TWELFTH 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. PROCUREMENT

1. Chapter Five (Procurement)

1.1 Article 506: Procedures for Procurement

A. Replace Article 506(2)(a) with the following:

“the use of an electronic tendering system that is equally accessible to all Canadian suppliers; the notices of a call for tenders shall be available to suppliers free of charge;”.

B. Add paragraph 13 Contract Award Notification:

“Entities shall electronically post contract award information on the electronic tendering system designated by its Party under paragraph 506(3) for all publicly tendered procurement concluded pursuant to paragraph 2a.”

Parties shall, no later than one year after entry into force of the 12th Protocol of Amendment, adhere to paragraph 13.”

1.2 Article 514: Bid Protest Procedures – Federal Government

Replace Article 514 with:

“Article 514: Complaint Procedures — Federal Government

1. This Article applies to complaints regarding procurement by the Federal Government.

2. In order to promote fair, open and impartial procurement procedures, the Federal Government shall adopt and maintain complaint procedures for procurement covered by this Chapter that:

   a) allow suppliers to submit complaints concerning any aspect of the procurement process, which for the purposes of this Article begins after an entity has decided on its procurement requirement and continues through to the awarding of the contract;
   b) encourage suppliers to seek a resolution of any problem with the entity concerned prior to initiating a complaint;
   c) ensure that its entities accord fair and timely consideration to any complaint regarding procurement covered by this Chapter;
d) limit the period within which a supplier may initiate a complaint, provided that the period is at least 10 business days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

e) permit a supplier that does not achieve a successful resolution of its complaint to bring the matter to the attention of an authority, with no substantial interest in the outcome, to receive and consider the complaint and make appropriate findings and recommendations with respect to the complaint;

f) require the reviewing authority to provide its findings and recommendations in writing and in a timely manner and make them available to the Parties; and

g) require the reviewing authority to specify its complaint procedures in writing and make them generally available.

3. The reviewing authority may:

a) recommend, where appropriate, a delay in awarding a proposed contract pending the resolution of the complaint;

b) issue a recommendation to resolve the complaint, which may include directing the entity to re-evaluate offers or terminate or re-compete the contract in question;

c) recommend, where appropriate, the award of compensation for lost profit or the costs associated with filing the complaint and preparing the bid; and

d) make, where appropriate, written recommendations to the entity concerning practices that the reviewing authority considers to be inconsistent with this Chapter.”

1.3 In Article 516, replace paragraph 4 by the following:

“4. The Parties shall review the opportunity to harmonize or reconcile the complaint procedures provided in Articles 513 and 514 and make appropriate recommendations to the Committee no later than three years after the date of entry into force of this Agreement.”

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

Replace paragraph C(5) with the following:

“5. Procurements covered by this Annex shall be announced by a notice on any electronic tendering system easily accessible to all suppliers in Canada. Each Party shall encourage entities covered by this Annex to post such notices on the electronic tendering system designated by it under paragraph 506(3). The information published shall give potential suppliers an overview of the proposed procurement and basic tendering information. Entities subject to this Annex shall provide suppliers with a reasonable period of time to submit a bid, taking into account the time needed to disseminate the information, the complexity and the context of the procurement.”

1.5 Annex 502.4 Procurement - Provisions for municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities
Replace paragraph G(8) with the following:

“8. After the date of entry into force of this Annex, entities covered by this Annex shall be required to post tender notices on the electronic tendering system or systems, referred to in paragraph 7, for all covered procurement. Each Party shall encourage entities to post such notices on the electronic tendering system designated by it under paragraph 506(3).”

B. LABOUR MOBILITY

2. Chapter Seven (Labour Mobility)

2.1 (French text only) Article 705: Residency Requirement

a. at the end of paragraph 1 add: “, selon le cas:”

C. DISPUTE RESOLUTION PROCEDURES

3. Chapter 17 (Dispute Resolution Procedures)

3.1 In Article 1701: Application, replace paragraph 3 with the following:

“3. Articles 1702.1 through 1707.5 (Government –to-Government Dispute Resolution) do not apply to complaints initiated under Article 513 (Complaint Procedures - Provinces). Articles 1710 through 1718 (Person-to-Government Dispute Resolution) do not apply to complaints initiated under Article 514 (Complaint Procedures- Federal Government). For greater certainty, a Party may not institute a complaint procedure on behalf of a supplier under Articles 1702.1 through 1707.5 or 1710 through 1718.”

D. FINAL PROVISIONS

4. Chapter Eighteen (Final Provisions)

4.1 Article 1806: Financial Sector

Replace paragraph 1 with the following:

“1. Except for Chapter 7 and for measures referred to in paragraphs 7 through 10 of Annex 807.1, nothing in this Agreement applies to measures adopted or maintained by a Party or a public body that exercises regulatory or supervisory authority delegated by law in relation to financial institutions or financial services.”

4.2 (French text only) Annex 1801.6A Obligations to Eliminate, Phase Out or Liberalize to Which Article 1801(2) Does Not Apply:

Change title of Annex 1801.6A to “Obligations d'éliminer, d'éliminer progressivement, ou de libéraliser auxquelles le paragraphe 1801 (2) ne s'applique pas”