Appellate Panel Roster**

7. Rules 8 to 11 apply to Appellate Panels only.
8. Each Party shall be entitled to appoint up to 5 members to the roster.
9. Roster members shall:
  - (a) have expertise in Canadian administrative law or the resolution of disputes arising under Canadian administrative law;
  - (b) be independent of and not take instructions from any Party; and

(c) serve for a term of five years, with the possibility of reappointment.

10.1 Each Party shall endeavor to appoint at least one bilingual (French and English) member to the roster. Each Party shall identify which of its roster members are bilingual.

10.2 If there are fewer than 18 bilingual persons appointed by the Parties to the Appellate Panel roster, the Secretariat shall develop a supplementary list of bilingual individuals qualified to be Appellate Panel roster members. The Secretariat shall submit such list to the internal trade representatives for approval, and those individuals approved by the internal trade representatives will be added to, and form part of, the Appellate Panel roster. The Secretariat may add Appellate Panel roster members in this manner whenever there are fewer than 18 bilingual roster members appointed to the Appellate Panel roster by the Parties.

11. Where a roster member becomes unable to sit on the roster or a roster member's term expires, the Party that appointed the member shall appoint a replacement member to the roster.

## **Annex 1705(1)**

### **Panel, Compliance Panel and Appellate Panel Rules of Procedure**

These rules are intended to give effect to the provisions of Chapter Seventeen with respect to Panel, Compliance Panel and Appellate Panel Proceedings conducted pursuant to that Chapter. These rules should not be construed to extend or limit the jurisdiction of Presiding Bodies.

#### **Application**

1. These rules are established under Article 1705 and shall apply to Proceedings under Chapter Seventeen.

#### **Definitions**

2. In these rules:

**Agreement** means the Agreement on Internal Trade;

**Disputant** means a Complaining Party, or a person of a Party that requests the establishment of a Panel, or any Complaint Recipient;

**Panel** means a panel established under Article 1704 or Article 1715;

**Participants** means the Disputants and all Intervenors, if any, to a Proceeding;

**Person** means a person as defined in Chapter Two and Article 1710(6).

#### **General Rules**

3. Subject to these rules, the Presiding Body is to conduct Proceedings in such manner as it considers appropriate, provided that the Proceedings are as transparent as possible, that the Parties are treated with equality and that at any stage of the Proceedings each Party is given a full opportunity to present its case.

#### **Interpretation**

- 3.1 These Rules shall be liberally construed to secure the fairest, most transparent, least expensive and most expeditious determination of every Proceeding.

#### **Directions on Procedure**

- 3.2 Where, in any Proceeding, a question of procedure arises to which these rules do not provide an answer, or the answer they do provide is incomplete, the question shall be disposed in such manner as the Presiding Body decides is reasonable in the circumstances and consistent with principles of fairness.

3.3 To provide for a more expeditious process in a manner that is reasonable in the circumstances and consistent with principles of fairness, the Presiding Body may vary or supplement any of these rules if it is fair and equitable to do so.

### **Combining Proceedings**

3.4 The panel may, on the written request of a Party or on its own initiative, and after hearing the submissions of all Disputants, combine two or more Proceedings to provide for a more expeditious process, if it is reasonable in the circumstances and consistent with principles of fairness.

### **Adding Parties to a Proceeding**

3.5 The panel may, on the written request of a Party that has not provided the written notice as required pursuant to Article 1703(9.2), add the Party as a Complaining Party to the Proceeding if it is reasonable in the circumstances and consistent with principles of fairness.

### **Extending or Abridging Time Limits**

3.6 If it is fair and equitable to do so, the Presiding Body may extend or abridge the time limits fixed by these rules or otherwise fixed by the particular Presiding Body, either before or after their expiry.

### **Defect in Form and Irregularity**

4. No Proceeding is invalid by reason of a defect in form or a technical irregularity.

### **Responsibilities of the Secretariat**

5. The Secretariat shall provide administrative support for all Proceedings, including making arrangements necessary for all oral hearings and meetings of the Presiding Body.

6. The Secretariat shall maintain the record of each Proceeding, comprised of all relevant documents, including originals or copies, filed in that Proceeding. Where necessary, the Secretariat may certify copies as true copies of the original. All documents filed shall be stamped by the Secretariat to show the file identification number and date and time of receipt.

