

AGREEMENT ON INTERNAL TRADE

Consolidated Version



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AGREEMENT ON INTERNAL TRADE

Consolidated Version

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FOREWORD

This consolidation combines the text of the original ***Agreement on Internal Trade*** (1994) together with all ***Protocols of Amendment*** which have been adopted since the signing of the *Agreement*.

Text

Entry into force

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Third Protocol of Amendment	April 17, 1999
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Eleventh Protocol of Amendment	November 8, 2010
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PREAMBLE

The Governments of Canada, Newfoundland and Labrador¹, Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, the Northwest Territories and Yukon²,

RESOLVED to:

PROMOTE an open, efficient and stable domestic market for long-term job creation, economic growth and stability;

REDUCE AND ELIMINATE, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada;

PROMOTE equal economic opportunity for Canadians;

ENHANCE the competitiveness of Canadian business;

PROMOTE sustainable and environmentally sound development;

CONSULT on matters related to internal trade;

RECOGNIZE the diverse social, cultural and economic characteristics of the provinces; and

RESPECT the legislative authorities of Parliament and the provincial legislatures under the Constitution of Canada;

HEREBY AGREE as follows:

¹ All references to "Newfoundland" in the Agreement were changed to "Newfoundland and Labrador" by the Sixth Protocol of Amendment.

² All references to "Yukon Territory" in the Agreement, other than where referring to legislation, were changed to "Yukon" by the Sixth Protocol of Amendment.

PART I – GENERAL

Chapter One

Operating Principles

Article 100: Objective

It is the objective of the Parties to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. All Parties recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal.

Article 101: Mutually Agreed Principles

1. This Agreement applies to trade within Canada in accordance with the chapters of this Agreement.
2. This Agreement represents a reciprocally and mutually agreed balance of rights and obligations of the Parties.
3. In the application of this Agreement, the Parties shall be guided by the following principles:
 - (a) Parties will not establish new barriers to internal trade and will facilitate the cross-boundary movement of persons, goods, services and investments within Canada;
 - (b) Parties will treat persons, goods, services and investments equally, irrespective of where they originate in Canada;
 - (c) Parties will reconcile relevant standards and regulatory measures to provide for the free movement of persons, goods, services and investments within Canada; and
 - (d) Parties will ensure that their administrative policies operate to provide for the free movement of persons, goods, services and investments within Canada.
4. In applying the principles set out in paragraph 3, the Parties recognize:
 - (a) the need for full disclosure of information, legislation, regulations, policies and practices that have the potential to impede an open, efficient and stable domestic market;
 - (b) the need for exceptions and transition periods;
 - (c) the need for exceptions required to meet regional development objectives in Canada;
 - (d) the need for supporting administrative, dispute settlement and compliance mechanisms that are accessible, timely, credible and effective; and
 - (e) the need to take into account the importance of environmental objectives, consumer protection and labour standards.

Article 102: Extent of Obligations

1. Each Party is responsible for compliance with this Agreement:
 - (a) by its departments, ministries and similar agencies of government;
 - (b) by its regional, local, district or other forms of municipal government, where provided by this Agreement; and
 - (c) by its other governmental bodies and by non-governmental bodies that exercise authority delegated by law, where provided by this Agreement.

For greater certainty, "other governmental bodies" includes Crown corporations.

2. Each Party shall adopt and maintain measures to ensure the compliance referred to in paragraph 1.

Chapter Two

General Definitions

Article 200: Definitions of General Application

In this Agreement, except as otherwise provided:

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

cultural industries means persons engaged in any of the following activities:

- (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
- (b) the production, distribution, sale or exhibition of film or video recordings;
- (c) the production, distribution, sale or exhibition of audio or video music recordings;
- (d) the publication, distribution or sale of music in print or machine readable form; or
- (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

date of execution of this Agreement means July 18, 1994;

days means calendar days, including weekends and holidays;

enterprise means an entity constituted, established or organized under applicable laws, whether or not for profit and whether privately-owned or governmentally-owned;

enterprise of a Party means an enterprise constituted, established or organized under the law of a Party;

environment means the components of the Earth and includes, but is not limited to:

- (a) land, water and air, including all layers of the atmosphere;
- (b) organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

environmental measure means a measure the primary purpose of which is to protect the environment or to prevent danger to human, animal or plant life or health;

existing measure means a measure adopted before the date of entry into force of this Agreement, being July 1, 1995;

financial institution means a person that is subject to, or governed by, a measure adopted or maintained by a Party or by a public body that exercises regulatory or supervisory authority delegated by law, in respect of and by reason of the production or provision of a financial service;

financial service means any service or product of a financial nature that is subject to, or governed by, a measure adopted or maintained by a Party or by a public body that exercises regulatory or supervisory authority delegated by law and includes, but is not limited to:

- (a) deposit-taking;
- (b) loan and investment services;
- (c) insurance;
- (d) estate, trust and agency services;
- (e) securities; and
- (f) all forms of financial or market intermediation including, but not limited to, the distribution of financial products;

good of a Party means a good that is produced, manufactured, grown or obtained in, used for a commercial purpose in, or distributed from, the territory of a Party;

harmonization means making identical or minimizing the differences between standards or related measures of similar scope;

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

investment includes:

- (a) the establishment, acquisition or expansion of an enterprise; and
- (b) financial assets, such as money, shares, bonds, debentures, partnership rights, receivables, inventories, capital assets, options and goodwill;

legitimate objective means any of the following objectives pursued within the territory of a Party:

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health;
- (d) protection of the environment;

³ This definition was added to the Agreement on Internal Trade by means of the Seventh Protocol of Amendment.

- (e) consumer protection;
- (f) protection of the health, safety and well-being of workers; or
- (g) affirmative action programs for disadvantaged groups;

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification.

Except as otherwise provided, "legitimate objective" does not include protection of the production of a Party or, in the case of the Federal Government, favouring the production of a Province.

For greater certainty, "legitimate objective" may be amended by a provision in Part IV;

measure includes any legislation, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure;

mutual recognition means the acceptance by a Party of a person, good, service or investment that conforms with an equivalent standard or standards-related measure of another Party without modification, testing, certification, re-naming or undergoing any other duplicative conformity assessment procedure;

new measure means a measure adopted on or after the date of entry into force of this Agreement, being July 1, 1995;

non-Party includes a foreign sovereign state;

Party means a party to this Agreement;

Parties means, as the context requires, all or some of the Parties to this Agreement;

person means a natural person or an enterprise;

person of a Party means:

- (a) a natural person resident in the territory of a Party; or
- (b) an enterprise of a Party;

Province means a province of Canada and includes the Northwest Territories and Yukon;

Secretariat means the Secretariat established under Article 1603 (Secretariat);

service of a Party means a service supplied, or to be supplied, by a person of a Party;

standard means a specification, approved by a Party or by a recognized body, including those accredited as members of Canada's National Standards System, that sets out the rules, guidelines or characteristics for goods or related processes and production methods, or for services, service providers or their related operating methods;

standards-related measure means a measure that incorporates a standard and may also set out the requirements and procedures to ensure conformity or compliance

PART II - CONSTITUTIONAL AUTHORITIES

Chapter Three

Reaffirmation of Constitutional Powers and Responsibilities

Article 300: Reaffirmation of Constitutional Powers and Responsibilities

Nothing in this Agreement alters the legislative or other authority of Parliament or of the provincial legislatures or of the Government of Canada or of the provincial governments or the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada.

PART III - GENERAL RULES

Chapter Four

General Rules

Article 400: Application

The general rules established under this Chapter apply only to matters covered by Part IV, except as otherwise provided in this Agreement. In the event of an inconsistency between a specific rule in Part IV and a general rule in this Chapter, the specific rule prevails to the extent of the inconsistency.

Article 401: Reciprocal Non-Discrimination

1. Subject to Article 404, each Party shall accord to goods of any other Party treatment no less favourable than the best treatment it accords to:

- (a) its own like, directly competitive or substitutable goods; and
- (b) like, directly competitive or substitutable goods of any other Party or non-Party.

2. Subject to Article 404, each Party shall accord to persons, services and investments of any other Party treatment no less favourable than the best treatment it accords, in like circumstances, to:

- (a) its own persons, services and investments; and
- (b) persons, services and investments of any other Party or non-Party.

3. With respect to the Federal Government, paragraphs 1 and 2 mean that, subject to Article 404, it shall accord to:

- (a) the goods of a Province treatment no less favourable than the best treatment it accords to like, directly competitive or substitutable goods of any other Province or non-Party; and
- (b) the persons, services and investments of a Province treatment no less favourable than the best treatment it accords, in like circumstances, to persons, services and investments of any other Province or non-Party.

4. The Parties agree that according identical treatment may not necessarily result in compliance with paragraph 1, 2 or 3.

Article 402: Right of Entry and Exit

Subject to Article 404, no Party shall adopt or maintain any measure that restricts or prevents the movement of persons, goods, services or investments across provincial boundaries.

Article 403: No Obstacles

Subject to Article 404, each Party shall ensure that any measure it adopts or maintains does not operate to create an obstacle to internal trade.

Article 404: Legitimate Objectives

Where it is established that a measure is inconsistent with Article 401, 402 or 403, that measure is still permissible under this Agreement where it can be demonstrated that:

- (a) the purpose of the measure is to achieve a legitimate objective;
- (b) the measure does not operate to impair unduly the access of persons, goods, services or investments of a Party that meet that legitimate objective;
- (c) the measure is not more trade restrictive than necessary to achieve that legitimate objective; and
- (d) the measure does not create a disguised restriction on trade.

Article 405: Reconciliation

1. In order to provide for the free movement of persons, goods, services and investments within Canada, the Parties shall, in accordance with Annex 405.1, reconcile their standards and standards-related measures by harmonization, mutual recognition or other means.
2. Where a difference, duplication or overlap in regulatory measures or regulatory regimes operates to create an obstacle to internal trade, the Parties shall, in accordance with Annex 405.2, cooperate with a view to addressing the difference, duplication or overlap.

Article 406: Transparency

1. Each Party shall ensure that its legislation, regulations, procedures, guidelines and administrative rulings of general application respecting matters covered by this Agreement are made readily accessible.
2. A Party proposing to adopt or modify a measure that may materially affect the operation of this Agreement shall, to the extent practicable, notify any other Party with an interest in the matter of its intention to do so and provide a copy of the proposed measure to that Party on request.
3. Paragraph 2 does not apply where the immediate implementation of a measure is necessary to address an urgent situation related to a legitimate objective, provided that, on adoption of the measure, the Party adopting it:
 - (a) notifies the other Parties of the measure and provides a copy of the measure to any Party that requests it; and

- (b) provides the other Parties with an opportunity to comment on the measure, and takes such comments into consideration.
4. The provision of notice under paragraph 2 or 3 is without prejudice as to whether the measure is consistent with this Agreement.
 5. Each Party shall maintain an enquiry point able to answer reasonable enquiries and to provide information pertaining to its measures and to other matters covered by this Agreement.
 6. Each Party shall ensure that documents requested by interested persons or Parties are supplied in a non-discriminatory manner and that any fees charged are reasonable.
 7. Nothing in this Agreement shall be construed to require a Party to:
 - (a) communicate, publish text or provide particulars or copies of documents other than in an official language of the Party;
 - (b) disclose any information that could prejudice the legitimate commercial interests of particular persons or the disclosure of which could result in a person obtaining an unfair financial gain arising from the use of information that is not widely available; or
 - (c) disclose any information that by law is not subject to disclosure in order to ensure the proper functioning of government.
 8. For the purposes of paragraphs 6 and 7, "documents" includes information in electronic form.

Article 407: Definitions

In this Chapter:

regulatory measure means a measure that does not contain a standard and that pertains to commercial activity;

regulatory regime means a framework of regulatory measures or a system, including institutions or agencies, established to secure compliance with regulatory measures.

Annex 405.1

Standards and Standards-Related Measures

Scope and Coverage

1. This Annex applies to standards and standards-related measures covered by Part IV.

Non-Governmental Standardizing Bodies

2. Each Party shall, through appropriate measures, encourage observance of this Annex by non-governmental bodies that carry out activities in the field of standardization, including those bodies accredited as members of Canada's National Standards System, or by other bodies that develop or maintain standards with which compliance is not mandatory.
3. For greater certainty, paragraph 2 is not an obligation under Article 102(1)(c) (Extent of Obligations).

Right to Establish Standards and Standards-Related Measures

4. For greater certainty, a Party may, in accordance with this Agreement, adopt or maintain any standard or standards-related measure to achieve a legitimate objective and may, in pursuing that objective, establish the level of protection that it considers to be appropriate.
5. For greater certainty, with respect to the application of Article 404(c), each Party shall, in ensuring that any standard or standards-related measure that it adopts or maintains is not more trade restrictive than necessary to achieve a legitimate objective, take into account the risks that non-fulfilment of that legitimate objective would create and ensure proportionality between the trade restrictiveness of the standard or standards-related measure and those risks.
6. Each Party shall, in pursuing a legitimate objective, ensure that it acts consistently when addressing comparable situations.
7. Each Party shall, where appropriate and to the extent practicable, specify standards in terms of performance or competence.
8. Each Party shall ensure that its standards and standards-related measures have a scientific, factual or other reasonable basis and that, where appropriate, such standards and standards-related measures are based on an assessment of risk.

Conformity Assessment

9. Each Party shall ensure that its conformity assessment procedures are non-discriminatory and expeditious in respect of their treatment of goods and shall endeavour to ensure such non-discriminatory and expeditious treatment towards persons, services and investments of all other Parties. In the event that non-conformity with a standard is established, each Party shall identify in writing in what respect a particular person, good, service or investment failed to conform with the applicable standard.
10. Where the criteria used for accreditation of conformity assessment bodies are equivalent, a Party shall recognize the conformity assessment bodies located in the territory of another Party on

terms no less favourable than those it affords to its own conformity assessment bodies or those of any other Party.

11. Where differing conformity assessment procedures produce equivalent results, a Party shall accept the certification of another Party that a satisfactory conformity assessment procedure has been completed.

12. Each Party shall avoid repeating a conformity assessment procedure already performed by a conformity assessment body located in the territory of any other Party and shall, to the extent practicable, use conformity assessment bodies accredited under Canada's National Standards System.

Reconciliation

13. In order to minimize potential obstacles to internal trade, the Parties shall establish mechanisms to consult and cooperate on matters relating to standards and standards-related measures.

14. Where a difference between a standard or standards-related measure of a Party and that of another Party is identified by a Party as operating to create an obstacle to internal trade, the affected Parties shall jointly conduct a review of the matter for the reconciliation of those standards or standards-related measures and make the results available.

