

Seventh 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.

Amendments Consequent upon Acceptance of the New Chapter Seventeen

2. Chapter Two (General Definitions)

- 2.1 Article 200: Definitions of General Application

Between the definitions for “harmonization” and “investment”, add a new definition as follows:

“internal trade representative means the government official designated by a Party and identified to the Secretariat as the Party’s representative for the purposes of this Agreement;”.

3. Chapter Five (Procurement)

- 3.1 Article 513: Bid Protest Procedures – Provinces

- a. In paragraph 5, replace “Article 1712(2)(a)” with “Article 1711(2)(a)”.
- b. In paragraph 6, replace “Article 1712(2)(b)” with “Article 1711(2)(b)”.
- c. In paragraph 9, replace “Article 1709 (Non-Implementation – Publicity) or 1710 (Non-Implementation – Retaliatory Action)” with “Article 1708 (Publication, Committee Agenda) or 1709 (Non-Implementation – Retaliatory Action)”.

4. Chapter Six (Investment)

- 4.1 Article 614: Consultations

Replace the article with the following:

“Article 614: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.”.

4.2 Annex 608.3: Code of Conduct on Incentives

Delete paragraphs 11, 12, 13 and 14.

5. Chapter Seven (Labour Mobility)

5.1 Article 711: Consultations

Replace the article with the following:

“Article 711: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.”.

6. Chapter Eight (Consumer-Related Measures and Standards)

6.1 Article 809P4: Consultations

Replace the article with the following:

“Article 809P4: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.”.

7. Chapter Nine (Agricultural and Food Goods)

7.1 Article 906: Consultations

Replace the article with the following:

“Article 906: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.”.

8. Chapter Ten (Alcoholic Beverages)

8.1 Article 1009: Complaints

Delete paragraphs 1(c), 1(d) and 2, add the word “and” after paragraph 1(a) and replace the semi-colon after paragraph 1(b) with a period.

8.2 New Article

Between Article 1009 and Article 1010, add the following new article:

“Article 1009P7: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.”.

9. Chapter Eleven (Natural Resources Processing)

9.1 Article 1103: Consultations

Replace the article with the following:

“Article 1103: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.”.

9.2 Annex 1103.2: Consultations

Delete the annex.

10. Chapter Fourteen (Transportation)

10.1 Article 1410: Listed Measures

In paragraph 4, replace “Article 1705” with “Article 1704”.

10.2 Article 1412: Consultations

Replace the article with the following:

“Article 1412: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.”.

10.3 Article 1413: Assistance of Council

Delete the article.

10.4 Article 1414: Request for Panel

Delete the article.

11. Chapter Fifteen (Environmental Protection)

11.1 Article 1510: Consultations and Assistance of Council

Replace the article with the following:

“Article 1510: Consultations and Dispute Resolution

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.”.

11.2 Annex 1510.1: Consultations and Assistance of Council

Delete the annex.

12. Chapter Eighteen (Final Provisions)

12.1 Annex 1813: Rules of Interpretation

a. Delete paragraph 10 and replace with the following:

“10. A Party asserting that a measure or proposed measure is inconsistent with the provisions of this Agreement has the burden of establishing that inconsistency.”

b. Add a new paragraph 11 to read as follows:

“11. A Party asserting that a measure or proposed measure is subject to an exemption or exception under this Agreement has the burden of establishing that the exemption or exception applies.”

B. PROCUREMENT

13. Chapter Five (Procurement)

13.1 Article 504: Reciprocal Non-Discrimination

a. In paragraph 3(a), add the words “in Canada” and remove the second “or” so that the section reads as follows:

“(a) the imposition of conditions on the invitation to tender, registration requirements or qualification procedures that are based on the location of a supplier’s place of business in Canada, the place in Canada where the goods are produced or the services are provided, or other like criteria;”.

b. In paragraph 3, delete section (g), add the word “and” to the end of section (e) and replace the semi-colon at the end of section (f) with a period.

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- c. In paragraph 6, add the words “Canadian services,” and the word “Canadian” so that the header sentence of the paragraph reads as follows:

“6. Except as otherwise required to comply with international trade obligations, a Party may limit its tendering to Canadian goods, Canadian services or Canadian suppliers, subject to the following conditions:”.