7. The Secretariat shall forward copies of any request for a Panel pursuant to Article 1703(1), request for a Summary Panel pursuant to Article 1702(2), request for a Compliance Panel pursuant to Article 1707(9), and Notice of Appeal pursuant to Article 1706.1(2), to all the other Parties and shall forward copies of all other documents and submissions filed with the Secretariat in a Proceeding to the Participants.

8. The Secretariat shall advise Participants in a timely manner of the time and location of all hearings and meetings before the Presiding Body in a Proceeding.

9. The Secretariat shall enter into the record all reports, decisions, orders and directions made by the Presiding Body and shall forward to Participants in a Proceeding

copies of all such reports, decisions, orders and directions or other written communications of the Presiding Body. Where an order for a monetary penalty has been made by a Compliance Panel, or an order for Tariff Costs has been made by a Presiding Body, the Secretariat shall forward a certified copy of the order to each Participant affected by the order.

10. Where the Complaint Recipient has filed a Standby pursuant to Article 1704(b)(ii) and fails to comply with the monetary penalty order within the time specified in Article 1707.2(2), the Secretariat shall, within 7 days after such time, demand payment in accordance with the procedure set out in the Standby. The Secretariat shall provide notice to the Complaint Recipient that its Standby has been presented to the financial institution for payment.

### **Translation and Interpretation**

11. Written documents and submissions filed by a Participant in connection with or during a Proceeding, and oral hearings, may be in either official language.

12. The Secretariat shall provide for interpretation and translation, as the case may be, of written documents and submissions, oral hearings and reports of presiding bodies, if a Participant or a member of the Presiding Body so requests. Participants are encouraged to provide documents and submissions in both official languages whenever feasible.

13. When a report of a Presiding Body is made public, it shall be issued in both official languages simultaneously. Each version shall be equally authentic.

### **Operation of the Presiding Body**

14. The chairperson of the Presiding Body of a Proceeding shall take the chair at all its meetings.

15.1 The chairperson of the Presiding Body shall fix the date and hour of its hearings in accordance with these rules following consultations with other Presiding Body members and the Secretariat.

15.2 Except to the extent that a Presiding Body otherwise directs, hearings shall be public.

15.3 Where the report of a Presiding Body is not unanimous, the members supporting each opinion shall be identified.

16. Presiding Body meetings other than hearings may be conducted by telephone conference call or other electronic means.

17. A Presiding Body may adopt its own internal procedures for routine administrative matters.

## **Confidentiality**

18. Where a Participant indicates that any information contained in documents filed with the Secretariat or forwarded to other Participants, in connection with a Proceeding, is to be treated confidentially:

- (a) because the information is commercially sensitive or otherwise protected by law; or
- (b) because its disclosure could impair international relations or obligations;

the Secretariat, the Presiding Body and all other Participants shall take all necessary steps to protect the confidentiality of the information and may enter into pre-hearing agreements regarding the protection of such information.

19. A Participant may disclose to other persons such information in connection with a Proceeding as it considers necessary to prepare its case, but it shall take all necessary steps to ensure that such other persons maintain the confidentiality of the information.

20. The Secretariat shall take all necessary steps to ensure that experts, interpreters, translators, court reporters and other individuals retained by the Secretariat maintain the confidentiality of any information designated as confidential.

21. On request of another Participant, a Participant shall promptly deliver to the other Participants and the Secretariat a non-confidential summary of its written submissions.

22. The Presiding Body shall make the Participants' written submissions available to the public no later than at the beginning of the hearing before it, except those parts of the written submissions that contain proprietary or confidential information as specified in Rule 18.

## **Prior Contact with Presiding Body Member Prohibited**

23. A person or Party intending to appoint a Presiding Body member pursuant to any provision of Chapter Seventeen shall not contact the proposed Presiding Body member regarding his or her appointment or regarding any other matter related to the dispute or to any issue to be decided by the Presiding Body.

## **Panel Proceedings: Notice of Appearance**

24. The Complaint Recipient, and any Party that is entitled to become an Intervenor and wishes to do so, shall file a notice of appearance with the Secretariat within 15 days after receiving, from the Secretariat, a request for a Panel under Article 1703.

25. The Compliant Recipient or the person, as the case may be, shall file a notice

of appearance with the Secretariat within 15 days after receiving, from the Secretariat, a request for a Panel under Article 1714.