Mutual Recognition

15. Where a Party accepts a standard or standards-related measure of another Party as equivalent to its own, it shall apply the principle of mutual recognition.

16. Where a Party does not accept a standard or standards-related measure of another Party as equivalent to its own, it shall, in response to a request from that other Party and within a reasonable period of time, provide detailed reasons for non-acceptance.

Harmonization

17. Each Party shall, where appropriate and to the extent practicable, base its standards on relevant National Standards, *de facto* national standards or international standards.

18. Where National Standards, *de facto* national standards or international standards do not exist or are not sufficient, the Parties shall cooperate to develop national standards and, wherever practicable, use Canada's National Standards System for that purpose.

19. Where a Party, in pursuing a legitimate objective, has or establishes a level of protection that is the same as that of another Party, the affected Parties shall endeavour to adopt a harmonized standard or standards-related measure in respect of that objective.

Advance Notification

20. Except in urgent circumstances, each Party shall allow a reasonable period of time between the date of publication and the date of implementation of a standard or standards-related measure in order to provide interested persons and Parties with sufficient time to adapt to the standard or standards-related measure. That Party shall, where appropriate, make the standard or standards-related measure available through Canada's National Standards System.

Definitions

21. In this Annex:

assessment of risk means an evaluation of the potential for adverse effects on the ability to satisfy, achieve or conform with a legitimate objective;

conformity assessment body means a person accredited to administer a conformity assessment procedure by the Standards Council of Canada or by a Party;

conformity assessment procedure means a procedure used, directly or indirectly, to determine that a standard is fulfilled;

de facto national standard means a standard recognized by all Parties;

National Standard means a standard approved as a National Standard of Canada by the Standards Council of Canada;

urgent circumstance means a situation where an urgent problem of safety, health, environmental protection or national security arises or threatens to arise.

Annex 405.2

Regulatory Measures and Regulatory Regimes

Scope and Coverage

1. This Annex applies to regulatory measures and regulatory regimes covered by Part IV.

Non-Governmental Bodies

2. Each Party shall, through appropriate measures, encourage observance of this Annex by non-governmental bodies that adopt or maintain regulatory measures or regulatory regimes that may affect internal trade.
3. For greater certainty, paragraph 2 is not an obligation under Article 102(1)(c) (Extent of Obligations).

Right to Establish Regulatory Measures and Regulatory Regimes

4. A Party may adopt or maintain any regulatory measure or regulatory regime that it considers necessary or appropriate to achieve a legitimate objective.
5. Each Party shall, in developing a new regulatory measure or regulatory regime, seek to ensure that the measure or regime is not more trade restrictive than necessary to achieve a legitimate objective.

Consultations

6. A Party may, or shall on the written request of a directly affected person of the Party, consult with another Party where the Party is satisfied that a difference, duplication or overlap between their regulatory measures or regulatory regimes operates to create a substantial obstacle to internal trade.
7. Where a Party approaches another Party under paragraph 6, the other Party shall respond and consult within a reasonable period of time.
8. The consulting Parties shall cooperate to seek to achieve a mutually satisfactory resolution of the issue raised.
9. Where differing regulatory measures or regulatory regimes of several Parties operate to create a substantial obstacle to internal trade, the affected Parties shall jointly conduct a review of the aspects of the regulatory measures or regulatory regimes that are creating the obstacle.
10. Chapter Seventeen (Dispute Resolution Procedures) does not apply to this Annex.

PART IV - SPECIFIC RULES

Chapter Five

Procurement

Article 500: Application of General Rules

1. Articles 401 (Reciprocal Non-Discrimination) and 406 (Transparency) do not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 402 (Right of Entry and Exit), 403 (No Obstacles), 404 (Legitimate Objectives) and 405 (Reconciliation) apply to this Chapter.
3. For the purposes of Article 504, the reference in Article 404 (Legitimate Objectives) to "Article 401" shall be construed as a reference to "Article 504".

Article 501: Purpose

Consistent with the principles set out in Article 101(3) (Mutually Agreed Principles) and the statement of their application set out in Article 101(4), the purpose of this Chapter is to establish a framework that will ensure equal access to procurement for all Canadian suppliers in order to contribute to a reduction in purchasing costs and the development of a strong economy in a context of transparency and efficiency.

Article 502: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to procurement within Canada by any of its entities listed in Annex 502.1A, where the procurement value is:
 - (a) \$25,000 or greater, in cases where the largest portion of the procurement is for goods;
 - (b) \$100,000 or greater, in cases where the largest portion of the procurement is for services, except those services excluded by Annex 502.1B;⁴ or
 - (c) \$100,000 or greater, in the case of construction.
2. Subject to paragraphs 3, 3P6 and 4 and Article 517, entities listed in Annexes 502.2A and 502.2B are excluded from this Chapter.⁵
3. The entities listed in Annex 502.2B shall be free to pursue commercial procurement practices that may otherwise not comply with this Chapter. Nevertheless, the Parties shall not direct those entities to discriminate against the goods, services or suppliers of goods or services of any Party, including those related to construction.

⁴ See Interpretive Note No.1, immediately following Annex 502.1B.

⁵ This paragraph was amended by the Sixth Protocol of Amendment.

3P6. Annex 502.3 establishes the provisions to cover procurement by entities of a commercial or industrial nature or those which have been granted exclusive rights by a Party.⁶

4. Annex 502.4 establishes the provisions to cover procurement by municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities (MASH entities). Annex 502.4 will only apply to those Provinces who subscribe to the Annex by giving written notice to the Secretariat.⁷

Article 503: Extent of Obligations

Further to Article 102 (Extent of Obligations), each Party is responsible for compliance with this Chapter by its entities listed in Annex 502.1A and Annex 502.3 and for those entities covered by Annex 502.4.⁸

Article 504: Reciprocal Non-Discrimination

1. Subject to Article 404 (Legitimate Objectives), with respect to measures covered by this Chapter, each Party shall accord to:

- (a) the goods and services of any other Party, including those goods and services included in construction contracts, treatment no less favourable than the best treatment it accords to its own such goods and services; and
- (b) the suppliers of goods and services of any other Party, including those goods and services included in construction contracts, treatment no less favourable than the best treatment it accords to its own suppliers of such goods and services.

2. With respect to the Federal Government, paragraph 1 means that, subject to Article 404 (Legitimate Objectives), it shall not discriminate:

- (a) between the goods or services of a particular Province or region, including those goods and services included in construction contracts, and those of any other Province or region; or
- (b) between the suppliers of such goods or services of a particular Province or region and those of any other Province or region.

⁶ This paragraph was added to the Agreement on Internal Trade by means of the Sixth Protocol of Amendment.

⁷ This paragraph was amended by the Third Protocol of Amendment.

⁸ This article was modified by the Sixth Protocol of Amendment.

3. Except as otherwise provided in this Chapter, measures that are inconsistent with paragraphs 1 and 2 include, but are not limited to, the following:
- (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;⁹
 - (b) the biasing of technical specifications in favour of, or against, particular goods or services, including those goods or services included in construction contracts, or in favour of, or against, the suppliers of such goods or services for the purpose of avoiding the obligations of this Chapter;
 - (c) the timing of events in the tender process so as to prevent suppliers from submitting bids;
 - (d) the specification of quantities and delivery schedules of a scale and frequency that may reasonably be judged as deliberately designed to prevent suppliers from meeting the requirements of the procurement;
 - (e) the division of required quantities or the diversion of budgetary funds to subsidiary agencies in a manner designed to avoid the obligations of this Chapter; and
 - (f) the use of price discounts or preferential margins in order to favour particular suppliers.
4. No Party shall impose or consider, in the evaluation of bids or the award of contracts, local content or other economic benefits criteria that are designed to favour:
- (a) the goods and services of a particular Province or region, including those goods and services included in construction contracts; or
 - (b) the suppliers of a particular Province or region of such goods or services.
5. Except as otherwise required to comply with international obligations, a Party may accord a preference for Canadian value-added, subject to the following conditions:
- (a) the preference for Canadian value-added must be no greater than 10 per cent;
 - (b) the Party shall specify in the call for tenders the level of preference to be used in the evaluation of the bid; and
 - (c) all qualified suppliers must be informed through the call for tenders of the existence of the preference and the rules applicable to determine the Canadian value-added.
6. Except as otherwise required to comply with international obligations, a Party may limit its tendering to Canadian goods, Canadian services or Canadian suppliers, subject to the following conditions:

⁹ This paragraph was amended by the Seventh Protocol of Amendment.

- (a) the procuring Party must be satisfied that there is sufficient competition among Canadian suppliers;
- (b) all qualified suppliers must be informed through the call for tenders of the existence of the preference and the rules applicable to determine Canadian content; and
- (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.¹⁰

Article 505: Valuation of Procurement

1. An entity shall estimate the procurement value as at the time of publication of a notice of a call for tenders in accordance with Article 506.
2. An entity shall, in calculating the procurement value, take into account all forms of remuneration including premiums, fees, commissions and interest.
3. No entity shall prepare, design or otherwise structure a procurement, select a valuation method or divide procurement requirements in order to avoid the obligations of this Chapter.

Article 506: Procedures for Procurement

1. Each Party shall ensure that procurement covered by this Chapter is conducted in accordance with the procedures set out in this Article.
2. A call for tenders shall be made through one or both of the following methods, which may be supplemented with any other notification method, such as newspapers or trade journal publications:¹¹
 - (a) 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) the use of source lists, provided that, in respect of any source list:¹²
 - (i) registration on the source list is consistent with Article 504;
 - (ii) all registered suppliers in a given category are invited to respond to all calls for tenders in that category; and
 - (iii) a supplier that meets the conditions for registration on the source list is able to register at any time.

¹⁰ This paragraph was amended by the Seventh Protocol of Amendment.

¹¹ This Paragraph was amended by the Thirteenth Protocol of Amendment.

¹² This Paragraph was amended by the Thirteenth Protocol of Amendment.

3. Each Party shall designate the electronic tendering system referred to in paragraph 2(a) that its covered entities will use when making its calls for tenders. If a Party decides to change the designation of the electronic tendering system, it shall notify the other Parties at least 30 days prior to implementing that change.¹³
4. A notice of a call for tenders shall contain at least the following information:
- (a) a brief description of the procurement contemplated;
 - (b) the place where a person may obtain information and tender documents;
 - (c) the conditions for obtaining the tender documents;
 - (d) the place where the tenders are to be sent;
 - (e) the date and time limit for submitting tenders;
 - (f) the time and place of the opening of the tenders in the event of a public opening; and
 - (g) a statement that the procurement is subject to this Chapter.
5. Each Party shall provide suppliers with a reasonable period of time to submit a bid, taking into account the time needed to disseminate the information and the complexity of the procurement.
6. In evaluating tenders, a Party may take into account not only the submitted price but also quality, quantity, transition costs, delivery, servicing, the capacity of the supplier to meet the requirements of the procurement and any other criteria directly related to the procurement that are consistent with Article 504. The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.¹⁴
7. An entity may limit tenders to goods, services or suppliers qualified prior to the close of call for tenders. However, the qualification process must itself be consistent with Article 504. An invitation to qualify shall be published at least annually by the method referred to in paragraph 2(a) or shall be distributed to suppliers listed on a source list referred to in paragraph 2(c).¹⁵
8. An entity may limit a contract award to goods, services or suppliers that have been assessed (for example, certified, evaluated, qualified, registered or verified) by an independent nationally-recognized and industry-supported organization such as the Standards Council of Canada.
9. If a procurement exempted from the obligations of this Chapter under paragraph 11 or 12 or Article 507 or 508 is publicly tendered in a daily newspaper or on an electronic tendering system,

¹³ This Paragraph was amended by the Thirteenth Protocol of Amendment.

¹⁴ This paragraph was amended by the Seventh Protocol of Amendment.

¹⁵ This Paragraph was amended by the Thirteenth Protocol of Amendment.

the tender notice shall indicate the restrictions and highlight the practices that do not conform with this Article or Article 504.¹⁶

10. An entity that uses a source list shall:
 - (a) include information in its policies, procedures and practices describing the circumstances and manner in which the source list is used and any qualification criteria that a supplier must meet in order to register on the source list;
 - (b) provide written confirmation of registration to any supplier that requests registration on the source list or indicate the qualification criteria that were not met; and
 - (c) on request by any Party, provide that Party with the tender notice and the list of suppliers that will be invited to bid on a specific tender.

11. An entity of a Party may use procurement procedures that are different from those described in paragraphs 1 through 10 in the following circumstances, provided that it does not do so for the purpose of avoiding competition between suppliers or in order to discriminate against suppliers of any other Party:
 - (a) where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
 - (b) where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
 - (c) where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the Party and the organization includes rules for awarding contracts that differ from the obligations set out in this Chapter;
 - (d) where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and pre-mixed concrete for use in the construction or repair of roads;¹⁷
 - (e) where compliance with the open tendering provisions set out in this Chapter would interfere with a Party's ability to maintain security or order or to protect human, animal or plant life or health; and
 - (f) in the absence of a receipt of any bids in response to a call for tenders made in accordance with the procedures set out in this Chapter.

¹⁶ This Paragraph was amended by the Thirteenth Protocol of Amendment.

¹⁷ This paragraph was amended by the Second Protocol of Amendment.

12. Where only one supplier is able to meet the requirements of a procurement, an entity may use procurement procedures that are different from those described in paragraphs 1 through 10 in the following circumstances:

- (a) to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
- (b) where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
- (c) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
- (d) for the purchase of goods on a commodity market;
- (e) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
- (f) for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
- (g) for a contract to be awarded to the winner of a design contest;
- (h) for the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- (i) for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (j) for the procurement of original works of art;
- (k) for the procurement of subscriptions to newspapers, magazines or other periodicals;
and
- (l) for the procurement of real property.

13. 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.

Article 507: Non-Application

This Chapter does not apply to:

- (a) procurement of goods intended for resale to the public;
- (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;¹⁸
- (c) procurement from philanthropic institutions, prison labour or persons with disabilities;
- (d) procurement contracts with a public body or a non-profit organization;¹⁹
- (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;²⁰ and
- (f) procurement of any goods the interprovincial movement of which is restricted by laws not inconsistent with this Agreement.

Article 508: Regional and Economic Development

Exceptional Circumstances

1. A Party may, under exceptional circumstances, exclude a procurement from the application of this Chapter for regional and economic development purposes, provided that:
 - (a) the exclusion of the procurement does not operate to impair unduly the access of persons, goods, services or investments of another Party;
 - (b) the exclusion of the procurement is not more trade restrictive than necessary to achieve its specific objective;
 - (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

¹⁸ This paragraph was amended by the Second and Seventh Protocols of Amendment.