- d. In paragraph 6(c), add the words “or service” so that the section reads as follows:

“(c) the requirement for Canadian content must be no greater than necessary to qualify the procured good or service as a Canadian good or service.”

13.2 Article 506: Procedures for Procurement

In paragraph 6, add the words “transition costs,” between “quantity,” and “delivery,”.

13.3 Article 507: Non-Application

- a. Replace paragraph (b) with the following:

“(b) procurement of goods, services or construction:

- (i) purchased on behalf of an entity not covered by this Chapter; or
- (ii) purchased by entities which operate sporting or convention facilities in order to comply with a commercial agreement with an entity not covered by this Chapter that contains provisions incompatible with this Chapter;”

- b. Replace paragraph (e) with the following:

“(e) procurement of:

- (i) goods purchased for representational or promotional purposes; or
- (ii) services or construction purchased for representational or promotional purposes outside the territory of a Party; and”

13.4 Article 508: Regional and Economic Development

Replace paragraph 1(c) with the following:

“(c) notice of all such excluded procurements is provided no later than the time the contract is awarded by the methods usually used to publish this type of procurement under Article 506(2); this notice

must provide details of the exceptional circumstances and, when published on an electronic tendering system, it must be accessible for a period of time sufficient to allow suppliers to become aware of the procurement; and notice of all such excluded procurements with details of the exceptional circumstances is also given to other Parties no later than the time the contract is awarded via email transmitted to the Internal Trade Secretariat which will redistribute it to the contact points designated under Article 512;”.

13.5 Article 518: Definitions

- a. Add the following definition:

“Canadian service means a service performed in Canada by persons of a Party.”.

- b. At the end of the definition of “Canadian value-added”, after paragraph (b)(viii), add the following sentence:

“The preference for Canadian value-added, as used in Article 504(5)(a), means the premium that may be awarded by a Party during the evaluation of bids for Canadian value-added, not the required level of Canadian content;”.

13.6 Annex 502.1B: Services Covered by Chapter Five

In paragraph (1)(a) of the French version, replace “comptables agréés” with “comptables”.

13.7 Annex 508.3: Transitional and Non-Conforming Measures

Under Column I (Transitional Procurement Policies and Programs), delete the title for Ontario and the measure listed thereunder.

C. FRENCH VERSION OF THE AGREEMENT

Note: Amendments numbered 14 to 20 inclusive apply solely to the French version of the Agreement on Internal Trade.

14. Chapter One (Operating Procedures)

14.1 Article 100: Objective

In paragraph 4(c), replace “la poursuite” with “l’atteinte”.

15. Chapter Two (General Definitions)

15.1 Article 200: Definitions of General Application

- a. In the definition of “institution financière”, replace “et se rapportant à la prestation d’un service financier” with “en ce qui concerne la prestation d’un service financier ou en raison de celle-ci.”.
- b. In paragraph (b) of the definition of “investissement”, replace “actifs financiers tels que” with “éléments d’actif financier, tels”.
- c. In the last sentence of the definition of “objectif légitime”, replace “dans les dispositions” with “par une disposition”.

16. Chapter Four (General Rules)

16.1 Article 404: Legitimate Objectives

In paragraph (b), replace “ne nuisent pas à la poursuite de” with “respectent”.

16.2 Article 405: Reconciliation

In paragraph 2, replace “ayant” with “s’ils ont”.

16.3 Article 406: Transparency

- a. In paragraph 2, replace “influencer sensiblement” with “avoir un impact sur”.
- b. In paragraph 3(b), replace “prend ces observations” with “les prene”.

16.4 Annex 405.1: Standards and Standards-Related Measures

- a. In paragraph 4, replace “dans la poursuite de” with “afin d’atteindre”.
- b. In paragraph 5, replace “tient” with “doit tenir” and “assure” with “doit garantir”.
- c. In paragraph 6, replace “Dans la poursuite d’un objectif légitime” with “Dans ses efforts en vue d’atteindre un objectif légitime”.
- d. In paragraph 14, add the words “un écart” between “qu’il existe” and “entre une norme”, delete “un écart” after “d’une autre Partie” and replace “ayant” with “qui a”.
- e. In paragraph 18, replace “lorsque celles qui existent sont insuffisantes” with “lorsqu’elles ne sont pas suffisantes”.
- f. In paragraph 19, replace “poursuite” with “réalisation”.