26. The Secretariat shall forward copies of any notice of appearance received under Rule 24 to the other Parties.

**Panel Proceedings: Written submissions**

27. A Disputant that has requested a Panel shall file a written submission with the Secretariat within 45 days after the date on which it delivered the request to the Secretariat and the Secretariat shall forward copies of the submission to the other Participants.

28. The written counter-submissions of the other Participants shall be filed with the Secretariat,

- (a) in the case of a Party that has filed a notice of appearance as Intervenor under Rule 24, within 21 days after the initial written submission has been filed with the Secretariat, and
- (b) in the case of the Complaint Recipient, within 45 days after the initial written submission has been filed by a Disputant with the Secretariat,

and the Secretariat shall forward copies of the written submissions to each of the Participants.

29. The Panel may allow further written submissions and shall fix the time for their filing.

30. The Panel may convene a pre-hearing conference in order to determine:

- (a) whether a Party has a substantial and direct connection with a person within the meaning of Article 1703(5), (6) or (7);
- (b) the timing and the location of the hearing;
- (c) the order in which the Participants will be heard at the hearing; and
- (d) subject to Rule 31, whether an issue in the Proceeding is within the scope of the Agreement; and
- (e) any other matter relevant to the Proceeding.

31. For the purposes of paragraph (d) of Rule 30:

- (a) "scope" means the range of rights and obligations encompassed by the Agreement;
- (b) the Panel may refuse to make the requested determination and instead direct that the issue be dealt with at the Panel hearing.

### **Panel Proceedings: Hearing**

32. The Panel shall fix the date for the hearing within 30 days of receipt of the last written submission and the Secretariat shall forward notice of the date to the Participants.

33. The hearing shall, unless the Participants otherwise agree, be held in the capital city of the Complaint Recipient.

34. All panellists must be present during the hearing. Participants who have not filed submissions or counter submissions may not present oral arguments without the consent of the panel and all other Participants.

35. Except to the extent that a Presiding Body otherwise directs, the hearing shall be conducted in the following manner:

- (a) argument of the Complaining Party or person;
- (b) presentation of any Intervenor that has joined a Panel Proceeding pursuant to Article 1703(9.1);
- (c) argument of the Complaint Recipient;
- (d) reply of the Complaining Party or person;

36.1 Oral arguments shall be limited to the issues in dispute.

36.2 Where interpretation or translation services are used during a hearing, a Presiding Body shall ensure that Participants requiring such services are afforded sufficient additional time to make their arguments, presentations or replies and to allow them to follow the arguments, presentations or replies of other Participants.

### **Panel Proceedings: Supplementary written submissions**

37. The panel may at any time during a Proceeding address questions in writing to one or more of the Participants. The panel shall deliver the written questions to the Participant or Participants to whom the questions are addressed through the Secretariat, which shall also provide for delivery of copies of the questions to all other Participants.

38. A Participant to whom the panel addresses written questions shall deliver a copy of any written reply to the Secretariat, which in turn shall provide for the delivery of copies of the reply to all other Participants. Each other Participant shall be given the opportunity to provide written comments on the reply within five days after the date of delivery.

### **Panel Proceedings: Report of panel**

39. The panel shall within 45 days after the date the hearing was completed or

such other period of time as the Disputants may agree, issue a report based on the submissions of the Participants and any other information received during the course of the Proceeding.

40. Where a person is one of the Disputants, the report shall contain:

- (a) findings of fact;
- (b) a determination, with reasons, as to whether the measure in question is or would be inconsistent with this Agreement;
- (c) a determination, with reasons, as to whether the measure has impaired or would impair internal trade and has caused or would cause injury; and
- (d) recommendations, if requested by a Disputant, to assist in resolving the dispute.

41. A report referred to in Rule 40 may contain an award of Tariff Costs of the panel Proceedings determined in accordance with Annex 1706.1(4)(b) and 1716.3.

#### **Notice of Suspension and Negotiation of Mutually Satisfactory Resolution**

42.1 Where the Disputing Parties, or some of them, at any time prior to the issuance of the report of the Presiding Body, agree to suspend the dispute Proceedings for the purposes of negotiating or achieving a mutually satisfactory resolution of the dispute, they shall provide written notification of their agreement to suspend the dispute Proceedings to the Secretariat and any other Disputing Party.