¹⁹ This paragraph was amended by the Second Protocol of Amendment.

²⁰ This paragraph was amended by the Seventh Protocol of Amendment.

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;²¹ and

- (d) the Party seeks to minimize the discriminatory effects of the exclusion on suppliers of the other Parties.

2. In the case of a dispute relating to a procurement excluded from the application of this Chapter under paragraph 1, factors such as the following are to be taken into account in the dispute resolution process:

- (a) the frequency of the use by the Party of such exclusions for its procurements;
- (b) the extent to which the use by the Party of the exclusion for the particular procurement may contribute to economic development objectives or to the reduction of economic disparities;
- (c) whether the use of the exclusion for the particular procurement was applied in a manner to minimize the discrimination among bidders; and
- (d) the extent to which the use by the Party of the exclusion affects the development of competitive Canadian companies.

Transitional and Non-Conforming Procurement Measures

3. A Party may continue the transitional procurement policies and programs listed in Column I of Annex 508.3 until January 1, 1996.

4. A Party may continue the non-conforming procurement policies and programs listed in Column II of Annex 508.3, provided that the Party:

- (a) prepares an annual written report on such policies and programs; and
- (b) conducts a review of such policies and programs, no later than January 1, 1998, to ensure that they meet their regional and economic objectives.

Article 509: Language

Each entity shall specify the language requirements for its procurement procedures.

²¹ This paragraph was amended by the Seventh Protocol of Amendment.

Article 510: Confidentiality

Nothing in this Chapter requires an entity to breach confidentiality obligations imposed by law or to compromise security or commercially sensitive or proprietary information identified by a supplier in its tender documents.

Article 511: Information and Reporting

1. Each Party shall report annually to the other Parties on procurement by its entities listed in Annex 502.1A. The report shall contain the number and aggregate values of the procurements awarded that equal or exceed the applicable threshold values specified in Article 502. The report shall also contain the estimated aggregate values of contracts awarded below the applicable threshold values. The aggregate values shall be broken down by each category of procurement, being goods, services and construction.
2. The Parties shall, before the date of entry into force of this Agreement, develop a general mechanism to report through an electronic tendering system as provided in Article 516(3).
3. Each Party shall report annually to the other Parties on procurement above the applicable threshold value specified in Article 502 for each of Articles 506(11)(a) and (e) and 506(12)(a) and (h) and on all procurement excluded under Article 508(1) and policies and programs listed in Column I of Annex 508.3, the following information:
 - (a) the number of contracts;
 - (b) a description including the value of what was procured for each procurement; and
 - (c) the total value of the procurements.
4. Statistics shall be collected on the basis of the fiscal year.
5. Each Party shall provide annually to the Secretariat information suitable for publication on that Party's procedures for procurement, and specify:
 - (a) the name of the contact point to which inquiries or complaints may be made;
 - (b) the name of any daily newspaper or electronic tendering system used; and
 - (c) the place where information may be obtained on how to register on a source list or acquire access to any electronic tendering system used.
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.²²
7. Where, in the context of a procurement by another Party, a Party considers that its rights under this Chapter may have been adversely affected, that Party may request, with the intent of

²² This paragraph was amended by the Eighth Protocol of Amendment.

avoiding a dispute, any relevant bid information concerning that procurement from the Party whose entity is responsible for the procurement. On receipt of such a request, that Party shall promptly provide such information.²³

Article 512: Contact Point

Each Party shall designate a contact point for receiving and reviewing complaints from Parties and suppliers that may arise from the application of this Chapter.

Article 513: Complaint Procedures - Provinces²⁴

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

²³ This paragraph was amended by the Eighth Protocol of Amendment.

²⁴ The former article was replaced with the current article by means of the Eighth Protocol of Amendment.

- (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).

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.

Article 515: Relationship to Other Agreements

In the event of an inconsistency between a provision of this Chapter and a provision of any comparable procurement liberalization agreement entered into by two or more Parties before the date of entry into force of this Agreement or subsequently under Article 1800 (Trade Enhancement Arrangements), the provision that is more conducive to trade liberalization prevails to the extent of the inconsistency.

Article 516: Future Reviews

1. Subject to Article 502(4), the Parties shall, within 12 months after the date of entry into force of this Agreement, undertake a review to:
- (a) assess whether this Chapter has met its objectives;
 - (b) assess and adjust threshold levels, as necessary;
 - (c) revise this Chapter to accommodate changing principles under this Agreement; and
 - (d) review the opportunities for progress related to public procurement not covered by or excluded from this Chapter.

2. The Parties shall conduct subsequent reviews in March of each fiscal year and shall present their findings and recommendations to the Committee for inclusion in its annual report on the Agreement.
3. The Parties shall, no later than January 1, 1995, establish a working group on electronic tendering to:
 - (a) review the operation of electronic tendering systems in relation to the provisions of this Chapter;
 - (b) develop common approaches for improving:
 - (i) the cost effectiveness and efficiency for suppliers;
 - (ii) the accessibility of information to governments and suppliers; and
 - (iii) the quality of information and service to suppliers;
 - (c) design ways to maximize the use of a common system or to ensure that the electronic tendering systems used by the Parties are fully compatible and accessible; and
 - (d) develop a process for selecting the supplier or suppliers of a common electronic tendering system.
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.
5. The Parties shall, before the date of entry into force of this Agreement, review and finalize the list of excluded services set out in Annex 502.1B.

Article 517: Treatment of Excluded Entities²⁵

Parties may exclude access to their procurement opportunities from suppliers of another Party if:

- (a) the other Party has a comparable entity that is not subject to the obligations of Chapter Five by virtue of coverage under Annex 502.1A, 502.3, or 502.4;
- (b) the other Party's comparable entity has excluded or impaired access to its procurement opportunities; and
- (c) consultations have failed to resolve the matter.

²⁵ The former article was replaced with the current article by means of the Sixth Protocol of Amendment.

Article 518: Definitions

In this Chapter:

bid means a submission in response to a call for tenders;

call for tenders means a call for competitive bids from suppliers, inviting them to submit a tender or proposal for the purpose of a procurement;

Canadian good means a good produced exclusively from domestic materials, a good manufactured in Canada or a good which if exported outside of Canada would qualify as a good of Canada under appropriate rules of origin;

Canadian service means a service performed in Canada by persons of a Party;²⁶

Canadian supplier means a supplier that has a place of business in Canada;

Canadian value-added means:

- (a) in relation to services, the proportion of the service contract performed by residents of Canada; and
- (b) in relation to goods, the difference between the dutiable value of imported goods and the selling price, taking into account any value added by manufacturers and distributors, and including any costs incurred in Canada related to:
 - (i) research and development;
 - (ii) sales and marketing;
 - (iii) communications and manuals;
 - (iv) customization and modifications;
 - (v) installation and support;
 - (vi) warehousing and distribution;
 - (vii) training; and
 - (viii) after-sales service;

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;²⁷

²⁶ This definition was added to the Agreement on Internal Trade by means of the Seventh Protocol of Amendment.

²⁷ This paragraph was added to the definition by means of the Seventh Protocol of Amendment.

construction means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement;

electronic tendering means the use of a computer-based system directly accessible by suppliers and providing them with information related to calls for tenders and requests for information;

goods means, in relation to procurement, moveable property (including the costs of installing, operating, maintaining or manufacturing such moveable property) and includes raw materials, products, equipment and other physical objects of every kind and description whether in solid, liquid, gaseous or electronic form, unless they are procured as part of a general construction contract;

information technology means software, electronic equipment or combinations thereof used to collect, store, process, communicate, protect or destroy information in all its forms, particularly in the form of text, symbol, sound and image;

place of business means an establishment where a supplier conducts activities on a permanent basis that is clearly identified by name and accessible during normal working hours;

procurement means the acquisition by any means, including by purchase, rental, lease or conditional sale, of goods, services or construction, but does not include:

- (a) any form of government assistance such as grants, loans, equity infusion, guarantees or fiscal incentives; or
- (b) government provision of goods and services to persons or other government organizations;

procurement procedures means the processes by which suppliers are invited to submit a tender, a proposal, qualification information, or a response to a request for information and includes the ways in which those tenders, proposals or information submissions are treated;

procurement value means the estimated total financial commitment resulting from a procurement, not taking into account optional renewals when the compulsory part of the contract is of at least one year's duration;

qualification of goods and services means a process whereby a buyer establishes a list of goods or services capable of responding to a specific need;

request for information means a procurement procedure whereby suppliers are provided with a general or preliminary description of a problem or need and are requested to provide information or advice about how to better define the problem or need, or alternative solutions. It may be used to assist in preparing a call for tenders;

request for qualification means a procurement procedure used for the qualification of goods or services or to invite suppliers, if they meet the required qualification criteria, to register on a

permanent source list or on a particular source list intended for a specific tender or some specific subsequent tenders;

services means all services including printing, but does not include those services excluded by Annex 502.1B;

statutory monopoly means an enterprise that in any relevant market in the territory of a Party has been designated by law or by governmental authority as the sole provider of a good or service;

supplier means a person who, based on an assessment of that person's financial, technical and commercial capacity, is capable of fulfilling the requirements of a procurement and includes a person who submits a tender for the purpose of obtaining a construction procurement;

tender means a response to a call for tenders;

technical specification means a specification that sets out characteristics of goods or their related processes and production methods, or characteristics of services or their related operating methods, including applicable administrative provisions, and may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, process, or production or operating method.

Annex 502.1A²⁸**Government Entities Covered by Chapter Five**

The Parties agree to provide the Internal Trade Secretariat with a list of their entities covered by this Annex and to advise the Secretariat immediately of:

- (a) the addition of a newly created entity to the list of entities covered by this Annex;
- (b) any changes to an entity covered by this Annex resulting from a change of name, the amalgamation of two or more entities, the restructuring of an entity into two or more entities, the dissolution of an entity; or the privatization of an entity; and
- (c) any movement of entities from one annex to another annex that offers a higher level of coverage under Chapter Five.

Changes resulting from actions other than the ones listed above require the consent of the Parties. The Secretariat shall amend the list after every notification of such changes, shall maintain an up to date copy of the list, shall forward the list to all Parties after every change and shall make it readily available.

²⁸ This annex was amended by the Fifth Protocol of Amendment.

Annex 502.1B

Services Covered by Chapter Five

1. All services are covered except the following:²⁹
 - (a) services that may, under the applicable laws of the Party issuing the tender, only be provided by the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries;
 - (b) transportation services provided by locally-owned trucks for hauling aggregate on highway construction projects;
 - (c) services of financial analysts or the management of investments by organizations who have such functions as a primary purpose;
 - (d) financial services respecting the management of government financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
 - (e) health services and social services; and
 - (f) advertising and public relation services.
2. The foregoing is an illustrative list. The Parties shall, before the date of entry into force of this Agreement, review the list and reduce it in accordance with the principle of open government procurement.

²⁹ This paragraph was amended by the Second Protocol of Amendment.

Interpretive Note No. 1³⁰**Annex 502.1B****(Services Covered by Chapter Five)**

1. Annex 502.1B provides a list of services excluded from the coverage of Chapter Five (Procurement). The Parties recognize that there may be difficulties in distinguishing between contracts *for* service which may be the subject of procurement by a Party and contracts *of* service which may be categorized as employer-employee relationships and which are not intended by the Parties to be subject to the procurement obligations found in Chapter Five. To reduce any difficulties in making such a distinction, to aid in the application of the obligations in Chapter Five and to clearly state their original intent, the Parties issue this interpretive note.
2. Contracts of service are not the procurement of services within the meaning of Chapter Five. Contracts of service is a term which is not to be construed narrowly but rather refers to an employer-employee relationship between a Party and one or more individuals.
3. The Parties recognize that the existence of an employer-employee relationship may be determined according to various tests. For the purposes of determining whether a contract is subject to the procurement obligations of Chapter Five (or an employer-employee relationship which is not subject to this chapter), the Parties are of the view that consideration should be given to the various elements which constitute the relationship between a Party and an individual or individuals, including the nature of the work and the circumstances in which it is performed.
4. In making a determination as to whether there is an employer-employee relationship between a Party and an individual or individuals, the Parties also believe that consideration should be given, among other factors, to whether:
 - (a) the Party reserves the right of direction and control over the individual or individuals;
 - (b) the Party is responsible for remuneration;
 - (c) the Party hires and has the power to dismiss the individual or individuals;
 - (d) the Party is believed to be the employer by the employee or employees;
 - (e) there exists an intention to create an employer-employee relationship, or
 - (f) there is a chance of profit or risk of loss for the individual or individuals.

³⁰ This Interpretive Note was added to the Agreement on Internal Trade by means of the First Protocol of Amendment.

Annex 502.2A³¹**Government Entities Excluded from Chapter Five**

This Annex includes entities that are not accountable to executive branches of governments of the Parties, entities whose objective is national security, businesses of a commercial nature or in competition with the private sector, and state monopolies involved in the transformation and distribution of goods and services.

The Parties agree to provide the Internal Trade Secretariat with a list of their entities covered by this Annex and to advise the Secretariat immediately of:

- (a) the addition of a newly created entity to the list of entities covered by this Annex;
- (b) any changes to an entity covered by this Annex resulting from a change of name, the amalgamation of two or more entities, the restructuring of an entity into two or more entities, the dissolution of an entity; or the privatization of an entity; and
- (c) any movement of entities from one annex to another annex that offers a higher level of coverage under Chapter Five.

Changes resulting from actions other than the ones listed above require the consent of the Parties. The Secretariat shall amend the list after every notification of such changes, shall maintain an up to date copy of the list, shall forward the list to all Parties after every change and shall make it readily available.

³¹ This annex was amended by the Fifth Protocol of Amendment.

Annex 502.2B³²**Government Entities Covered by Non-Intervention Commitment**

This Annex includes entities that are businesses of a commercial nature or in competition with the private sector, and state monopolies involved in the transformation and distribution of goods and services.

The Parties agree to provide the Internal Trade Secretariat with a list of their entities covered by this Annex and to advise the Secretariat immediately of:

- (a) the addition of a newly created entity to the list of entities covered by this Annex;
- (b) any changes to an entity covered by this Annex resulting from a change of name, the amalgamation of two or more entities, the restructuring of an entity into two or more entities, the dissolution of an entity; or the privatization of an entity; and
- (c) any movement of entities from one annex to another annex that offers a higher level of coverage under Chapter Five.