16.5 Annex 405.2: Regulatory Measures and Regulatory Regimes

- a. In paragraph 4, replace “Les Parties peuvent” with “Une Partie peut” and “qu’elles considèrent” with “qu’elle estime”.

17. Chapter Five (Procurement)

17.1 Article 502: Scope and Coverage

- a. In paragraph 1(b), replace “précisés” with “qui sont exclus”.
- b. In paragraph 4, replace the paragraph with the following:

« 4. L’Annexe 502.4 établit les conditions pour couvrir les marchés publics passés par les municipalités, organismes municipaux, conseils et commissions scolaires, ainsi que par les entités d’enseignement supérieur, de services de santé ou de services sociaux financées par l’État. L’Annexe 502.4 ne s’appliquera qu’aux provinces qui y ont souscrit au moyen d’un préavis écrit au Secrétariat. ».

17.2 Article 504: Reciprocal Non-Discrimination

- a. In paragraph 3(d), replace “à l’égard desquels il est raisonnable de considérer que” with “qui peuvent raisonnablement être considérés” and “ils ont” with “comme ayant”.
- b. In paragraph 5, replace “valeur canadienne ajoutée” with “valeur ajoutée canadienne”.

17.3 Article 506: Procedures for Procurement

- a. In paragraph 2, in the header sentence, replace “au moyen de” with “selon”.
- b. In paragraph 11(f), replace “par le” with “au”.

17.4 Article 508: Regional and Economic Development

In paragraph 2(c), replace “question” with “cause”.

17.5 Article 510: Confidentiality

Replace “tel” with “tels”.

17.6 Article 518: Definitions

- a. Replace the definition of “appel d’offres “ with what follows:

“« appel d’offres » Une procédure d’appel à la concurrence entre des fournisseurs, les invitant à présenter une offre ou une proposition en vue de l’obtention d’un marché.”.

- b. In the definition of “marché public”, replace “visés” with “visées” and “par exemple les” with “comme les”.
- c. In the definition of “technologie de l’information”, replace “l’un ou l’autre” with “ceux-ci” and “d’écrits” with “de textes”.

- 17.7 Annex 502.1A: Government Entities Covered by Chapter Five;
Annex 502.2A: Government Entities Excluded from Chapter Five; and
Annex 502.2B: Government Entities Covered by Non-Intervention Commitment

Replace the last paragraph of each Annex with the following:

“Toute modification découlant de mesures autres que celles qui sont énumérées ci-dessus requiert l’approbation des Parties. Pour sa part, le Secrétariat doit modifier la liste après chaque réception d’un avis de tels changements, maintenir une copie à jour de la liste, la réacheminer à toutes les Parties à la suite de chaque modification, et la rendre facilement disponible.”.

- 17.8 Annex 502.3: Procurement – Provisions for Entities of a Commercial or Industrial Nature or Those Which Have Been Granted Exclusive Rights by a Party

a. C : Contracting Rules

- (i) In paragraph 2(b), replace “qui ne nuisent pas à la poursuite de” with “qui respectent”.
- (ii) In paragraph 3, replace “telles que” with “tels”.

b. Appendix “A”: Government Entities Covered by Annex 502.3

Replace the last paragraph with the following:

“Toute modification découlant de mesures autres que celles qui sont énumérées ci-dessus requiert l’approbation des Parties. Pour sa part, le Secrétariat doit modifier la liste après chaque réception d’un avis de tels changements, maintenir une copie à jour de la liste, la réacheminer à toutes les Parties à la suite de chaque modification, et la rendre facilement disponible.”.

- 17.9 Annex 502.4: Procurement – Provisions for municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities

a. F: Legitimate Objectives

In paragraph 1(b), replace “qui ne nuisent pas à la poursuite de” with “qui respectent”.

b. G: Fair Acquisition Process

Delete the word “que”.

c. J: Canadian Content

In paragraph 2, replace “en autant” with “pourvu”.

d. S: Definitions

Replace “dans l’annexe ce” with “dans l’annexe” and “qu’on retrouve” with “, laquelle est établie”.

e. Appendix “B”: Discriminatory Practices

In paragraph (j), replace “originants de la province du lieu des travaux” with “provenant de la province où les travaux sont effectués”.

f. Appendix “C”: Exceptions – Circumstances for Exclusions

In paragraph (f), replace “lorsque aucune” with “lorsqu’aucune”.