42.2 Where a Disputing Party does not agree to the suspension, that Party shall, within 7 days of receiving the notification made pursuant to Rule 42.1, provide written notice of its opposition to the other Disputing Parties and the Secretariat. Upon receipt of this notice, the parties that agree with the suspension shall apply to the Presiding Body for an order to suspend the Proceeding.

42.3 Where an application is made pursuant to Rule 42.2, the Presiding Body shall determine whether to order a suspension to the dispute resolution Proceedings under Article 1707(4).

42.4 Where the dispute Proceedings have been suspended by consent of all Disputing Parties, any such Party may withdraw its consent and resume the dispute Proceedings at any time subject to procedural direction by the Presiding Body.

42.5 Where the dispute Proceedings have been suspended pursuant to an order of the Presiding Body under Rule 42.2, any Party subject to the order may, on written notice to the other Disputing Parties and to the Secretariat, apply to the Presiding Body to terminate the suspension within 36 months of the date of suspension.

## **Appellate Panel Notice of Appeal**

43.1 A Disputing Party that decides to appeal shall provide to the Secretariat and the other Participants a notice of appeal that briefly outlines its grounds of appeal and the relief sought.

43.2 No appeal may be taken if a notice of appeal has not been provided within 30 days of the issuance of the Panel Report.

## **Written Submissions**

44.1 Within 75 days of the date of the Panel Report, the Appellant shall provide a written submission in support of its appeal to the Respondent, to the other Participants and to the Secretariat.

44.2 Within 45 days of receipt of the Appellant's submission, the Respondent shall, and an Intervenor may, provide a written response to the Appellant, to the other Participating Parties and to the Secretariat.

44.3 Participation in the appeal process by an Intervenor is limited to the written response set out in Rule 44.2)

## **Hearing**

45.1 Upon receipt of the Notice of Appeal by the Secretariat, a hearing before the Appellate Panel shall be convened forthwith.

45.2 Except to the extent the Presiding Body otherwise directs,

- (a) the hearing shall be held in the capital city of the Respondent to the appeal, and
- (b) the hearing shall be conducted in the following manner:
  - (i) Oral argument of the Appellant followed by
  - (ii) Oral argument of the Respondent.

## **Timing of the Decision of the Appellate Body**

46. The Appellate Panel shall, within 90 days of the completion of the hearing, issue a decision.

## **Costs Operational Costs Apportionment in Appellate Proceedings**

47.1 (a) For purposes of paragraphs 47.2 to 47.6, "Operational Costs" has the same meaning as that defined in Rule 54.

47.2 Operational Costs in appellate Proceedings are to be apportioned by the Appellate Panel with a view to discouraging non-meritorious appeals.

47.3 Where an appeal is unsuccessful, Operational Costs shall ordinarily be borne by the Appellant.

47.4 Where an appeal is successful, Operational Costs shall ordinarily be divided equally between the Appellant and Respondent.

47.5 Notwithstanding paragraphs 47.2, 47.3 and 47.4, the Appellate Panel may apportion Operational Costs between the Appellant and Respondent differently where justified by other relevant considerations, including the procedural conduct of an Appellant or Respondent or the extent of an Appellant's or Respondent's success. For greater certainty, the Appellate Panel may make an award of Operational Costs where an appeal is discontinued.

47.6 If there are one or more Intervenors in an appeal, Operational Costs may also be apportioned among Intervenors commensurate with the Operational Costs incurred as a result of their participation, but in no instance shall Intervenors collectively be responsible for more than one-third of Operational Costs.

#### **Tariff Cost Awards in Appellate Proceedings**

48.1 For purposes of this Rule, "Tariff Costs" are those set out in Annex 1706.1(4)(b) and 1716(3).

48.2 Tariff Costs of appellate Proceedings are to be awarded by the Appellate Panel with a view to discouraging non-meritorious appeals.

48.3 Where an appeal is unsuccessful, the Appellate Panel shall ordinarily order the Appellant to pay the Tariff Costs of the Respondent.