Changes resulting from actions other than the ones listed above require the consent of the Parties. The Secretariat shall amend the list after every notification of such changes, shall maintain an up to date copy of the list, shall forward the list to all Parties after every change and shall make it readily available.

³² This annex was amended by the Fifth Protocol of Amendment.

Annex 502.3³³**Procurement - Provisions for Entities of a Commercial or Industrial Nature
or Those Which Have Been Granted Exclusive Rights by a Party****A. Scope and Coverage**

1. This Annex shall apply to contracting by entities listed in Appendix "A".
2. This Annex applies to measures, related to the procurement within Canada of goods, services and construction, which are adopted and maintained by the entities covered by this Annex, where the procurement value is:
 - (a) \$500,000 or more in cases where the procurement is for goods or services;
 - (b) \$5,000,000 or more in cases where the procurement is for construction.
3. In the case of framework agreements or long-term agreements with one or more suppliers, all procurement covered by said agreements shall be considered in determining the value of the contracts.

B. Relationship to the Agreement on Internal Trade

1. Chapter Five (Procurement) and the provisions of other Chapters of the Agreement on Internal Trade apply only as specified in this Annex.
2. The following Articles of the Agreement on Internal Trade, or portions thereof, apply to this Annex: Article 505 (Valuation of Procurement); Article 509 (Language); Article 512 (Contact Point); Article 518 (Definitions); Article 1600 (a), (b), and (d) (Committee on Internal Trade); Article 1603.4 (Secretariat); Article 1802 (Aboriginal Peoples); Article 1803 (Culture); Article 1805 (Taxation); and Article 1811 (Accession and Withdrawal).

C. Contracting Rules

1. Entities covered by this Annex shall maintain a procurement policy for procurements subject to this Annex, and shall make that policy available on request. Entities may continue existing policies and procedures, provided they are consistent with the provisions of this Annex.
2. Policies referred to in paragraph 1 may contain measures intended to achieve a legitimate objective as defined in Article 200 of the Agreement on Internal Trade, provided that it can be demonstrated that:
 - (a) the purpose of the measure is to achieve a legitimate objective;
 - (b) the measure does not operate to impair unduly the access of persons, goods, services or investments of a Party that meet the legitimate objective;

³³ This annex was added to the Agreement on Internal Trade by means of the Sixth Protocol of Amendment.

- (c) the measure is not more trade restrictive than is necessary to achieve the legitimate objective; and
- (d) the measure does not create a disguised restriction on trade.

3. A call for tenders includes all methods of tendering such as Requests for Information, Requests for Quotations, Requests for Proposals, Request for Qualification and Requests for tenders.

4. All forms of discrimination based on the province of origin, either of goods, services or construction materials or of suppliers of such goods, services or materials of construction contractors, shall be eliminated from practices used in all stages of the procurement process.

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.

6. An entity subject to this Annex may restrict a tender to pre-qualified goods, services or suppliers. The pre-qualification process shall be announced as provided in clause 5.

An entity shall announce its prequalification process sufficiently in advance of either a procurement or each procurement cycle so as to give suppliers an opportunity to qualify.

Pre-qualification of potential suppliers shall be on the basis of their ability to meet the entity's requirements. For reasons of efficiency, an entity may limit the number of potential suppliers pre-qualified in a manner consistent with clauses 3 and 4 while ensuring a competitive and fair process.

7. Tender appraisals may consider price, quality, quantity, delivery, security of supply, maintenance services, experience and financial capacity of the supplier, or any other criteria directly related to the contract that are consistent with the provisions of this Annex. Tender documents, including the notice for pre-qualification, shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids, the relative importance of those criteria, and a brief outline of the methods that will be used to evaluate those criteria.

Entities subject to this Annex may include in the bid document requirements for maintaining their effective operation, including best business practices, provided that such requirements are not designed to favour:

- (a) the goods and services of a particular Province, including those goods and services included in construction contracts; or
- (b) the suppliers of a particular Province of such goods or services, including construction contractors.

8. Entities subject to this Annex may restrict all tendering to Canadian goods or suppliers or provide a margin of preference to Canadian goods or suppliers.

9. A Party may, under exceptional circumstances, exclude a procurement of an entity covered by this Annex from the provisions of this Annex for regional and economic development purposes provided that all such exceptions are reported, prior to the commencement of any procedure leading to the award of a contract, to the other Parties with an explanation of the reasons justifying the decision. A Party invoking this provision will seek to minimize the discriminatory effects of the exception on the goods or suppliers of the other Parties.

D. Buying Groups

1. Entities subject to this Annex who participate in group purchasing activities through Buying Groups shall ensure that the activities of such buying groups are carried out in a manner consistent with this Annex.

2. Buying Group means an organization, involving two or more entities, created to achieve efficiencies and economies of scale by combining the purchasing requirements and activities of the members of the group into one joint procurement process. Buying Groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the organization administers procurement for group members. Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations.

3. The Parties agree not to direct the procurement activities of Buying Groups so as to discriminate against out-of-province suppliers for procurement covered by this Annex.

E. Exclusions

1. The following procurements shall be excluded from the provisions of this Annex:
 - (a) contracts between subsidiaries or affiliates of the same entity, or between an entity and any of its subsidiaries or affiliates, or between an entity and a general, limited or special partnership in which the entity has a majority or controlling interest, and contracts with a public body or non-profit organization;
 - (b) procurement intended for resale to the public or on behalf of an entity not covered by this Annex;
 - (c) contracts with the only supplier able to meet the bid requirements, including contracts to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
 - (d) contracts with the only supplier able to ensure the continuation of guarantees or warranties;
 - (e) contracts for procuring cultural or artistic goods or services including goods and services relating to the creation, production, distribution or broadcasting of programming in Canada including co-productions, sports and news;
 - (f) contracts concluded where a situation of urgency is brought about by events unforeseeable by the entity;

- (g) contracts for procuring services which, under applicable laws or regulations in the province of tender, can be provided only by the following authorized professional: physicians, dentists, nurses, pharmacists, veterinarians, engineers, architects, land surveyors, accountants, lawyers and notaries;
- (h) contracts for procuring financial services for managing the entity's assets (including endowment funds) and liabilities, and accessory consulting and information services;
- (i) contracts for procuring goods and services to be used outside Canada or for construction work outside Canada;
- (j) goods or services regarding matters of a confidential, competitive or privileged nature, where disclosure of those matters could reasonably be expected to compromise confidentiality, cause economic disruption or otherwise be contrary to the public interest or the interests of the entity;
- (k) contracts financed under international cooperative agreements, only where such agreements include rules for awarding contracts;
- (l) contracts for goods purchased on a commodity market;
- (m) for the procurement of a prototype or a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- (n) for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (o) contracts for the transportation of alcoholic products in bulk by sea or for the transportation of alcoholic products by air; and
- (p) advertising and public relations services.

F. Dispute Resolution

1. Each entity covered by this Annex shall establish a complaint process which provides equal treatment to all Canadian suppliers and shall provide a written description thereof to any supplier requesting same.
2. If a supplier, after completing the complaint process of an entity, continues to believe that the entity has not adhered to the provisions of this Annex, the supplier may register a complaint with the designated contact point of the Party where the supplier is located. If a Party has received recurring complaints from suppliers about a specific covered entity regarding its failure to adhere to the provisions of this Annex, or if a Party agrees that there is merit in an individual supplier's complaint against a covered entity, that Party shall inform the Party responsible for that entity. Both Parties shall make every effort to work with affected suppliers and entities so that entities do adhere to this Annex.
3. The complaints process shall not cause delay in the awarding of a contract by an entity covered by this Annex.

G. Confidentiality

Nothing in this Annex requires an entity to:

- (a) breach confidentiality obligations imposed by law;
- (b) breach confidentiality obligations imposed by a contract with a third party with respect to confidential information provided by the third party to the entity;
- (c) compromise security or commercially sensitive or proprietary information of its own through the dispute resolution process in this Annex;
- (d) compromise commercially sensitive or proprietary information identified by a supplier in its tender documents; or
- (e) disclose those provisions of a contract where such disclosure would compromise the competitive position of, or cause economic disruption to, the entity.

H. Final Provisions

1. This Annex shall come into force on January 1, 2005 for all provinces and on April 1, 2005 for the federal government.
2. After the date of entry into force of the Annex, entities covered by this Annex will be encouraged to use the electronic tendering system or systems referred to in paragraph C for all covered procurement and six months after the date of entry into force of this Annex, entities covered by this Annex will be required to post tender notices on the above mentioned electronic tendering system or systems.
3. Contracts awarded under an agreement predating, or initiated, prior to the coming into force of this Annex shall not be subject to this Annex. Nevertheless, any agreement providing for contracting over a period extending five years beyond the coming into force of Annex shall be announced by the entity within three months of the adoption of this Annex.
4. The Parties agree to review the provisions of this Annex within two years of the coming into force of this Annex with a view to determining how adequately the procurement activities of the entities subject to this Annex are covered and the efficiency of the dispute resolution mechanism in resolving complaints.
5. Following the review referred to in paragraph 4, the Parties shall conduct yearly reviews of the operation of this Annex and present their findings to the Committee on Internal Trade.

APPENDIX "A"**Government Entities Covered by Annex 502.3**

This Annex includes entities of a commercial or industrial nature or those which have been granted exclusive rights by a Party.

The Parties agree to provide the Internal Trade Secretariat with a list of their entities covered by this Annex and to advise the Secretariat immediately of:

- (a) the addition of a newly created entity to the list of entities covered by this Annex;
- (b) any changes to an entity covered by this Annex resulting from a change of name, the amalgamation of two or more entities, the restructuring of an entity into two or more entities, the dissolution of an entity; or the privatization of an entity; and
- (c) any movement of entities from one annex to another annex that offers a higher level of coverage under Chapter Five.

Changes resulting from actions other than the ones listed above require the consent of the Parties. The Secretariat shall amend the list after every notification of such changes, shall maintain an up to date copy of the list, shall forward the list to all Parties after every change and shall make it readily available.

Annex 502.4³⁴

Procurement - Provisions for municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities

A. Purpose

This Annex establishes the provisions required to extend coverage of Chapter Five (Procurement) to municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities.

B. Application of Chapter Five and Relationship to other Chapters

1. Chapter Five (Procurement) and the provisions of other Chapters of the Agreement on Internal Trade apply only as specified in this Annex.
2. The following provisions of the Agreement on Internal Trade apply to this Annex: Chapter One (Operating Principles); Chapter Three (Reaffirmation of Constitutional Powers and Responsibilities); Article 502(4) (Scope and Coverage); Article 512 (Contact Point); Article 602(2) (Scope and Coverage); Article 1600 (a), (b), and (d) (Committee on Internal Trade); Article 1603(4) (Secretariat); Article 1802 (Aboriginal Peoples); Article 1803 (Culture); Article 1805 (Taxation); Article 1809 (Relationship to International Agreements); Article 1811 (Accession and Withdrawal); Article 1812 (Language); and Article 1813 (Rules of Interpretation).

C. Scope and Coverage

1. This Annex covers all municipalities, municipal organizations, school boards and publicly-funded academic, health and social service entities, as well as any corporation or entity owned or controlled by one or more of the preceding.
2. At the time of its adherence to this Annex, each Province shall provide the Secretariat with a list of its legislation applicable to entities covered by this Annex. Those lists will be attached as Appendix "A" (Legislation applicable to entities covered by Annex 502.4) to this Annex. Thereafter, each province shall advise the Secretariat of any changes to its list and the Secretariat shall maintain an up to date list of all applicable legislation. Each province shall also maintain an up to date list of all its entities covered by this Annex.
3. This Annex applies to measures related to the procurement, within Canada, of goods, services and construction which are adopted or maintained by the entities covered by this Annex where the procurement value is

- (a) \$100,000 or greater, in the case of goods or services; or

³⁴ This annex was added to the Agreement on Internal Trade by means of the Third Protocol of Amendment.

(b) \$250,000 or greater, in the case of construction.

4. For procurement below the thresholds in paragraph 3, entities covered by this Annex are encouraged to respect the spirit of this Annex.

D. Non-Discrimination

1. Provinces shall not adopt or maintain any measures that would operate to require the entities covered by this Annex to differentiate between suppliers, or goods or services on the basis of geographic location in Canada.

2. Entities covered by this Annex shall not adopt or maintain any forms of discrimination based on the province of origin of goods, services, construction materials or the suppliers of such goods, services or construction materials in their procurement practices.

3. Discriminatory procurement practices which are not allowed under this Annex include, but are not limited to, those listed in Appendix "B" (Discriminatory Practices).

4. Nothing in this Annex is intended to provide, nor shall be construed to provide, directly or indirectly, to any Province not subject to this Annex or to its goods, services, suppliers or entities any right, claim, benefit or remedy pursuant to any provision of this Annex.

E. Transparency

1. Each Province shall ensure that its legislation, regulations, procedures, guidelines and administrative rulings as they apply to matters covered by this Annex are made readily accessible.

2. Each entity covered by this Annex shall ensure that its legislation, regulations, procedures, guidelines and administrative rulings as they apply to matters covered by this Annex are made readily accessible.

3. Each entity covered by this Annex shall ensure that its notices of contract award are made readily accessible.

F. Legitimate Objectives

1. Where it is established that a measure is inconsistent with Section "D" (Non-Discrimination) of this Annex, that measure is still permissible under this Annex where it can be demonstrated that:

- (a) the purpose of the measure is to achieve a legitimate objective;
- (b) the measure does not operate to impair unduly the access of persons, goods, services or investments of a Province that meet that legitimate objective;
- (c) the measure is not more trade restrictive than necessary to achieve that legitimate objective; and

(d) the measure does not create a disguised restriction on trade.

2. In this Annex, legitimate objective means one of the following objectives:

(a) public security and safety;

(b) public order;

(c) protection of human, animal or plant life or health;

(d) protection of the environment;

(e) consumer protection;

(f) protection of the health, safety and well-being of workers; or

(g) affirmative action programs for disadvantaged groups;

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification.

The protection of the production of a Province is not a legitimate objective.

G. Fair Acquisition Process

1. Procurements covered by this Annex shall be subject to a tendering process.

2. "Tendering Process" includes all methods of tendering such as requests for information, requests for quotations, requests for proposals, requests for qualification and calls for tenders.

3. Entities covered by this Annex may continue existing policies and procedures to the extent that they are compatible with the provisions of this Annex.

4. Purchasing practices which may depend on a long term arrangement between an entity covered by this Annex and a supplier are permitted provided that each such arrangement is undertaken in a manner consistent with this Annex.