18. Chapter Six (Investment)

18.1 Annex 606: Extra-provincial Corporate Registration and Reporting Requirements

a. In paragraph 2, replace “tel que” with “comme il est”.

b. In paragraph 7, replace “les informations suivantes sont disponibles” with “l’information suivante soit disponible”.

c. In paragraph 18, replace “compétente” with “compétence”.

d. In paragraph 20, replace “dans la proportion où cela est réalisable” with “si possible”.

e. In paragraph 22(a), replace “rendraient” with “rendent” and “poser les gestes qui s’imposent” with “prendre les mesures nécessaires” and, in paragraph (b), replace “puisse commencer” with “soit réalisable” and “dès que possible” with “dès ce moment-là”.

f. In paragraph 23, replace the paragraph with the following:

“23. Dans la présente Annexe, on entend par :

« autorité de constitution » La Partie dont les lois ont régi la constitution légale de la compagnie;

« fondé de pouvoir » En ce qui a trait à une compagnie extra-provinciale, la personne autorisée à recevoir la signification de documents au nom de la compagnie;

« prorogation » La procédure qui permet à une compagnie de demander à être assujettie aux lois d'une autre Partie, tout comme si elle avait été constituée en vertu des lois de cette autre Partie.”.

19. Chapter Seven: Labour Mobility

19.1 Article 709: Legitimate Objectives

In paragraph 1(b), replace “ne nuisent pas à la poursuite de” with “respectent”.

20. Chapter Eight: Consumer-Related Measures and Standards

20.1 Article 803: Legitimate Objectives

In paragraph (b), replace “qui ne nuisent pas à la poursuite de l'” with “qui respectent cet”.

20.2 Article 804: Right to Establish Consumer-Related Measures and Standards

In paragraph 1, replace “poursuite” with “réalisation”.

Attachment 1

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

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, to Annex 502.3, to Annex 502.4, or to Annex 903.1. With respect to paragraphs 8 and 9 of Annex 608.3, only Article 1702 of this Chapter applies.

3. Articles 1702 through 1707 do not apply to bid protests initiated under Article 513 (Bid Protest Procedure - Provinces). Articles 1710 through 1718 do not apply to bid protests initiated under Article 514 (Bid Protest Procedure - Federal Government).

PART A: Government-to-Government Dispute Resolution

Article 1702: Consultations

1. A Party that considers that a measure of another Party is 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 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 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. Any Party that considers itself to have a substantial interest in the matter, within the meaning of Article 1703(9), may participate in the consultations by delivering written notice of its intention to participate to the Party complained against, to all other Parties and to the Secretariat within 10 days of the delivery of a request made pursuant to paragraph 1.

4. The disputing Parties 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.

5. A request for assistance made pursuant to paragraph 4 shall be delivered in writing to the chairperson of the Working Group, to all other participating Parties and to the Secretariat.

6. A Working Group, in giving assistance pursuant to paragraph 4, shall consider any matter referred to it as expeditiously as possible, particularly matters regarding perishable goods.

7. Where the matter is not resolved to the satisfaction of the disputing Parties within 60 days of delivery of a request made pursuant to paragraph 1, the disputing Parties may, by agreement, request the assistance of relevant responsible Ministers or members of the Committee whose assistance the disputing Parties consider would be helpful in resolving the dispute. A list of relevant ministers and Committee members shall be filed by the Parties with the Secretariat.

8. A request for assistance from the disputing Parties made pursuant to paragraph 7 shall be delivered in writing to the Ministers or members of the Committee, to all other participating Parties and to the Secretariat.

9. In providing assistance requested pursuant to paragraph 7, 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.

10. Consultations shall be confidential and without prejudice to the rights of the participating Parties in any further proceedings.

11. The participating 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 participating Parties shall treat any confidential information exchanged on the same basis as the Party providing the information.