48.4 Where an appeal is successful, the Appellate Panel shall ordinarily make no award for Tariff Costs.

48.5 Notwithstanding paragraphs 48.2 to 48.4, the Appellate Panel may award Tariff Costs differently where justified by other relevant considerations, including the procedural conduct of an Appellant or Respondent or the extent of an Appellant's or Respondent's success. For greater certainty, the Appellate Panel may make an award of Tariff Costs where an appeal is discontinued.

#### **Tariff Costs of Intervenors in Appellate Proceedings**

49. An Intervenor shall bear its own Tariff Costs.

#### **Compliance Panel**

50.1 A Party making a request for a Compliance Panel shall do so in writing and shall deliver it to the other disputing Parties and to the Secretariat and shall include written submissions supporting its position.

50.2 Roster members who served on the panel will also comprise the Compliance Panel. Where one or more members of the panel are no longer available to serve on the Compliance Panel, members will be appointed in accordance with the procedure set out in Rule 53.

50.3 A disputing Party notified of a request for a Compliance Panel may, within 60 days of receipt of such notice, provide a written reply to submissions delivered pursuant to Rule 50.1 and shall deliver it to any other disputing Party and to the Secretariat.

50.4 The Compliance Panel shall consider submissions of the Parties and may seek further written clarification from them. The Compliance Panel may also, at its discretion, convene a hearing with disputing Parties.

50.5 The Compliance Panel shall issue a Compliance Report within 45 days of the expiry of the deadline for submissions by disputing Parties under Rule 50.3 or, where a compliance hearing is held, within 45 days of the conclusion of the hearing.

### **Discontinuance**

51. The Disputing Party shall discontinue its participation in the process by filing with the Secretariat a notice of discontinuance, and by serving forthwith a copy of it on the other parties to the Proceeding.

### **Convening of Panel under Article 1709**

52.1 Where a panel is convened by the Committee:

(a) under Article 1709(5) to determine whether the suspension of benefits or the imposition of retaliatory measures by a complaining Party is manifestly excessive; or

(b) under Article 1709(7) to determine whether any action taken by the complained against to resolve the dispute is sufficient or satisfactory;

the panel shall issue its decision within 45 days after the matter is referred to it.

52.2 The panel shall as soon as possible after being convened under Article 1709(5) or Article 1709(7), determine the manner in which it intends to proceed and shall through the Secretariat, notify the Participants thereof.

### **Unavailability of Panellist**

53. Where a panel is to be convened or reconvened pursuant to any provision of Chapter Seventeen, and a panellist is unable to participate, that panellist shall be replaced by a panellist selected by lot by the Secretariat excluding any person appointed to the roster by disputing Parties, and ensuring that one member of the panel has administrative law experience as outlined in Annex 1704(2).

## **Payment of Presiding Body Operational Costs**

54. For the purposes of Rules 55 to 57:

**Operational Costs** means all per diem fees and other disbursements payable to Presiding Body members for the performance of their duties as Presiding Body members, fees and disbursements of experts retained by the Presiding Body pursuant to Article 1705 and costs of third Party facilities and equipment used for meetings or hearings involving the Presiding Body.

55. Unless otherwise specified, the panel may apportion Operational Costs to the participating Parties at its discretion. In exercising its discretion, the Presiding Body may consider:

- (a) whether the Disputants complied with Article 1700;
- (b) the outcome of the Proceedings; and
- (c) other relevant considerations that may justify assessing a major part of the responsibility for Operational Costs to one of the Disputants.

56. In the event that there are one or more Intervenors in a dispute, Operational Costs may also be apportioned among Intervenors, but in no instance shall Intervenors collectively be responsible for more than one-third of Operational Costs.

57. Nothing in these rules shall be construed as preventing a Party in its discretion from assuming full or partial liability for the share of Operational Costs for which a person of that Party is liable under Rule 55.

## **Annex 1707.1(2)**

### **Monetary Penalty Tiers**

The following tiers, based on population size from time to time determined by the most recent version of the Census of Canada published by Statistics Canada, represent the maximum monetary penalties, on a per case basis, that, through the dispute Proceedings, can be applied to respective non-compliant parties

Population not exceeding 250,000, maximum penalty \$250,000

Population exceeding 250,000, but not exceeding 750,000, maximum penalty \$750,000

Population exceeding 750,000, but not exceeding 1,500,000, maximum penalty \$1,500,000