5. Entities covered by this Annex shall ensure that their needs, within Canada, of goods, services and construction are met through a fair acquisition process that is based on the highest degree of competition, efficiency and effectiveness, and is consistent with Sections "D" (Non-Discrimination) and "E" (Transparency) of this Annex.

6. The Provinces recognize that the transparency and non-discrimination of fair acquisition processes necessary to ensure access for all Canadian suppliers to public procurement opportunities can best be promoted through the widespread adoption of an electronic tendering system or systems.

7. Accordingly, Provinces agree that an electronic tendering system or systems which are low cost, easy to use and readily accessible across Canada, shall be made available to the entities covered by this Annex no later than December 31, 1998. The electronic tendering system or systems shall be capable of transmitting notices of contract awards.
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).
 - (a) Prior to the date of entry into force of this Annex, entities covered by this Annex are encouraged to use the electronic system or systems, for all covered procurement.
 - (b) The dates above are subject to review under Section "P" (Review of Provisions and Future Negotiations) by the Committee on Internal Trade to ensure that the electronic tendering system or systems are operational and that an adequate period is provided for their adoption.
9. The information provided in the tender notice shall include at least the following:
 - (a) a brief description of the procurement contemplated;
 - (b) the place where a person may obtain information and tender documents;
 - (c) the conditions for obtaining the tender documents;
 - (d) the place where the tenders are to be sent;
 - (e) the date and time limit for submitting tenders;
 - (f) the time and place of the opening of the tenders in the event of a public opening; and
 - (g) a statement that the procurement is subject to this Annex.
10. Consistent with Section "E" (Transparency), entities covered by this Annex may, in evaluating bids, take into account the submitted price, quality, quantity, delivery, servicing, the capacity of the supplier to meet the requirements of the procurement and any other criteria consistent with Section "D" (Non-Discrimination). The tender documents shall clearly identify the requirements of the procurement, the criteria that will be used in the evaluation of bids and the methods of weighting and evaluating the criteria.
11. Subject to Section "D" (Non-Discrimination), an entity covered by this Annex may limit tenders to goods, services or suppliers qualified prior to the close of call for tenders.

H. Buying Groups

1. Entities covered by this Annex that participate in group purchasing activities through buying groups shall ensure that the activities of such buying groups are carried out in a manner consistent with this Annex.
2. No Province shall direct the procurement activities of buying groups in a manner inconsistent with this Annex.
3. Buying group means a group of two or more members which combines the purchasing requirements and activities of the members of the group into one joint procurement process. Buying groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers procurement for group members. Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations.

I. Exceptions

1. An entity covered by this Annex may exclude a procurement from the application of this Annex in the circumstances listed in Appendix "C" (Exceptions - Circumstances for Exclusions) provided that it does not do so for the purposes of avoiding competition between suppliers or in order to discriminate against suppliers of any other Province.
2. Where only one supplier is able to meet the requirements of a procurement, an entity covered by this Annex may exclude a procurement from the application of this Annex in the circumstances listed in Appendix "D" (Exceptions - Circumstances for Sole Supplier Procurement), provided it does not do so for the purpose of avoiding competition or in order to discriminate against suppliers of any other Province.

J. Canadian Content

1. Entities covered by this Annex may accord a preference for Canadian value-added, provided that the preference is no greater than 10 percent.
2. An entity covered by this Annex may limit its tendering to Canadian goods or suppliers, provided the procuring entity is satisfied that there is sufficient competition among Canadian suppliers and the requirement for Canadian content is no greater than necessary to qualify the procured good as a Canadian good.

K. Regional Economic Development

A Province may, under exceptional circumstances, exclude a procurement of an entity covered by this Annex from the application of this Annex for economic development purposes provided that all such exclusions are reported, prior to the commencement of any procedure leading to the award of a contract, to the other Provinces with an explanation of the reasons

justifying the decision. A Province invoking this provision will seek to minimize the discriminatory effects of the exclusion on the suppliers of the other Provinces.

L. Non-Application

This Annex does not apply to:

- (a) procurement of goods intended for resale to the public;
- (b) contracts with a public body or a non-profit organization;
- (c) procurement of goods, services or construction purchased on behalf of an entity not covered by this Annex;
- (d) procurement from philanthropic institutions, prison labour or persons with disabilities;
- (e) procurement of any goods the interprovincial movement of which is restricted by laws not inconsistent with the Agreement on Internal Trade;
- (f) procurement of goods, services and construction that is financed primarily from donations that are subject to conditions that are inconsistent with this Annex;
- (g) procurement of goods and services related to cultural or artistic fields and computer software for educational purposes;
- (h) procurement of services that in the province of the entity issuing the tender may, by legislation or regulation, be provided only by any of the following licensed professionals: medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers and notaries;
- (i) procurement of services of financial analysts or the management of investments by organizations who have such functions as a primary purpose;
- (j) procurement of financial services respecting the management of financial assets and liabilities (i.e. treasury operations), including ancillary advisory and information services, whether or not delivered by a financial institution;
- (k) procurement of goods and services for use outside Canada as well as construction work done outside Canada; and
- (l) health services and social services.

M. Dispute Resolution

1. Entities covered by this Annex shall document their non-judicial complaint process and provide this information to suppliers or Provinces upon request.
2. Entities covered by this Annex shall provide suppliers from other Provinces the opportunity and process to challenge contract decisions that are equal to those available to local suppliers.

3. If a supplier, after completing the non-judicial complaint process of the entity, continues to believe that the entity has not adhered to the provisions of this Annex, the supplier may register a complaint with the designated contact point in the Province where the supplier is located.
4. If a Province has received recurring complaints about a specific entity, or if a Province agrees that an individual supplier's complaint has merit, that Province may inform the Province of the entity. Both Provinces shall make every effort to work with the affected suppliers and entities to resolve the complaints in a satisfactory manner.
5. Where the Provinces fail to resolve a complaint, one of them may require that the complaint be considered by an expert panel. A panel shall usually consist of three members or any other composition acceptable to both Provinces. The panel's report shall be made public and shall be provided to both Provinces. The Provinces shall consult each other in order to reach a mutually acceptable settlement based on the panel's report.
6. Each Province shall be responsible for costs incurred by itself and any entity within its jurisdiction involved in a dispute referred to a panel. Both Provinces shall share the fees and expenses of any panel equally.
7. The dispute resolution process shall not cause delay in the awarding of a contract by an entity covered by this Annex.
8. If a Province considers, as a result of a panel's report and subsequent consultations, the other Province is not complying with the terms of this Annex, the Province may temporarily suspend the application of equivalent benefits under this Annex to the non-complying Province and its resident suppliers, until such time as a mutually satisfactory solution is reached.

N. Language

Entities covered by this Annex shall specify the language requirements for their respective procurement procedures.

O. Confidentiality

Nothing in this Annex requires an entity covered by this Annex to breach confidentiality obligations imposed by law or to compromise security or commercially sensitive or proprietary information identified by a supplier in its tender documents.

P. Review of Provisions and Future Negotiations

1. The Secretariat shall prepare a progress report on the development of the electronic tendering system or systems referred to in Section "G" (Fair Acquisition Process) by the entry into force of this Annex. The progress report shall assess the provisions of this Annex in light of progress in the implementation of the electronic tendering system or systems and make appropriate recommendations, if necessary, to the Committee on Internal Trade.

2. Entities covered by this Annex may report to their respective Province any concerns or problems they encounter in the implementation of this Annex.
3. The Secretariat shall prepare a report for the Committee on Internal Trade based on any concerns or problems with the implementation of this Annex reported by the Provinces.
4. This Annex may be reviewed, as required, by the Ministers as part of the annual meetings of the Committee on Internal Trade. Opportunities for progress related to public procurement not covered by this Annex, or excluded from this Annex by virtue of paragraph L (h), shall be part of that review.
5. Each Province shall establish a process and guidelines leading to the harmonization of standard terms and conditions in the tender documents and to standardized procedures for complaint processes used by their entities covered by this Annex. The Provinces shall establish a Working Group to review the work of the Provinces with the perspective of harmonization. The Working Group shall report regularly through the Secretariat and shall report progress to the Committee on Internal Trade by July 1, 2000.
6. The Provinces shall review the application of Section "J" (Canadian Content) and of Section "K" (Regional Economic Development) and shall conclude such a review within two years of the entry into force of this Annex. If, as a result of that review, the Provinces agree that there is no justification for those Sections or for one of them, then the Section or Sections shall no longer apply to the procurement of entities covered by this Annex.
7. The Provinces shall review the operation of Section "M" (Dispute Resolution) following the review of standardized procedures for complaint processes noted in paragraph 5 and shall conclude the review within one year. In particular, the Provinces shall review whether Section "M" (Dispute Resolution) provides adequate access for private parties to the dispute resolution process.

Q. Relationship to Other Agreements

1. Provinces may continue or enter into additional agreements covering procurement by entities covered by this Annex. In the event of an inconsistency between such an agreement and this Annex, the agreement more conducive to trade liberalization prevails to the extent of the inconsistency.
2. Other Provinces will be provided the opportunity to gain access to any such agreement referred to in paragraph 1 within a reasonable time if they are prepared to accept the terms of the agreement.

R. Implementation

1. This Annex enters into force July 1, 1999.

2. This Annex does not apply to contracts entered into before July 1, 1999 or to calls for tenders or other procurement procedures initiated before such date.
3. Each Province shall not establish new trade barriers or increase the non-conformity of existing non-conforming measures in the areas to be covered by this Annex between the date it adheres to this Annex and the entry into force of this Annex.
4. Each Province is responsible for compliance with this Annex by its entities covered by this Annex.

S. Definitions

1. The definitions in Article 200 (Definitions of General Application) and in Article 518 (Definitions) of the Agreement on Internal Trade apply to this Annex insofar as any of the terms in those Articles are used in this Annex, except for the definition of “legitimate objective” in paragraph F2.

APPENDIX "A"**Legislation Applicable to Entities Covered by Annex 502.4****NEWFOUNDLAND AND LABRADOR**

The City of Corner Brook Act
The City of Mount Pearl Act
The City of St. John's Act
The Municipalities Act
The Hospitals Act
The Schools Act
The Health and Community Services Act
The Memorial University Act
The Colleges Act
The Public Tender Act

NOVA SCOTIA

Municipal Government Act
Universities Assistance Act
Community Colleges Act
Education Act
School Boards Act
Hospitals Act

PRINCE EDWARD ISLAND

Municipalities Act
Charlottetown Area Municipalities Act
City of Summerside Act
Holland College Act
School Act
University Act
Health and Community Services Act
Hospitals Act

NEW BRUNSWICK

Adult Education and Training Act
Clean Environment Act
Education Act
Hospital Act
Municipalities Act
Public Purchasing Act
University of New Brunswick Act
St. Thomas College Incorporation Act

Mount Allison University Act 1993
Université de Moncton Act

QUÉBEC

Financial Administration Act
Regulation respecting the promise and awarding of grants
Cities and Towns Act
Municipal Code of Québec
Municipal Powers Act
Act respecting the exercise of certain municipal powers in certain urban agglomerations
Act respecting the Communauté métropolitaine de Montréal
Act respecting the Communauté métropolitaine de Québec
Regulation respecting the awarding of contracts for certain professional services
Act respecting intermunicipal boards of transport in the area of Montréal
Act respecting public transit authorities
Act respecting mixed enterprise companies in the municipal sector
*Act to amend various legislative provisions concerning municipal affairs [2002, c. 37, a. 282,
 modified by the Act, 2003, c.19, a.237]*
*Rules for the awarding of certain contracts required by a municipal body or school board to
 implement, operate or use a broadband telecommunications network*
Charter of Ville de Gatineau
Charter of Ville de Longueuil
Charter of Ville de Montréal
Charter of Ville de Québec
Act respecting Northern villages and the Kativik Regional Government;
Act respecting the Société d'habitation du Québec
Education Act
Regulation respecting construction contracts for immovables of school boards
General and Vocational Colleges Act
*Regulation respecting contracts for the construction of immovables of general and vocational
 colleges*
Act respecting educational institutions at the university level
University Investments Act
Act respecting health services and social services
Act respecting health services and social services for Cree Native persons
Regulation respecting the application of the Act respecting health services and social services
*Regulation respecting building construction by establishments, regional councils and the
 Corporation d'hébergement du Québec*

ONTARIO

Municipal Act, 2001
City of Greater Sudbury Act, 1999
City of Hamilton Act, 1999
City of Ottawa Act, 1999
City of Toronto Act, 1997 (See also City of Toronto Act, 1997 (No. 2))
Town of Haldimand Act, 1999
Town of Moosonee Act, 2000

Town of Norfolk Act, 1999
Education Act
Ministry of Training, Colleges and Universities Act
Ontario Colleges of Arts and Technology Act, 2002
Brock University Act, 1964, S.O. 1964, c.127
The Carleton University Act, 1952, S.O. 1952, c.117
The University of Guelph Act, 1964, S.O. 1964, c.120
The Lakehead University Act, 1965, S.O. 1965, c.54
The Laurentian University of Sudbury Act, 1960, S.O. 1960, c.151
The McMaster University Act, 1976, S.O. 1976, c.98
Nipissing University Act, 1992, S.O.1992, c. Pr52; S.O. 2001, c.Pr.20
Ontario College of Art & Design Act, 2002, S.O. 2002, c.8, Sched. E
University of Ontario Institute of Technology Act, 2002, S.O. 2002, c.8, Sched. O
The University of Ottawa Act, 1965, S.O. 1965, c.137
Ryerson University Act, 1977, S.O. 1977, c.47
The University of Toronto Act, 1971, S.O. 1971, c.56
The Trent University Act, 1962-63, S.O. 1962-63, c.192
The University of Waterloo Act, 1972, S.O. 1972, c.200
University of Western Ontario Act, 1982, S.O. 1982, c.92
The Wilfrid Laurier University Act, 1973, S.O. 1973, c.87
The University of Windsor Act, 1962-63, S.O. 1962-63, c.194
The York University Act, 1965, S.O. 1965, c.143
Public Hospitals Act
Mental Health Act
Private Hospitals Act
Developmental Services Act
Youth Criminal Justice Act
Provincial Offences Act

MANITOBA

Legislation applicable to:

Municipalities

The City of Winnipeg Charter
The Municipal Act
The Local Government Districts Act
The Northern Affairs Act

Family Services and Housing

The Child and Family Services Act
The Social Services Administration Act
The Housing and Renewal Corporation Act

