

EIGHTH 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.

1. Chapter Five (Procurement)

1.1 Article 511: Information and Reporting

- a. Replace paragraph 6 with the following:

“6. The Secretariat shall compile the information received from each Party under paragraph 5 and publish the information electronically. Each Party shall provide links to the information compiled by the Secretariat by either electronic means or by posting a notice in a newspaper.”

- b. In paragraph 7, first sentence, replace “procuring Party” with “the Party whose entity is responsible for the procurement”. In the second sentence, replace “procuring Party” with “that Party”.

1.2 Article 513: Bid Protest Procedures – Provinces

Replace the article with the revised article found in Annex 1, noting that the title of the article is changed to “Complaint Procedures – Provinces”.

2. Chapter Six (Investment)

2.1 Annex 608.3: Code of Conduct on Incentives

Divide paragraph 8 into two separate paragraphs by, in the third sentence:

- a. putting a period after “applying their incentive measures”; and

- b. replacing “, and” immediately thereafter with “The Parties” and renumbering the new sentence beginning with “The Parties shall endeavour” as paragraph 8P8.

Accordingly, the two paragraphs shall read:

“8. The Parties affirm that economic development within their territories may include the provision of incentives. The Parties acknowledge that certain incentives may harm the economic interests of other Parties. The Parties shall take into account the economic interests of other Parties in developing and applying their incentive measures.

8P8. The Parties shall endeavour to refrain from providing an incentive that:

- (a) sustains, for an extended period of time, an economically non-viable operation whose production adversely affects the competitive position of a facility located in the territory of another Party;
- (b) increases capacity in sectors where the increase is not warranted by market conditions; or
- (c) is excessive, either in absolute terms or relative to the total value of the specific project for which the incentive is provided, taking into account such factors as the economic viability of the project and the magnitude of the economic disadvantage that the incentive is designed to overcome.”

3. Chapter Seventeen (Dispute Resolution Procedures)

3.1 Article 1701: Application

In paragraph 3, replace “Article 513 (Bid Protest Procedures – Provinces)” with “Article 513 (Complaint Procedures - Provinces)”.

3.2 Article 1711: Initiation of Proceedings by Persons

- a. Replace paragraph 2 with the following:

“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."

- b. In paragraph 4(b), replace "under Article 513(5) (Bid Protest Procedures - Provinces)" with "under Article 513(4) (Complaint Procedures - Provinces)".

3.3 Article 1712: Screening

In paragraph 3, replace "Article 513(5) or (6) (Bid Protest Procedures – Provinces)" with "Article 513(5) (Complaint Procedures – Provinces)".

3.4 Article 1713: Consultations

In paragraph 2, replace "under Article 513(5) (Bid Protest Procedures – Provinces)" with "under Article 513(5)(a) (Complaint Procedures – Provinces)".

Article 513: Complaint Procedures - Provinces

1. This Article applies to complaints regarding procurement by Provinces.
2. Where, in respect of a specific procurement, a supplier has had recourse to the dispute settlement procedures under another procurement agreement, it may not utilize the complaint procedures of this Chapter for that specific procurement.
3. The supplier shall communicate its concerns or complaints in writing to the entity responsible for the procurement with a view to resolving them. The entity shall acknowledge receipt of the complaint in writing within five working days and provide a response within 20 working days.
4. Where a supplier has not received a satisfactory response under paragraph 3, it may make a written request to the contact point in the Province where the supplier is located to seek resolution of the complaint. Such a request may only be made within 90 days after the date on which the supplier acquired, or should have acquired, knowledge of the alleged inconsistent measure that forms the basis for the complaint.
5. Within 20 working days after the date of delivery of the request by the supplier under paragraph 4, the following must occur:
 - (a) the contact point shall decide whether or not to make representations on the supplier's behalf. Where the contact point decides not to do so, it shall provide the supplier with written notice, setting out reasons for its decision;
 - (b) where the contact point decides to make representations on the supplier's behalf, it shall provide written notice to the supplier of its decision and shall, within the first 10 working days, proceed to make such representations to the contact point of the Province of the purchasing entity;
 - (c) the contact point of the Province of the purchasing entity shall provide an initial response within 10 working days of the delivery of the representations;
 - (d) the contact points of the two Provinces shall consult with a view to resolving the matter; and
 - (e) the contact point of the supplier's Province shall provide written notice to the supplier of the outcome of the consultations and, in the case where consultations have failed to resolve the matter, shall indicate whether or not

the contact point intends to request consideration of the complaint by a review panel pursuant to paragraph 7.

6. The supplier that has made a written request under paragraph 4 shall have recourse to Article 1711(2) (Initiation of Proceedings by Persons) where the contact point of the supplier's Province gives notice:

- (a) under paragraph 5(a), that it will not make representations on the supplier's behalf; or
- (b) under paragraph 5(e), that it will not request the establishment of a review panel.

Failure to provide such notice within the 20 working days after the date of delivery of the supplier's request or, with the mutual agreement of the two contact points, within a further period not to exceed 10 additional working days, is deemed to be notice for the purposes of Article 1711(2)(Initiation of Proceedings by Persons).

7. Where consultations have failed to resolve the matter, the contact point of the supplier's Province may make a written request for consideration of the complaint by a review panel. The request shall be delivered to the contact point of the Province of the purchasing entity and to the Secretariat.

The review panel shall consider the complaint in accordance with the following:

- (a) each Province shall, before the date of entry into force of this Agreement, establish a roster consisting of competent and impartial people who will be able to serve on and chair review panels, and deliver notice of the roster to the other Provinces and to the Secretariat;
- (b) the contact points of the two Provinces shall, within 10 working days after the date of delivery of the request to the Secretariat, each appoint one panellist from any roster and agree on the choice of a third panellist to act as chairperson;
- (c) notwithstanding paragraph (b), any other composition of a panel acceptable to both Provinces is permissible;
- (d) if a contact point fails to appoint a panellist under paragraph (b), or the two contact points fail to agree on the choice of a chairperson under paragraph (b), the Secretariat shall select the panellist or chairperson by lot from the rosters of those Parties not involved in the complaint;
- (e) the panel shall begin consideration of a complaint within five working days after the appointments of panellists and a chairperson are confirmed, and

shall complete its work within 20 working days after this confirmation. Should extraordinary circumstances require an extension, the panel will provide written notice of the extension to the contact points of both Provinces and to the Secretariat;

- (f) the panel shall establish procedures and guidelines appropriate to each case. The contact points of the two Provinces shall provide secretarial and research support to the panel and maintain necessary records;
- (g) the panel shall investigate the complaint to determine whether there is an inconsistency with this Chapter. The panel is entitled to receive a copy of pertinent tender documents and other relevant support information that it may require to assist in its determination. In accordance with Article 510, the panel shall keep confidential all information obtained by it;
- (h) the panel shall deliver a written report to both contact points who shall consult with each other and the supplier with the objective of reaching a mutually acceptable accommodation based on the report; and
- (i) both Provinces shall share the fees and expenses of the panel equally.

8. The contact points shall, within 10 working days after the date of delivery of the report, append to the report a description of the accommodation or, if an agreement on accommodation has not been reached, the different positions of both Provinces. The report and the appendix or appendices shall constitute the complete and final report of the panel. The contact points shall send the complete and final report to the Secretariat which shall forward a copy to the other Parties.

9. Where a Province considers, as a result of a panel's report and subsequent consultations, or another series of similar unresolved complaints, that the other Province is not complying with the terms of this Chapter, that Province may have recourse to Article 1708 (Publication, Committee Agenda) or 1709 (Non-Implementation - Retaliatory Action).