Population exceeding 1,500,000, maximum penalty \$5,000,000

## **Annex 1706.1(4)(b) and 1716(3)**

### **Tariff Costs**

1. Tariff Costs may awarded at the discretion of a panel. If awarded, Tariff Costs must be awarded in accordance with this annex.
2. Only a successful person in a panel Proceeding, or an Appellant or Respondent in an appellate Proceeding, is entitled to an award of Tariff Costs.
2. A person, Appellant or Respondent may submit a statement of costs incurred in the Proceeding at the conclusion of the panel hearing.
3. In determining whether to award Tariff Costs, the panel shall consider the conduct of the person, Appellant or Respondent during the panel Proceeding.
4. In determining the amount of Tariff Costs to be awarded, the panel shall consider the statement of costs submitted by the person, Appellant or Respondent and, as well, the reasonableness of the costs based on the complexity of the complaint and the duration of the Proceeding.
5. In no event shall Tariff Costs exceed the following amounts:
  - (a) counsel or agent's fees relating to preparation for the hearing, to a maximum of: \$13,613;
  - (b) counsel or agent's fees related to attendance at the hearing for each of the first five days, to a maximum per day of: \$2,178.00; and thereafter for each day up to 10 days, to a maximum per day of: \$1,634;
  - (c) reasonable fees and disbursements of experts, to a maximum of: \$13,613.00;
  - (d) reasonable charges for postage, courier services and disbursements, including travel expenses.
6. The maximum allowable amounts set out in paragraph 5 above are valid for Tariff Costs awarded in the calendar year in which the Effective Date falls. Beginning in the following calendar year and in each calendar year thereafter, the Secretariat will increase such amounts by that percentage by which the Consumer Price Index (published by Statistics Canada) has increased between January 1 and December 31 of the previous calendar year. If there has been no increase or if there has been a decrease in that period, the amounts will remain the same for the following calendar year.

## Annex 1719

### Code of Conduct For Panellists

#### PREAMBLE

The Parties place importance on the integrity and impartiality of Proceedings conducted pursuant to the provisions of Chapter Seventeen of the Agreement on Internal Trade, this Code of Conduct is hereby established to ensure that these principles are respected.

This Code of Conduct is intended to assist the Committee, the Secretariat and Presiding Body members in the operation of dispute resolution procedures involving presiding bodies under Chapter Seventeen.

The governing principle of this Code of Conduct is that a candidate or member must disclose the existence of any interest relationship or matter that is likely to affect the candidate's or member's independence or impartiality, that is, which creates a reasonable apprehension of bias or an appearance of impropriety.

A reasonable apprehension of bias is created where a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would reasonably conclude that a candidate or member has an interest, relationship or matter that might have an influence on the exercise of the candidate's or member's public duties.

The disclosure obligation, however, should not be interpreted so that the burden of detailed disclosure makes it impractical for persons to serve as members, thereby depriving the Parties and Participants of the services of those who might be best qualified to serve as members. Thus, candidates and members should not be called upon to disclose interests, relationships or matters whose bearing on their role in the Proceeding would be trivial.

***Throughout the Proceeding, candidates and members have a continuing obligation to disclose, in writing, interests, relationships or matter that may bear on the integrity or impartiality of the dispute settlement process.***

*This Code of Conduct does not determine whether or under what circumstances the Parties will disqualify a candidate or member from being appointed to, or serving as a member of, a panel or committee on the basis of disclosures made.*

#### Part 1: INTERPRETATION

1. In this Code of Conduct:

**Agreement** means the Agreement on Internal Trade;

**candidate** means

- (a) an individual whose name appears on a roster or list established under Annex 1704(2), or
- (b) an individual who is under consideration for appointment as a member of a Presiding Body pursuant to Annex 1704(1);

**committee** means Committee on Internal Trade;

**family** means two or more persons related to each other by reason of blood relationships, marriage or adoption;

**family member** means a member of a family;

**member** means a member of a panel constituted pursuant to Annex 1704(1);

**participant** has the meaning ascribed to it in the *Panel, Compliance Panel and Appellate Panel Rules of Procedure*;

**Party** means a Party to the Agreement;

**Secretariat** means the Secretariat established pursuant to Article 1603; and

**staff**, in respect of a member, means persons under the direction and control of the member.

2. Any reference made in this Code of Conduct to an Article, Annex or Chapter is a reference to the appropriate Article, Annex or Chapter of the Agreement.