Health

The Hospitals Act
The Health Services Insurance Act
The Regional Health Authorities Act
The District Health and Social Services Act
The Health Services Act

The CancerCare Manitoba Act
The Addictions Foundation of Manitoba Act
The Sanatorium Board Act

Education, Citizenship and Youth

The Blind and Deaf Person's Maintenance and Education Act
The Education Administration Act
The Public Schools Act
The Public Schools Finance Board Act
The Teachers' Pensions Act
The Teachers' Society Act

Education and Training

The Adult Learning Centres Act
The Apprenticeship and Trades Qualifications Act
The Brandon University Act
The Colleges Act
The Council on Post-Secondary Education Act
The Education Administration Act (clause 3(1)(h), as it relates to advanced education and training)
The Department of Labour and Immigration Act (as it applies to certain training programs)
The Student Aid Act
The University of Manitoba Act
The University of Winnipeg Act
The Private Vocational Institutions Act

SASKATCHEWAN

Education Act
University of Saskatchewan Act
University of Regina Act
Regional Colleges Act
Saskatchewan Institute of Applied Sciences and Technology Act
Health Districts Act
Rural Municipality Act
Urban Municipality Act
Northern Municipalities Act
The Cities Act
The City of Lloydminster Act
The Health Quality Council Act
The Cancer Foundation Act
The Saskatchewan Health Research Foundation Act

ALBERTA

Municipal Government Act
Post-Secondary Learning Act
Access to the Future Act
School Act
Regional Health Authorities Act

Hospitals Act
Nursing Homes Act
Public Health Act
Provincial Mental Health Advisory Board Regulation
Cancer Programs Act

BRITISH COLUMBIA

Local Government Act
Vancouver Charter
Islands Trust Act
Resort Municipality of Whistler Act
University Act
College & Institute Act
Institute of Technology Act
Open Learning Agency Act
School Act
Health Authorities Act
Society Act
Community Charter

NORTHWEST TERRITORIES

Aurora College Act
Charter Communities Act
Cities, Towns and Villages Act
Education Act
Hamlets Act
Hospital Insurance and Health and Social Services Administration Act
Public Health Act

YUKON

DOES NOT ADHERE TO ANNEX 502.4

CANADA

NOT APPLICABLE

APPENDIX "B"

Discriminatory Practices

For the purposes of D3, discriminatory procurement practices which are not allowed under this Annex include, but are not limited to:

- (a) registration requirements and restrictions on calls for bids based upon the location of a supplier and its subcontractors, or the place where the goods or services are produced and, generally, qualification procedures that discriminate between suppliers by province of origin;
- (b) the biasing of specifications in favour of, or against, a particular good or service for the purpose of circumventing this Annex;
- (c) the timing of bid opening and closing dates so as to prevent qualified suppliers from submitting bids;
- (d) the specification of quantities and delivery schedules of a scale and frequency that may reasonably be judged as deliberately designed to prevent qualified suppliers from meeting the requirements of the procurement;
- (e) the division of required quantities or the diversion of budgetary funds to subsidiary agencies in a manner designed to circumvent this Annex;
- (f) the consideration, in evaluating bids, of provincial content or economic benefits that favour a supplier or good of one of the participating Provinces;
- (g) the giving of preference to selected bids after bids have been submitted and without any mention of the intended preference in the tender documents;
- (h) the use of price discounts or preferential margins to favour suppliers of one Province;
- (l) the unjustifiable exclusion of a qualified supplier from bidding;
- (j) the requirement that a construction contractor or subcontractor use workers, materials or suppliers of materials originating from the Province where the work is being carried out.

APPENDIX "C"**Exceptions - Circumstances for Exclusions**

The following are the exceptions for the purposes of paragraph I(1):

- (a) where an unforeseeable situation of urgency exists and the goods, services or construction cannot be obtained in time by means of open procurement procedures;
- (b) where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest;
- (c) where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the entity and the organization includes rules for awarding contracts that differ from the obligations set out in this Annex;
- (d) where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre-mixed concrete for use in the construction or repair of roads;
- (e) where compliance with the open tendering provisions set out in this Annex would interfere with the entities' ability to maintain security or order or to protect human, animal or plant life or health; and
- (f) in the absence of a receipt of any bids in response to a call for tenders made in accordance with this Annex.

APPENDIX "D"**Exceptions - Circumstances for Sole Supplier Procurement**

The following are the exceptions for the purposes of paragraph I(2):

- (a) to ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative;
- (b) where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists;
- (c) for the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly;
- (d) for the purchase of goods on a commodity market;
- (e) for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;
- (f) for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work;
- (g) for a contract to be awarded to the winner of a design contest;
- (h) for the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases;
- (i) for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;
- (j) for the procurement of original works of art;
- (k) for the procurement of subscriptions to newspapers, magazines or other periodicals;
and
- (l) for the procurement of real property.

Annex 508.3

Transitional and Non-Conforming Measures

COLUMN I³⁵

TRANSITIONAL PROCUREMENT
POLICIES AND PROGRAMS

COLUMN II³⁶

NON-CONFORMING
PROCUREMENT POLICIES AND
PROGRAMS

Federal Government

Industrial and Regional Benefits Policy

The Federal Government may seek national industrial and regional benefits in procurement exceeding \$2 million provided that the evaluation of regional benefits is carried out in a non-discriminatory manner with respect to regions for which the Federal Government has a general framework of regional development.

British Columbia

The RISP contract system (B.C.
Transportation and Highways)

Northwest Territories

Business Incentive Policy (BIP)

The Government of the Northwest Territories (G.N.W.T.) will continue to apply the BIP, or successor programs having similar objectives, to all procurements by G.N.W.T. departments and corporations, as well as communities and other organizations which receive fifty-one (51) per cent or more of funding from the G.N.W.T. The program has the objective of compensating business for the higher costs of northern operations. It operates to discount 2bids from both northern and southern contractors on the basis of northern and/or local content included in the tender. Most tenders are publicly called and

³⁵ Column I was amended by the Sixth and Seventh Protocols of Amendment.

³⁶ Column II was amended by the Fifth and Sixth Protocols of Amendment.

opened and details of the program and its criteria are publicly available and generally are included in tender calls.

Yukon

The Government of Yukon will continue to apply the following programs or contracting conditions, or the successor programs and contracting conditions having similar objectives, to all procurements by the Government of Yukon.

Business Incentive Policies (BIPs)

The Business Incentive Policies which provide cash rebates for the use of Yukon apprentices, the use of Yukon labour and materials, and the provision of Yukon-made goods.

Community Contracting Policy

The Community Contracting Policy (CCP) which states that "Government departments shall contract for goods and services in the communities in which they are to be used, to the extent that their needs can be met by community-based businesses."

Supplementary Conditions in Construction Contracts

The Supplementary Conditions which require contractors to provide adequate living accommodation, meals, and transportation to the job site, and to make other "best efforts" to hire locally.

Prince Edward Island

Public Purchasing Act Regulations

Section 11 exempts certain commodities, including those related to highway maintenance and construction from the application of the Act. The effect of section 11 is to create opportunities to encourage local and regional suppliers.

Chapter Six

Investment

Article 600: Application of General Rules

1. Articles 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), 403 (No Obstacles) and 404 (Legitimate Objectives) do not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 405 (Reconciliation) and 406 (Transparency) apply to this Chapter, except as otherwise provided in this Chapter.

Article 601: Relationship to Other Chapters

Except as otherwise provided in this Chapter, in the event of an inconsistency between this Chapter and any other chapter in Part IV, the other chapter prevails to the extent of the inconsistency.

Article 602: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to investors and enterprises of a Party.³⁷
2. This Chapter, except as provided in paragraph 6 of Annex 608.3, does not apply to measures relating to procurement by the entities listed in the Annexes to Article 502 (Scope and Coverage) and the entities referred to in Article 502(4). For the purposes of this paragraph, "procurement" means the acquisition by any means, including by purchase, rental, lease or conditional sale, of goods, services or construction.
3. This Chapter, except as provided in Articles 607 and 608, does not apply to measures relating to incentives.

Article 603: Reciprocal Non-Discrimination

1. Subject to Article 605, each Party shall accord to an investor of a Party treatment no less favourable than the best treatment it accords, in like circumstances, to an investor of any Party.
2. Subject to Article 605, each Party shall accord to an enterprise of any other Party, established and carrying on business activities in its territory, treatment no less favourable than the treatment it accords, in like circumstances, to its own enterprises.
3. With respect to the Federal Government, paragraphs 1 and 2 mean that, subject to Article 605, it shall ensure that any measure it adopts or maintains does not operate so as to discriminate between Provinces or regions.

³⁷ This paragraph was amended by the Fifth Protocol of Amendment.

Article 604: Local Presence and Residency Requirements

1. Subject to Article 605, no Party shall require an investor of any other Party to be resident in its territory as a condition for the establishment or acquisition of an enterprise.
2. Subject to Article 605, no Party shall require an enterprise of any other Party to establish or maintain a representative office or enterprise, or to be resident, in its territory as a condition for carrying on business activities.
3. For greater certainty, a requirement by a Party that an investor of any other Party:
 - (a) have an agent for service of notices of proceedings or other judicial documents; or
 - (b) post a bond or other form of financial security, for a legitimate objective;

as a condition for carrying on business activities in or into its territory is not a requirement to establish or maintain a local presence or to be resident in its territory.

4. Annex 604.4 lists existing measures maintained by each Party which include local presence and residency requirements that either require an investor of another Party to be resident in its territory as a condition for the establishment or acquisition of an enterprise; or require an enterprise of any other Party to establish or maintain a representative office or enterprise, or to be resident, in its territory as a condition for carrying on business activities. No measure listed may be made more restrictive than it was on the date of entry into force of this Agreement.³⁸
5. The Parties shall examine the measures listed in Annex 604.4 and make recommendations to the Committee as to the appropriate retention, removal or replacement of such measures.³⁹
6. No measure that a Party lists or proposes to list in Annex 604.4 shall, before January 1, 1997, be subject to the obligations of paragraphs 1 and 2 or to dispute settlement procedures under this Agreement.

Article 605: Legitimate Objectives

Where it is established that a measure is inconsistent with Article 603 or 604, that measure is still permissible under this Chapter where it can be demonstrated that:

- (a) the purpose of the measure is to achieve a legitimate objective;
- (b) the measure does not operate to impair unduly the access of investors of a Party or enterprises that meet that legitimate objective;
- (c) the measure is not more restrictive on investors of a Party or enterprises than necessary to achieve that legitimate objective; and

³⁸ This paragraph was amended by the Second Protocol of Amendment.

³⁹ This paragraph was amended by the Second Protocol of Amendment.

- (d) the measure does not create a disguised restriction on investors of a Party or enterprises.

Article 606: Corporate Registration and Reporting Requirements⁴⁰

The Parties shall reconcile extra-provincial corporate registration and reporting requirements in accordance with Annex 606.

Article 607: Performance Requirements

1. No Party shall impose or enforce, in relation to an investor of a Party or an enterprise in its territory, or condition the receipt of an incentive by an enterprise on compliance with, any requirement to:

- (a) achieve a specific level or percentage of local content of goods or services;
- (b) purchase or use goods or services produced locally;
- (c) purchase goods or services from a local source; or
- (d) achieve a certain level of sales in the territory of another Party.⁴¹

2. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party from conditioning the receipt of an incentive on any requirement to carry out economic activities in its territory or to create or maintain employment.

3. A Party may, under exceptional circumstances, adopt or maintain a measure inconsistent with paragraph 1 for regional economic development purposes, provided that:

- (a) the measure does not operate to impair unduly the access of persons, goods, services or investors of another Party;
- (b) the measure is not more trade restrictive than necessary to achieve its specific objective; and
- (c) the Party promptly notifies the other Parties of the details of the measure.

Article 608: Incentives

1. No Party shall, in the provision of incentives to enterprises located in its territory, discriminate against an enterprise on the basis that:

- (a) the enterprise is owned or controlled by an investor of another Party; or

⁴⁰ This article was amended by the Second Protocol of Amendment.

⁴¹ This paragraph was amended by the Fifth Protocol of Amendment.

- (b) the head office of the enterprise is located in the territory of another Party.
- 2. Nothing in this Agreement shall be construed to require a Party to provide incentives for activities undertaken outside its territory.
- 3. The Code of Conduct on Incentives set out in Annex 608.3 applies to the Parties.

Article 609: Government Enterprises and Monopolies

- 1. A Party may maintain or establish a government enterprise and may maintain, establish or authorize a monopoly.
- 2. Further to Article 102(1)(c) (Extent of Obligations), each Party shall ensure that any government enterprise maintained or established by it exercises any delegated administrative or other governmental authority in a manner consistent with this Chapter.

Article 610: Environmental Measures

- 1. No Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental measures as an encouragement for the establishment, acquisition, expansion, ongoing business activities or retention in its territory of an enterprise.
- 2. Notwithstanding paragraph 1 and Article 1505(5) (Basic Rights and Obligations), a Party is permitted a reasonable, but as short as possible, period of time to seek compliance by an established enterprise in its territory with its environmental measures.

Article 611: Non-Application

- 1. Articles 603, 604 and 605 do not apply to a measure for the privatization of government services, government assets or an enterprise.
- 2. Articles 603 and 604 do not apply to an existing measure that restricts the acquisition or use of land by non-residents of a Party. Any such measure may not be made more restrictive in its treatment of non-residents than it was on the date of entry into force of this Agreement.
- 3. Articles 603 and 604 do not apply to a measure:
 - (a) adopted by Prince Edward Island, after the date of entry into force of this Agreement, that restricts the acquisition or use of land by non-residents of Prince Edward Island; or
 - (b) adopted by a Party, other than Prince Edward Island, after the date of entry into force of this Agreement, that restricts the acquisition or use of agricultural, recreational or shorefront land by a non-resident of that Party.
- 4. Notwithstanding any other provision of this Agreement, in the event of an inconsistency between paragraph 2 or 3 and any other provision of this Agreement, paragraph 2 or 3 prevails to the extent of the inconsistency.

Article 612: Transparency and Reporting Requirements

1. Further to Article 406(1) (Transparency), each Party shall ensure that all measures it adopts or maintains pertaining to investors of a Party or enterprises are promptly published or otherwise made available in a manner easily accessible to the Parties and interested persons.
2. Each Party shall endeavour to reduce or simplify any requirement for the filing or other submission of documents imposed on investors or enterprises.
3. Each Party shall endeavour to facilitate public access to up-to-date information on its investment-related programs and measures through the development and interconnection of electronic data bases and networks.