Article 1703: Request for Panel

1. Where the matter in dispute has not been resolved to the satisfaction of the disputing Parties within 120 days of delivery of a request made pursuant to Article 1702(1), or within such other time as the disputing Parties may agree, a disputing Party may make a written request to the Secretariat, with a copy to the Committee, for the establishment of a panel. With respect to a dispute arising under Annex 608.3, a request may not be made after 2 years from the date of a request made pursuant to Article 1702(1) without the consent of the Party whose measure is in question.

2. The request for the establishment of 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.

3. 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.

4. Where a complaining Party requests the establishment of a panel on behalf of a person, the complaining 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 paragraph 5, 6 or 7. If the complaining Party fails to do so, the panel shall immediately dismiss the complaint for lack of standing.

5. Where the complaining 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

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- (c) the consequences of that economic injury or denial of benefit are being felt in the Province.

6. With respect to disputes arising out of Chapter Seven, 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.

7. 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.

8. Any Party that has a substantial interest in the matter in dispute, within the meaning of paragraph 9, is entitled to join the panel proceedings on delivery of written notice to the other Parties and the Secretariat within 15 days after the date of delivery of the request for establishment of a panel.

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

- (a) in the case of any Party, it maintains a measure that is analogous to the one at issue; or
- (b) in the case of a Party that is a Province, it 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 Panel

1. The Parties shall maintain a roster of panellists in accordance with Annex 1704.1.

2. Within 30 days after the date of delivery of the request for establishment of a panel, each disputing Party shall appoint one panellist from the roster. If the Parties 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 3 of Annex 1704.1.

3. If a disputing Party fails to appoint a panellist within the 30 days, or, if the Parties have agreed to a panel 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.

4. 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.

5. If neither of the panellists appointed or selected pursuant to this Article has administrative law experience as identified pursuant to paragraph 3 of Annex 1704.1, the panellists or the Secretariat, as the case may be, shall select a person with administrative law experience to be the chairperson.

6. Unless the disputing Parties otherwise agree, the panellists or the Secretariat, as the case may be, shall exclude from selection any person appointed to the roster by a disputing Party.

7. Unless the disputing Parties otherwise agree, the terms of reference for a panel 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: Panel Rules of Procedure

1. The Panel Rules of Procedure in Annex 1705.1 shall apply to all panel proceedings unless modified, where appropriate, by a panel.

2. A panel 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 panel shall first seek advice from the participating Parties. If the procedural question is not resolved to the satisfaction of the panel, the panel 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 panel, with copies to the participating Parties.

3. All proceedings before a panel 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 which could include amendment of the Rules.

Article 1706: Report of Panel

1. The panel shall, within 45 days after the date when the hearing was completed or such other period of time as the disputing Parties may agree, issue a report based on the submissions of the disputing Parties and any other information received during the course of the proceeding.

2. The report shall contain:

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- (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 disputing Party, to assist in resolving the dispute.

3. Where a Party with a substantial interest in the matter in dispute, within the meaning of Article 1703(9), has participated in the panel hearing, any recommendation that the panel may make with regard to making a measure consistent with this Agreement shall apply in relation to that Party.

4. 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) 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 1707: Implementation of Panel Report

1. The Parties agree that the prompt resolution of disputes is for the benefit of all Parties. Accordingly, the disputing Parties shall, within 60 days after the issuance of the panel report, implement the panel report or agree on a mutually satisfactory resolution of the dispute. The disputing Parties 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. If the disputing Parties resolve the dispute at any stage of the dispute resolution process, written notice of such resolution shall be delivered to the other Parties and the Secretariat.

4. A participating Party which alleges that:

- (a) the measures taken to implement the panel report; or
- (b) the agreement of the disputing Parties on a mutually satisfactory resolution of the dispute

are not consistent with this Agreement may request a review by the panel that issued the report. The request shall be delivered in writing to the other participating Parties, to the

chairperson of the panel and to the Secretariat and shall include written submissions supporting the allegations.

5. The Party complained against may provide a written reply to submissions delivered pursuant to paragraph 4 and shall deliver them to the other participating Parties, to the chairperson of the panel and to the Secretariat within 10 days of receiving notice of a request pursuant to paragraph 4.