## **Part 2: RESPONSIBILITIES TO THE PROCESS**

3. Every candidate, member and former member has the responsibility to avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

## **Part 3: DISCLOSURE OBLIGATIONS**

### **INITIAL DISCLOSURE OBLIGATION**

(Relationship Conflicts)

4. A candidate shall disclose any interest, relationship or matter that is likely to affect the candidate's independence or impartiality or that might create a reasonable apprehension of bias or appearance of impropriety in the Proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests,

relationships and matters.

Upon consideration for membership on a Presiding Body and at the request of the Secretariat, the candidate shall disclose such interests, relationships and matters by completing an Initial Disclosure Statement provided by the Secretariat and sending it to the Secretariat.

Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:

- (a) any financial or personal interest of the candidate
  - (i) arising out of any personal, professional or other relationship with persons associated with the Proceeding or who may benefit from its outcome, and
  - (ii) arising out of any issue, that may be decided in the Proceeding for which the candidate is under consideration, in an administrative Proceeding, a domestic court Proceeding or another Presiding Body Proceeding that involves similar issues;
- (b) any financial interest of the candidate's employer, partner, business associate or family member
  - (i) arising out of any personal, professional or other relationship with persons associated with the Proceeding or who may benefit from its outcome, and
  - (ii) arising out of any issue, that may be decided in the Proceeding for which the candidate is under consideration, in an administrative Proceeding, a domestic court Proceeding or another Presiding Body Proceeding that involves similar issues;
- (c) any past or existing financial, business, professional, family or social relationship with any interested parties in the Proceeding, or their counsel, or any such relationship involving a candidate's employer, partner, business associate or family member; and
- (d) public advocacy or legal or other representation concerning an issue in dispute in the Proceeding or involving the same goods or services.

#### SUPPLEMENTAL DISCLOSURE OBLIGATION

(Issue Conflicts)

5. A member in a Chapter Seventeen Proceeding shall, after receiving the written submissions and counter submissions of the participants, disclose any interests, advocacy or representation, particularly as referred to in subparagraph 4(a)(ii) or (b)(ii) or paragraph 4(d), by completing a Supplementary Disclosure

Statement provided by the Secretariat and sending it to the Secretariat.

#### CONTINUING DISCLOSURE OBLIGATION

6. Once appointed, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in section 4 and shall disclose them. The obligation to disclose is a continuing duty which requires a member to disclose any such interests, relationships and matters that may arise during any stage of the Proceeding.

The member shall disclose in writing such interests, relationships and matters by communicating them to the Secretariat for consideration by the appropriate Parties.

#### **Part 4: THE PERFORMANCE OF DUTIES BY CANDIDATES AND MEMBERS**

7. A candidate who accepts an appointment as a member shall be available to perform, and shall perform, a member's duties thoroughly and expeditiously throughout the course of the Proceeding.

8. A member shall carry out all duties fairly and diligently and comply with the provisions of Chapter Seventeen; the applicable rules and the Code of Conduct.

9. A member shall not deny other members the opportunity to participate in all aspects of the Proceeding.

10. A member shall consider only those issues raised in the Proceeding and necessary to make a decision and shall not delegate the duty to decide to any other person, except as provided in the applicable rules. A member must make his or her decision based solely on the official record.

11. A member shall take all reasonable steps to ensure that the member's staff comply with Parts 2, 3 and 7 of this Code of Conduct.

12. A member shall not make any communication concerning the Proceeding outside the scope of Presiding Body review. A member shall not have any communication with a participant except in the presence of all other members and participants.

13. A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the Secretariat and is necessary to ascertain whether that candidate or member has violated or may violate the Code.

#### **Part 5: INDEPENDENCE AND IMPARTIALITY OF MEMBERS**

14. A member shall be independent and impartial. A member shall act in a fair

manner and shall avoid creating a reasonable apprehension of bias or an appearance of impropriety.

15. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

16. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.

17. A member shall not use the member's position on the Presiding Body to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.

18. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgment.

19. A member shall avoid entering into any relationship, or acquiring any financial or personal interest, that is likely to affect the member's impartiality or that might create a reasonable apprehension of bias or an appearance of impropriety.