Article 613: Preference for Canadians

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining a measure that accords rights or preferences to Canadians.
2. For the purposes of paragraph 1, "Canadian" means a Canadian citizen, a natural person who is a permanent resident of Canada, or an enterprise controlled by a Canadian citizen or natural person who is a permanent resident of Canada.

Article 614: Consultations and Dispute Resolution⁴²

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

Article 615: Working Group on Investment⁴³

The Parties shall establish a Working Group on Investment which shall:

- (a) examine local presence and residency requirements as set out in Article 604;
- (b) prepare the annual report on incentives referred to in paragraph 15 of Annex 608.3;
- (c) examine matters referred to it under Article 614(2) and paragraph 12 of Annex 608.3 and make recommendations as appropriate;
- (d) examine any investment matter as directed by the Committee; and
- (e) examine any other investment matter.

⁴² This article was amended by the Seventh Protocol of Amendment.

⁴³ This article was amended by the Fifth Protocol of Amendment.

Article 616: Definitions

In this Chapter:

enterprise means an entity constituted, established or organized under the applicable laws of a Party, whether privately-owned or governmentally-owned, including any corporation, trust, partnership, cooperative, sole proprietorship, joint venture or other form of association, for the purpose of economic gain;

government enterprise means a Crown corporation within the meaning of the *Financial Administration Act* (Canada), a Crown corporation within the meaning of comparable provincial law or any equivalent entity formed under other applicable provincial law;

incentive means:

- (a) a contribution with a financial value that confers a benefit on the recipient, including cash grants, loans, debt guarantees or an equity injection, made on preferential terms; or
- (b) any form of income or price support which results directly or indirectly in a draw on the public purse;

investor of a Party means:

- (a) a Party;
- (b) a Canadian citizen or permanent resident of Canada; or
- (b) an enterprise;

that seeks to establish, acquire or dispose of an enterprise;

market means the geographic or commercial market for a good or service;

monopoly means an entity, whether privately-owned or owned by a Party, that, in the relevant market in the territory of a Party, is granted the right to be the only provider or purchaser of a good or service;

Working Group on Investment means the Working Group established under Article 615.

Annex 604.4⁴⁴**Local Presence and Residency Requirements**

This Annex lists existing measures further to Article 604(4). The Parties recognize that a measure listed in this Annex may be still permissible where it can be demonstrated that the measure conforms with Article 605 (Legitimate Objectives).

NEWFOUNDLAND AND LABRADOR

NIL

NOVA SCOTIA

Collection Agencies Act, 1975, c.7, s.1

Consumer Reporting Act, 1973, c.4, s.1

Direct Sellers' Licensing and Regulation Act, R.S.N.S. 1989, c.129

Future Services Act, S.N.S 1990, c.12

Real Estate Brokers' Licensing Act, R.S.N.S. 1989, c.384, s.21

Solemnization of Marriage Act, 56 (1) (d)

PRINCE EDWARD ISLAND

Architects Act, R.S.P.E.I. 1988, A-18; Architects Association of Prince Edward Island Bylaws

Consumer Reporting Act, R.S.P.E.I. 1988, C-20

Fish and Game Protection Act, R.S.P.E.I. 1988, F-12; General Regulations

Legal Profession Act, 1992, c.39, R.S.P.E.I. 1988, L-6.1

Maritime Electric Company Limited Act, R.S.P.E.I. 1988, Cap. M-12

Real Estate Trading Act, R.S.P.E.I. 1988, R-2

NEW BRUNSWICK

Beverage Containers Act, R.S.N.B. 1991, C. B-2.2

⁴⁴ This annex was added to the Agreement on Internal Trade by means of the Second Protocol of Amendment.

Collection Agencies Act, R.S.N.B. 1973, c.C-8

Companies Act, R.S.N.B. 1973, c.C-13

Fish and Wildlife Act, R.S.N.B. 1980, c.F-14.1

Marriage Act, R.S.N.B. 1973, c. M-3, as amended by S.N.B. 1986, c.52; Regulation 85-30

Real Estate Agents Act, R.S.N.B. 1973, c.R-1

Real Estate Agents Act, R.S.N.B. 1973, c.R-1

The Embalmers and Funeral Director's Act, S.N.B. 1978; Regulation 92-705

QUEBEC⁴⁵

Code de la sécurité routière, L.R.Q., c.C-24.2; Règlement sur les commerçants et les recycleurs, Décret 1693-87 du 4 novembre 1987

Loi sur la protection de la santé publique, L.R.Q., c.P-35; Règlement d'application de la Loi sur la protection de la santé publique, R.R.Q., 1981, c.P-35, r.1 et modifications

Loi sur la Société des alcools du Québec, L.R.Q., c.S-13

Loi sur le courtage immobilier, L.R.Q., c.C-73.1; Règlement de l'Association des courtiers et agents immobiliers du Québec, Décret 1865-93 du 15 décembre 1993

Loi sur le recouvrement de certaines créances, L.R.Q., c.R-2.2

Loi sur les agences d'investigation ou de sécurité, L.R.Q., c.A-8; Règlement d'application de la Loi sur les agences d'investigation ou de sécurité, R.R.Q., 1981, c.A-8, r.1 et modifications

Loi sur les courses, L.R.Q., c.C-72.1; Règles sur l'élevage du chavel de course du Québec de race Standardbred, Décision du 21 décembre 1983 et modifications

Loi sur les intermédiaires de marché, L.R.Q., c.I-15.1; Règlement sur les cabinets modifications multidisciplinaires, Décret 1020-91 du 17 juillet 1991 et modifications

Loi sur les licences, L.R.Q., c.L-3

Loi sur les loteries, les concours publicitaires et les appareils d'amusement, L.R.Q., c.L-6; Règles appareils d'amusement, R.R.Q., 1981, c.L-6, r.2 et modifications; Règles sur les sur les systèmes de loteries, Décision du 14 décembre 1984 et modifications

Loi sur les pesticides, L.R.Q., c.P-9.3

⁴⁵ This listing was amended by the Sixth Protocol of Amendment.

ONTARIO

Assignments and Preferences Act, R.S.O. 1990, c.A.33

Business Names Act, R.S.O. 1990, c.B.17; Regulation 121/91

Co-operative Corporations Act, R.S.O. 1990, c.C.35

Corporations Act, R.S.O. 1990, c.C.38; Regulation 181, R.R.O. 1990

Employment Agencies Act, R.S.O. 1990, c.E.13; Regulation 320, R.R.O. 1990

Farm Products Marketing Act, R.S.O.1990, c.F.9; Quota Policy No. 119-1992, Ontario Chicken Producers' Marketing Board

Game and Fish Act, R.S.O. 1990, c.G.1; Regulation 462/93; Regulation 480, R.R.O. 1990; Regulation 497, R.R.O. 1990; Regulation 300/93; Policy No. WM. 3.01.01, issued 1978, Appointment of Hunter Education Program Instructor; Regulation 495, R.R.O. 1990

Gaming Control Act, 1992, S.O. 1992, c.24; Order-in-Council 2688/93

Liquor Control Act, R.S.O. 1990, c.L.18; Regulation 717, R.R.O. 1990; Regulation 345/92; Liquor Control Board of Ontario Policies and Practices

Livestock Medicines Act, R.S.O. 1990, c.L.23; Regulation 730, R.R.O. 1990

Ontario Casino Corporation Act, S.O. 1993, c.26; Regulation 22/93; Lottery Licensing Policy Manual and Terms and Conditions to Licences

Ontario Lottery Corporation Act, R.S.O. 1990, c.O.25; Ontario Lottery Corporation practice

Public Lands Act, R.S.O. 1990, c.P.43; Policy and Procedure for Small Hydro Power Sites, 1988 Stakes Programs

Wild Rice Harvesting Act, R.S.O. 1990, c.W.7

MANITOBA

Fisheries Act (Canada), Chapter F-14; Manitoba Fishery Regulations, 1987; Manitoba Fisheries Policy

The Mortgage Dealers Act, C.C.S.M., c.M210

The Real Estate Brokers Act, C.C.S.M., R20

The Private Vocational Schools Act, R.S.M., c.V70; Manitoba Regulation 182/88

The Wild Rice Act, Chapter W130

The Wildlife Act, Chapter W140; Manitoba Wildlife Regulations; Manitoba Wildlife Policies

SASKATCHEWAN

The Agricultural Implements Act, R.S.S. 1978, c.A-10; *The Agricultural Implements Regulations*, 1982, R.R.S., c.A-10, Reg 1; *The Practices and Polices of the Agricultural Implements Board*

The Co-operatives Act, 1989, S.S. 1989-90, c.C-37.2; *Private Acts of the Legislature of Saskatchewan establishing corporate bodies*; *Practice and Policy of the Registrar*

The Labour-sponsored Venture Capital Corporations Act, S.S. 1986, c.L-0.2, and tax credit policy; *The Labour-sponsored Venture Capital Corporations Regulations*, R.R.S., c.L-0.2, Reg 1

The Saskatchewan Land Surveyors Act, S.S. 1978, c.S-27; *Bylaws of the Saskatchewan Land Surveyors' Association*

The Motor Dealers Act, R.S.S. 1978, c.M-22; *The Motor Dealers Regulations*, R.R.S., c.M-22, Reg 1; *Policies of the Registrar*

The Wildlife Act, S.S. 1979, c.W-13.1; *The Outfitter and Guide Regulations*, 1988, R.R.S. c.R-19.01, Reg 2; *The Wild Rice Regulations*, R.R.S., c.F-19, Reg 5; *The Wildlife Regulations*, 1981, R.R.S., c.W-13.1 Reg 1

The Real Estate Brokers Act, 1987, S.S. 1986-87-88, c.R-2.1; *The Real Estate Commission policies and bylaws*

The Alcohol and Gaming Regulation Act, S.S. 1988-89, c.A-18.01; *Saskatchewan Liquor and Gaming Authority Policy*

The Interprovincial Lotteries Act, 1984, S.S. 1983-84, c. I-12.01

The Slot Machine Act, R.S.S. 1978, c.S-50

The Saskatchewan Gaming Corporation Act, S.S. 1994, c. S-18.2; *Saskatchewan Liquor and Gaming Authority Policy*

ALBERTA

Alberta Government Telephones Reorganization Act, R.S.A. 1980, c.A-23.5, s.4, 6, 11

Cemeteries Act, R.S.A. 1980, c.C-2, Section 47

Charitable Fund Raising Act, c.C-4.5, s.7

Collection Practices Act, R.S.A. 1980, c.C-17, s.10, 12

Government Organization Act

Licensing Trades and Businesses Act, R.S.A. 1980, c.L-13; *Direct Selling Business Licensing Regulation*, 315/82, s.12; *Employment Agency Business Licensing Regulation*, 87/89, s.9; *Natural*

Gas Direct Marketing Regulation, 237/95, s.11; Prepaid Contracting Business Licensing Regulation, 314/82, s.11; Retail Home Sales Business Licensing Regulation, 189/82, s.11

Pacific Western Airlines Act, R.S.A. 1980, c.P-0.5, s.13.1

Public Auctions Act, Statutes of Alberta, 1981, c.P-25.1, s.14; Auction Sales Business Licensing Regulations, 210/82

Residential Tenancies Act, R.S.A. 1980, c.R-15.3, s.37.1

Wildlife Act, R.S.A. 1980, c.W-9.1; Captive Wildlife Regulation, s.21; Captive Wildlife (Ministerial) Regulation; General Wildlife Regulation

BRITISH COLUMBIA

Cemetery and Funeral Services Act, R.S.B.C. 1989, c.21

Credit Reporting Regulations, B.C. Reg. 564/74, Section 5(2)

Liquor Control and Licensing Act, R.S.B.C. 1979, c.237, Section 16(3)

Real Estate Act Regulations, B.C. Reg. 75/61

NORTHWEST TERRITORIES

Real Estate Licensing Act

YUKON

Financial Administration Act, R.S.Y 1986; Contract Regulations, O.I.C. 1992/111, s.51(2); Contracting Directive, 1995, Part IV, s.40(g)

Fisheries Act, R.S.C 1985, c.F-14

Freshwater Fisheries Agreement Act, R.S.Y. 1989-90, c.4; Yukon Territory Fishery Regulations, C.R.C., 1978, c.854; Canada-Yukon Freshwater Fisheries Agreement, 1989

Motor Transport Act, R.S.Y. 1988, c.18, ss.33, 39(1): Policy and Procedures for Minimum Conditions of License, 1993, amended 1994

Notaries Act

Real Estate Agents Act, Regulation O.I.C. 1977/158, 1984/157

Wildlife Act, R.S.Y. 1986, c.178; Trapping Regulations, O.I.C. 1982/283: Interim Fur Farming Policy

CANADA

NIL

Annex 606⁴⁶**Extra-provincial Corporate Registration and Reporting Requirements****Purpose**

1. The purpose of this Annex is to reconcile extra-provincial corporate registration and reporting requirements for corporations incorporated under the law of any Party.
2. In order to achieve the purpose of this Annex the Parties shall:
 - (a) collect and make available to each other corporate information; and
 - (b) cooperate and coordinate other measures relating to extra-provincial corporations as provided for in this Annex.

Standard Statement of Registration

3. The Parties shall adopt a Standard Statement of Registration for use by corporations for the purposes of filing for extra-provincial registration with a Province.
4. Each Party shall put in place appropriate arrangements to enable its corporations, if the corporations so wish, to apply to register extra-provincially to operate in any other Province or Provinces by filing the Standard Statement of Registration.
5. Each Province shall accept filings for registration from corporations in the form of the Standard Statement of Registration.
6. The Standard Statement of Registration shall contain the following information:
 - (a) name of corporation;
 - (b) jurisdiction of incorporation or continuance, and
 - (c) one of:
 - (i) address for service in the registering province, or
 - (ii) name and address of agent for service,if required.

Change Reporting

7. Each Party shall ensure that the following information is available to all Provinces in which a corporation is registered as an extra-provincial corporation:

⁴⁶ This annex was added to the Agreement on Internal Trade by means of the Second Protocol of Amendment.

- (a) a proposed or actual change of name (with name availability documents, if required);
- (b) a cessation of existence;
- (c) a decision or application to dissolve or be dissolved, or to wind up or be wound up; or
- (d) an amalgamation or continuance (including an “export” continuance from the incorporating jurisdiction to another jurisdiction).

Annual Reports

8. Each Party shall ensure that the information contained in the annual report submitted by any corporation which it incorporates is available to all Provinces in which that corporation is registered as an extra-provincial corporation.