6. Within thirty days of receiving a request pursuant to paragraph 4, the panel shall issue a determination of whether the measures taken or the agreement of the disputing Parties, as the case may be, are consistent with this Agreement. The panel shall consider submissions of the Parties and may seek further written clarification from them. The panel may also, at its discretion, convene a hearing with participating Parties and may postpone its determination for a further 60 days if such a hearing is convened.

Article 1708: Publication, Committee Agenda

1. The Secretariat shall make the panel report public after the time period set out in Article 1707(1), or sooner if the disputing Parties agree.

2. After the time period set out in Article 1707(1), a disputing Party may add the dispute 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.

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 issuance of the panel report, the complaining Party may then 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 Party complained against.

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 Party complained against 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

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- (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, 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 determine whether the suspension of benefits or the imposition of retaliatory measures by a complaining Party under paragraph 3 is manifestly excessive. The panel shall issue its decision within 30 days after the matter is referred to it.

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 Party complained against 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, 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 determine whether any action taken by the Party complained against to resolve the dispute is sufficient or satisfactory. The panel shall issue its decision within 30 days after the matter is referred to it.

8. Where the panel determines that the action taken by the Party complained against 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 with respect to a Party with a substantial interest in the matter in dispute, within the meaning of Article 1703(9), that has participated in the panel hearing 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.

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 Article 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:

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- (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:
- (a) notice under Article 513(5) (Bid Protest Procedures - Provinces) that a contact point will not initiate dispute resolution proceedings on the person's behalf; or
 - (b) notice under Article 513(6) (Bid Protest Procedures - Provinces) that the Party in whose territory the person is located will not request the establishment of a 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.

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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(5) (Bid Protest Procedures - Province)

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, 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) (Bid Protest 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) (Bid Protest 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 person and Party complained against 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;

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- (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 3 of Annex 1704.1.

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 3 of Annex 1704.1, 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, within 45 days after the date the hearing was completed or such other period of time as the person and Party complained against may agree, 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;

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- (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 report may contain an award of costs of the proceeding determined in accordance with Annex 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 the Party shall agree to such resolution within 60 days after the issuance of the panel report. The person and the Party 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 costs awarded under Article 1716(3) to be paid in the same manner as costs awarded 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 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

Panellists shall conduct themselves in accordance with Annex 1719.

Article 1720: Limit on Jurisdiction

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

Article 1721: Contact Points

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

Article 1722: Definitions

In this Chapter:

administrative remedy means any non-judicial remedy provided by an agency, board or commission of a Party;

disputing Parties means the complaining Party and the Party complained against;

participating Parties means the complaining Party, the Party complained against and any other Party with a substantial interest in the matter in dispute, within the meaning of Article 1703(9) that has delivered a notice pursuant to Article 1703(8).

Annex 1704.1

Roster

1. Subject to paragraph 4, each Party shall be entitled to appoint up to 5 members to the roster.
2. 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.
3. At least one member of each Party's roster shall have administrative law experience. 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. Where, on the coming into effect of paragraph 3, none of the members appointed by a Party has the requisite administrative law experience, that Party shall, within six months of the coming into effect of paragraph 3, appoint such a person. In this case, that Party shall be entitled, but only for so long as is necessary, to appoint up to 6 members to the roster.
5. Where a roster member becomes unable to sit on the roster or a roster member's term expires, the Party who nominated that member shall nominate a replacement member to the roster.

Annex 1705.1

Panel Rules of Procedure

These rules are intended to give effect to the provisions of Chapter Seventeen with respect to panel reviews conducted pursuant to that Chapter. Where a procedural question arises that is not covered by these rules, a panel may adopt the procedure to be followed in the particular case before it by analogy to these rules and the provisions of Chapter Seventeen. These rules should not be construed to extend or limit the jurisdiction of panels.

Application

1. These rules are established under Article 1705 and shall apply to dispute resolution proceedings under Chapter Seventeen.

Definitions

2. In these rules:

Agreement means the Agreement on Internal Trade;

Committee means the Committee on Internal Trade established under Article 1600;

disputant means a complaining Party, or a person of a Party, that requests the establishment of a panel, or any Party complained against in the panel proceeding;

documents includes any materials filed in a panel review;

intervenor means a participating Party which is not a disputant but fulfills the requirements for participation in a dispute under Articles 1703(8) and 1703(9) of the Agreement;

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

participants means the disputants and any Party that joins a panel proceeding under Article 1703(8);

Party means a Party to the Agreement;

person means a person as defined in Chapter Two and Chapter Seventeen of the Agreement;

Secretariat means the Secretariat established under Article 1603.