#### **Part 6: POST PROCEEDING CONDUCT**

20. For a period of one year after the completion of a Chapter Seventeen Proceeding, a former member shall not personally advise or represent any participant in the Proceeding with respect to any issues which arose in the Proceeding.

21. A member or former member shall not represent a participant in an administrative Proceeding, a domestic court Proceeding or another Chapter Seventeen Proceeding involving the issues in dispute before the Presiding Body.

22. A former member shall avoid actions that may create the appearance that the member was biased in carrying out the member's duties or would benefit from the decision of the Presiding Body.

#### **Part 7: MAINTENANCE OF CONFIDENTIALITY**

23. A member or former member shall not at any time disclose or use any non-public information concerning the Proceeding or acquired during the Proceeding except for the purposes of the Proceeding, nor disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of another.

24. A member shall not disclose a Presiding Body report or Presiding Body decision prior to its release by the Secretariat. A member or former member shall not at any time disclose which members are associated with majority or minority opinions in any Proceedings.

25. A member or former member shall not at any time disclose the deliberations of a Presiding Body or committee, or any member's view, except as required by law.

#### **Part 8: RESPONSIBILITIES OF STAFF**

26. Parts 2 (Responsibilities to the Process) and 7 (Maintenance of Confidentiality) of this Code of Conduct apply also to staff. Part 3 (Disclosure Obligations) apply to staff to the extent that they are not obliged to submit disclosure statements but do have an initial and continuing obligation to disclose to Presiding Body members any interests, relationships or matters that may bear in the integrity or impartiality of the dispute settlement process.

#### **Part 9: RESPONSIBILITIES OF THE SECRETARIAT AND COMMITTEE**

27. The Secretariat shall take all necessary steps to protect the confidentiality of disclosure statements and any subsequent disclosures.

28. Any communication to the Secretariat regarding a conflict of interest, a reasonable apprehension of bias or an appearance of impropriety shall be conveyed to the participants for the purposes of determining whether there has been a breach of this Code of Conduct.

29. In the event the participants are unable to agree as to whether there has been a breach of this Code of Conduct, the matter shall be referred to the Committee for decision.

## **AGREEMENT ON INTERNAL TRADE**

**IN THE MATTER OF  
(title of Proceeding)**

**(Secretariat file number)**

### **INITIAL DISCLOSURE STATEMENT**

I have read the Code of Conduct for Presiding Body Members (Code of Conduct) and the Panel, Compliance Panel and Appellate Panel Rules of Procedure under Chapter Seventeen of the Agreement on Internal Trade and understand them. I am fully aware that Part 3 of the Code of Conduct requires that I disclose any interests, relationships and matters that are likely to affect my independence or impartiality or that might create a reasonable apprehension of bias or an appearance of impropriety in the matter cited above.

I have read the request for Presiding Body review filed in the matter cited above and have made all reasonable efforts to determine whether there are any such interests, relationships or matters. I make the following statement fully aware of my duties and obligations under the Code of Conduct.

1. I do not have any financial or personal interest in the matter cited above or in its outcome, except as follows:
2. I do not have any financial or personal interest in an administrative Proceeding, a domestic court Proceeding or another Presiding Body Proceeding that involves issues that may be decided in the matter cited above, except as follows:
3. Neither my employer, partner, business associate or family member has a financial interest in the matter cited above or in its outcome, except as follows:
4. Neither my employer, partner, business associate or family member has a financial interest in an administrative Proceeding, a domestic court Proceeding or another Presiding Body Proceeding that involves issues that may be decided in the matter cited above, except as follows:
5. I do not have any past or existing financial, business, professional, family or social relationship with any interested parties in the matter cited above, or their counsel, nor am I aware of any such relationship involving my employer, partner, business associate or family member, except as follows:
6. I have not publicly advocated, nor have I provided legal or other representation, concerning any issue in dispute in the matter cited above or involving the same goods or services, except as follows:
7. I do not have any interests or relationships, other than those described above, nor am I aware of any matters, that are likely to affect my

independence or impartiality or that might create a reasonable apprehension of bias or an appearance of impropriety, except as follows:

I recognize that, once appointed, I have a continuing duty to make all reasonable efforts to become aware of any interest, relationship or matter within the scope of Part 3 of the Code of Conduct that may arise during any stage of the matter cited above and to disclose it in writing to the Secretariat, as and when I become aware of it.

Signature

Name (Typed)

Date