Duration and scope of panel review

3. A panel review commences on the day on which a Request for Panel Review is filed with the Secretariat and terminates on:
 - (a) the day on which a panel report is issued under rule 39;
 - (b) the day on which a notice of termination is given to the Secretariat under rule 45;
or
 - (c) where a panel is convened under Article 1709(5) or 1709(7), the day on which a decision of the panel is issued under rule 46.
4. A panel, in conducting its review, shall:
 - (a) where a panel is established pursuant to a request made under Article 1703, unless the disputants otherwise agree in writing, examine whether the actual or proposed measure or other matter at issue is or would be inconsistent with the Agreement;
 - (b) where a panel is established pursuant to a request made under Article 1714, examine whether the actual measure at issue is inconsistent with the Agreement;
 - (c) where a panel is convened under Article 1709(5), determine whether the suspension of benefits or the imposition of retaliatory measures by a complaining Party is manifestly excessive; and
 - (d) where a panel is convened under Article 1709(7), determine whether any action taken by the Party complained against to resolve the dispute is sufficient or satisfactory.

Responsibilities of the Secretariat

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5. The Secretariat shall provide administrative support for each panel review and shall make the arrangements necessary for the oral proceedings and meetings of each panel.
 6. The Secretariat shall maintain a file for each panel review, comprised of either the original or a copy of all documents filed in the panel review and, where necessary, may certify copies as true copies of the originals.
 7. The file number assigned to a Request for Panel Review shall be the Secretariat file number for all documents filed or issued in that panel review. All documents filed shall be stamped by the Secretariat to show the date and time of receipt.
 8. The Secretariat shall forward copies of any Request for Panel Review to all the other Parties and shall forward copies of all other documents and submissions filed with it on a panel review to the participants.
 9. The Secretariat shall advise the participants in a timely manner of the time and location of all proceedings before the panel.
 10. The Secretariat shall forward copies of each panel report to the participants.

Translation and interpretation

11. The written and oral proceedings may be in either official language.
12. The Secretariat shall provide for interpretation and translation, as the case may be, of written and oral proceedings or panel reports, if a participant or panellist so requests. Participants are encouraged to provide submissions in both official languages whenever feasible.
13. Where a panel report is made public, it shall be issued in both official languages simultaneously. Each version shall be equally authentic.

Operation of the panel

14. The chairperson of the panel shall preside at all its meetings.
15. The chairperson of the panel shall fix the date and hour of its sittings in accordance with these rules and following consultations with other panel members and the Secretariat.
16. Panel meetings other than hearings may be conducted by telephone conference call or other electronic means.
17. A panel may adopt its own internal procedures for routine administrative matters not inconsistent with these rules.

Confidentiality

18. Where a participant indicates that any information contained in documents filed with the Secretariat or forwarded to other participants, in connection with panel proceedings, is to be treated confidentially:
 - (a) as a result of the information being commercially sensitive or otherwise protected by law; or

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- (b) in order to protect the information from disclosure which could impair international relations or obligations;

the Secretariat, the panel 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 panel proceedings as it considers necessary for the preparation of 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 panel shall make the participants' written submissions available to the public no later than at the beginning of the panel hearings, except those parts of the written submissions that contain proprietary or confidential information as specified in Rule 18.

Prior Contact with Panel Member Prohibited

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

Notice of appearance

24. The Party complained against and any Party that is entitled to join the panel proceedings under Article 1703(8) and wishes to do so, shall file a Notice of Appearance with the Secretariat within 15 days after receiving a Request for Panel Review under Article 1703.

25. The Party complained against or the person, as the case may be, shall file a Notice of Appearance with the Secretariat within 15 days after receiving a Request for Panel Review under Article 1714.

26. The Secretariat shall forward copies of any Notice of Appearance received under rule 24 to the other Parties.

Written submissions

27. A disputant that has filed a Request for Panel Review shall file written submissions with the Secretariat within 45 days after the Request for Panel Review was filed and the Secretariat shall forward copies of the submissions to the other participants.

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

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- (a) in the case of a Party that is entitled to join the panel proceedings under Article 1703(8) and that has filed a Notice of Appearance under Rule 24, within 21 days after the initial written submission has been filed with the Secretariat, and
 - (b) in the case of the Party complained against, within 45 days after the initial written submission has been filed 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, on its own initiative or at the request of a participating Party, 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;
- (d) subject to Rule 31, whether an issue in the dispute is within the scope of the Agreement; and
- (e) any other matter relevant to the panel proceedings.

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

- (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.

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 Party complained against.

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. The hearing shall be conducted by the panel in the following manner:

- (a) Argument of the complaining Party or person;

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- (b) Presentation of any Party that has joined a panel proceeding pursuant to Article 1703(8);
 - (c) Argument of the Party complained against;
 - (d) Reply of the complaining Party or person;

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

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.

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 the disputants are Parties, 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. Where a Party with a substantial interest in the dispute has participated in the panel hearing pursuant to Article 1703(8), any recommendation referred to in rule 40 contained in a report shall apply with respect to that Party.

42. 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 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

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

43. A report referred to in rule 45 may contain an award of costs of the panel proceedings determined in accordance with Annex 1716.3.

44. The majority and dissenting opinions of panel members shall be anonymous.

Notice of termination

45. If the disputants resolve the dispute at any stage of the panel proceedings, written notice shall be given to the Secretariat, and where the disputants are Parties, copies of the notice shall be delivered by the Secretariat to the other Parties.

Convening of panel under Article 1709

46. 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 Party complained against to resolve the dispute is sufficient or satisfactory;

the panel shall issue its decision within 30 days after the matter is referred to it.

47. The panel shall as soon as possible after being convened under rule 46, determine the manner in which it intends to proceed and shall through the Secretariat, notify the participants of the manner of proceeding.

Unavailability of Panellist

48. 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 1704.1.

Payment of panel operational costs

49. For the purposes of rules 50 to 52:

operational costs means all per diem fees and other disbursements payable to panellists for the performance of their duties as panellists including fees and disbursements of experts retained by the panel pursuant to Article 1705 and costs of third party facilities and equipment used for meetings or hearings involving the panel.

50. Operational costs shall be divided equally between disputants. However, the panel may apportion operational costs otherwise where justified by the following considerations:

- (a) whether the disputants complied with Article 1700;

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- (b) the outcome of the panel proceedings; and
 - (c) other relevant considerations that may justify assessing a major part of the responsibility for costs to one of the disputants.

51. 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.

52. 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 50.

Annex 1716.3

Costs

1. An award of costs may be made only to a successful person in a panel proceeding and shall be at the discretion of the panel and determined in accordance with this annex.
2. A person may submit a statement of costs at the conclusion of the panel hearing.
3. In determining whether to award costs, the panel shall consider the conduct of the person during the panel proceeding.
4. In determining the amount of costs, the panel shall consider the statement of costs submitted by the person and, as well, the reasonableness of the costs based on the complexity of the complaint and the duration of the panel proceeding.
5. In no event shall costs exceed the following tariff:
 - (a) counsel or agent's fees relating to preparation for the hearing, to a maximum of: \$12,500.00;
 - (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: \$2,000.00; and thereafter for each day up to 10 days, to a maximum per day of: \$1,500;
 - (c) reasonable fees and disbursements of experts, to a maximum of: \$12,500.00;
 - (d) reasonable charges for postage, courier services and disbursements, including travel expenses.

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 panellists in the operation of dispute resolution procedures involving panels 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 1704.1, or
- (b) an individual who is under consideration for appointment as a member of a panel 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 assigned to the *Panel Rules of Procedure*;

Party means a Party to the Agreement;

proceeding, unless otherwise specified, means a panel under Article 1704;

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 panel 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 panel 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

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- (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 panel 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 panel 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 panel 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 panel.

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 panel.

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 panel report or panel 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 panel 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 panellists 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 Panellists (Code of Conduct) and the 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 panel 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 panel 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 panel 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

APPROVAL OF THE SEVENTH PROTOCOL OF AMENDMENT

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Seventh Protocol of Amendment to the Agreement on Internal Trade.

Signed at _____,

this ____ **day of** _____, **2006**