9. Each Province shall accept the annual report (and the information contained therein) submitted by an extra-provincial corporation to that corporation’s incorporating jurisdiction as meeting its own requirements for an annual report from that corporation.

10. The annual report required by each Party shall identify all Provinces in which the corporation is registered as an extra-provincial corporation.

11. Each Province shall accept the date upon which an extra-provincial corporation must file an annual report with that corporation’s incorporating jurisdiction as the annual report filing date for its own extra-provincial reporting purposes.

12. Each Province retains the right to impose its own penalties on extra-provincial corporations for failure to file an annual report in conformity with the requirements of this Annex.

Additional Information Requirements

13. Provinces reserve the right to require corporations to submit information in addition to that specified in paragraphs 6, 7 and 9 in order to complete the processes referred to in those paragraphs.

Fees

14. Each Party retains the right to levy fees in respect of registration and renewal of registration of extra-provincial corporations.

15. The Parties shall incorporate in the arrangements for electronic communication of information under paragraph 20, arrangements to streamline the collection and distribution of fees.

Agent for Service

16. A Province may require an agent for service if the corporation does not have a presence within the province upon which legal service can be made.

Language

17. Each Party may require that information for registration, change reporting and annual reporting be submitted in either or both official languages.

Names

18. Nothing in this Annex affects the name granting authority of any Party and corporations maintain all rights associated with the name or names granted them under such authority.

19. Corporations are responsible for meeting all requirements related to name approval in any jurisdiction in which they operate or may plan to operate.

Communication of Information

20. The Parties shall put in place arrangements to ensure that the information stipulated in paragraphs 6, 7, 9 and 10 is communicated electronically. The Parties shall also include, as practicable, in such arrangements means to collect and communicate the information referred to in paragraph 13.

Review

21. The Parties shall review biennially the operation, scope and coverage of this Annex for the purpose of enhancing cooperation and trade liberalization.

Implementation

22. The arrangements to ensure electronic communication of information as specified in paragraph 20 shall be fully operational by July 1, 1999, subject to the following:

- (a) should technical complications make compliance with the above date impossible, the Committee on Internal Trade will be informed at the earliest possible time so that it may take appropriate action; and
- (b) should commencement of electronic communication of information among some or all Parties become feasible at an earlier date or dates, such Parties may implement this Annex at such earlier date or dates.

Definitions

23. In this Annex,

agent for service means, with reference to an extra-provincial corporation, the person authorized to accept service of documents on behalf of the corporation.

continuance means the process that allows a corporation to apply to be governed by the laws of another jurisdiction as if it had been incorporated under the laws of that other jurisdiction.

incorporating jurisdiction means the Party under whose laws a company has been incorporated.

Annex 608.3

Code of Conduct on Incentives

Scope and Coverage

1. This Annex applies to incentives provided to enterprises by a Party or any entity acting on its behalf.

1P5. Parties shall not influence or direct municipalities, regional development authorities or any other entity, or apply incentive practices through same, so as to circumvent the intent and provisions of this Annex.⁴⁷

2. In this Annex, "incentive" means:

- (a) a contribution with a financial value that confers a benefit on the recipient, including cash grants, loans, debt guarantees or an equity injection, made on preferential terms;
- (b) a reduction in taxes or government levies otherwise payable aimed at a specific enterprise, whether organized as one legal entity or as a group of legal entities, but does not include a reduction resulting from a provision of general application of a tax law of a Party; or
- (c) any form of income or price support that results directly or indirectly in a draw on the public purse.

Purpose

3. The Parties affirm the application of the operating principles of this Agreement to incentives and shall minimize the adverse effects of their incentives on the economic interests of other Parties.

Prohibited Incentives

4. No Party shall provide an incentive that is, in law or in fact, contingent on, and would directly result in, an enterprise located in the territory of any Party relocating an existing operation to its territory or to the territory of any other Party.⁴⁸

5. An incentive shall not be considered to be inconsistent with paragraph 4 where a Party can demonstrate that the incentive was provided to offset the possibility for relocation of the existing operation outside Canada and the relocation was imminent, well known and under active consideration.

⁴⁷ This paragraph was added to the Agreement on Internal Trade by means of the Fifth Protocol of Amendment.

⁴⁸ This paragraph was amended by the Fifth Protocol of Amendment.

6. No Party shall provide an incentive the primary purpose of which is to enable the recipient enterprise to undercut competitors of another Party in obtaining a specific contract in the territory of a Party.

7. For greater certainty, paragraph 4 shall not be construed to prevent a Party from carrying out general investment promotion activities such as market information and intelligence.

Avoidance of Certain Incentives

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.⁴⁹

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.⁵⁰

9. Each Party shall refrain from engaging in bidding wars to attract prospective investors seeking the most beneficial incentive package.⁵¹

Request for Information

10. Where a Party has reason to consider that an incentive program or an individual incentive package offered or implemented by another Party may be inconsistent with paragraphs 4 through 9, it may request relevant information from that other Party. A Party may also request any other information relating to a Party's investment incentive programs or individual incentive packages offered or implemented. The other Party shall respond promptly to any such requests.⁵²

Annual Report

⁴⁹ This paragraph was amended by the Eighth Protocol of Amendment.

⁵⁰ This paragraph was added to the Agreement on Internal Trade by means of the Eighth Protocol of Amendment.

⁵¹ This paragraph was amended by the Fifth Protocol of Amendment.

⁵² This paragraph was amended by the Fifth Protocol of Amendment.

15. The Working Group on Investment shall prepare an annual report on incentives for submission to the Committee that includes:
- (a) a short description, including the goals and objectives, of the incentive programs and of the individual incentive packages that are outside established programs offered by each Party;
 - (b) the total amount of each of the following types of incentives committed by a Party to enterprises in its territory:
 - (i) cash grants or contributions;
 - (ii) loans or loan guarantees; and
 - (iii) equity injections;
 - (c) in the case of the Federal Government, the total amount for each Province of each of the types of incentives referred to in paragraph (b) committed by it to enterprises;
 - (d) the amounts of:
 - (i) each cash grant or contribution over \$500,000;
 - (ii) each loan or loan guarantee over \$1,000,000; and
 - (iii) each equity injection over \$1,000,000;committed by a Party to enterprises in its territory; and
 - (e) where relevant, a summary of any matter that has given rise to procedures under paragraph 10 or paragraphs 11 through 14.

Chapter Seven⁵³

Labour Mobility

Article 700: Application of General Rules

1. Articles 404 (Legitimate Objectives) and 405 (Reconciliation) do not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), 403 (No Obstacles), and 406 (Transparency) apply to this Chapter.
3. For purposes of Articles 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), and 403 (No Obstacles), any reference in those Articles to Article 404 (Legitimate Objectives) shall be construed as a reference to Article 708.

Article 701: Purpose

The purpose of this Chapter is to eliminate or reduce measures adopted or maintained by the Parties that restrict or impair labour mobility in Canada and, in particular, to enable any worker certified for an occupation by a regulatory authority of one Party to be recognized as qualified for that occupation by all other Parties.

Article 702: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) residency requirements for workers as a condition of access to employment opportunities or as a condition of certification relating to a worker's occupation,
 - (b) certification requirements, other than residency requirements, for workers in order to practice an occupation or use a particular occupational title, and
 - (c) occupational standards.
2. This Chapter does not cover
 - (a) social policy measures including, but not limited to, labour standards and codes, minimum wages, employment insurance qualification periods and social assistance, and
 - (b) Quebec's measures pertaining to language requirements.

⁵³ The former chapter, including annexes, was replaced by the current chapter by means of the Ninth Protocol of Amendment.

Article 703: Extent of Obligations

1. For the purposes of Article 102(1)(b) and (c) (Extent of Obligations), each Party shall, through appropriate measures, ensure compliance with this Chapter by
 - (a) its regional, local, district and other forms of municipal government, and
 - (b) its other governmental bodies and by non-governmental bodies that exercise authority delegated by law.
2. Each Party shall, through appropriate measures, seek compliance with this Chapter by non-governmental bodies other than those that exercise authority delegated by law.

Article 704: Relationship to Other Agreements

In the event of an inconsistency in a particular case between a provision of this Chapter and a provision of any other agreement between two or more Parties respecting matters covered by this Chapter, the agreement that is more conducive to labour mobility in that particular case prevails to the extent of the inconsistency. It is understood that any such other agreement may prevail only as between the Parties that are party to that agreement.

Article 705: Residency Requirements

1. Subject to Article 708, no Party shall require a worker of a Party to be resident in its territory as a condition of:
 - (a) eligibility for employment; or
 - (b) certification relating to the worker's occupation.
2. With respect to the Federal Government, paragraph 1 (a) means that, subject to Article 708, it shall not require a worker of a Party to be a resident of a particular province or territory as a condition of eligibility to apply, in an external appointment or hiring process, for appointment or hiring to a position or job in
 - (a) federal public service departments, departmental corporations, Crown corporations, separate agencies and other portions of the public administration which are listed in Schedules I to VI of the *Financial Administration Act*, Revised Statutes of Canada, chapter F-10, as amended from time to time, and
 - (b) other Crown corporations, as defined in the *Financial Administration Act*, Revised Statutes of Canada, chapter F-10, as amended from time to time, which are not covered under paragraph (a).

Article 706: Certification of Workers

1. Subject to paragraphs 2, 3, 4 and 6 and Article 708, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each

other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure.

2. Subject to paragraphs 3, 4 and Article 708, each Party shall recognize any worker holding a jurisdictional certification bearing the Red Seal endorsement under the Interprovincial Standards Red Seal Program as qualified to practice the occupation identified in the certification.

3. It is understood that a regulatory authority of a Party may, as a condition of certification for any worker referred to in paragraph 1 or 2, impose requirements on that worker (other than requirements for material additional training, experience, examinations or assessments), including requirements to:

- (a) pay an application or processing fee;
- (b) obtain insurance, malpractice coverage or similar protection;
- (c) post a bond;
- (d) undergo a criminal background check;
- (e) provide evidence of good character;
- (f) demonstrate knowledge of the measures maintained by that Party applicable to the practice of the occupation in its territory;
- (g) provide a certificate, letter or other evidence from the regulatory authority in each territory in which they are currently certified confirming that their certification in that territory is in good standing;

provided that:

- (h) subject to paragraph (5)(c), any requirements referred to in paragraphs (a) to (f) are the same as, or substantially similar to but no more onerous than, those imposed by the regulatory authority on its own workers as part of the normal certification process; and
- (i) the requirement does not create a disguised restriction on labour mobility.

4. Nothing in paragraphs 1 or 2 limits the ability of a regulatory authority of a Party to:

- (a) refuse to certify a worker or impose terms, conditions or restrictions on his or her ability to practice where such action is considered necessary to protect the public interest as a result of complaints or disciplinary or criminal proceedings in any other jurisdiction relating to the competency, conduct or character of that worker;
- (b) impose additional training, experience, examinations or assessments as a condition of certification where the person has not practiced the occupation within a specified period of time;
- (c) require the worker to demonstrate proficiency in either English or French as a condition of certification in cases where there was no equivalent language proficiency requirement imposed upon, and satisfied by, the worker as a condition of the worker's

certification in his or her current certifying jurisdiction;

- (d) assess the equivalency of a practice limitation, restriction or condition imposed on a worker in his or her current certifying jurisdiction to any practice limitation, restriction or condition that may be applied by the regulatory authority to a worker in its territory, and apply an equivalent practice limitation, restriction or condition to the worker's certification, or, where the regulatory authority has no provision for applying an equivalent limited, restricted or conditional certification, refuse to certify the worker;

provided that:

- (e) any such measure is the same as, or substantially similar to but no more onerous than, that imposed by the regulatory authority on its own workers; and
- (f) the measure does not create a disguised restriction on labour mobility.

5. Subject to Article 708, each Party shall ensure that any measure that it adopts or maintains relating to certification of workers of any other Party:

- (a) is published on the website of the relevant regulatory authority or through a readily accessible website of the Party;
- (b) results in expeditious certification; and
- (c) except for actual cost differentials, does not impose fees or other costs that are more burdensome than those imposed on its own workers.

6. Where a worker has been certified for an occupation by a regulatory authority of a Party, nothing in this Article prevents a regulatory authority of another Party from permitting the worker to practice that occupation in its territory without further certification.

Article 707: Occupational Standards

1. Each Party may adopt or maintain any occupational standard, and in doing so, may establish the level of protection that it considers to be appropriate in the circumstances. Parties agree, to the extent possible and where practical, to take steps to reconcile differences in occupational standards.

2. Further to paragraph 1, each Party shall, to the extent possible and where practical, adopt occupational standards based on common interprovincial standards, including occupational standards developed for the Interprovincial Standards Red Seal Program, or international standards. The Parties acknowledge their continued commitment to the Interprovincial Standards Red Seal Program, including the use of National Occupational Analyses, as a well-established means of establishing common interprovincial standards for trades.

3. If occupational standards have not been established in the territory of a Party in respect of a particular occupation but exist in the territory of any other Party, and the Party without the standards wishes to develop such standards, it shall do so in a manner conducive to labour mobility. A Party intending to develop such standards shall notify the other Parties of its intent and afford them an opportunity to comment on the development of those standards.

4. If occupational standards do not exist in the territories of any of the Parties in respect of an occupation and a Party considers it necessary to establish occupational standards for that occupation, the Parties agree that the process of development of new occupational standards shall occur in a manner conducive to labour mobility. A Party intending to develop new standards shall notify the other Parties of its intent and afford them an opportunity to comment on the development of those standards.

5. If a Party considers it necessary to make changes to any standards in respect of an occupation, the Parties agree that the process for making such changes shall occur in a manner conducive to labour mobility. A Party intending to make such changes shall notify the other Parties and afford them an opportunity to comment on the modification of those standards.

Article 708: Legitimate Objectives

1. Where it is established that a measure falling within the scope and coverage of this Chapter is inconsistent with Article 401, Article 402, Article 403 or Article 705, or paragraphs 1, 2 or 5 of Article 706, that measure is still permissible under this Chapter where it can be demonstrated that:

- (a) the purpose of the measure is to achieve a legitimate objective;
- (b) the measure is not more restrictive to labour mobility than necessary to achieve that legitimate objective; and
- (c) the measure does not create a disguised restriction to labour mobility.

2. For greater certainty, for purposes of the application of paragraph 1(b) of Article 708 to paragraph 1, 2 or 5 of Article 706, a mere difference between the certification requirements of a Party related to academic credentials, education, training, experience, examination or assessment methods and those of any other Party is not, by itself, sufficient to justify the imposition of additional education, training, experience, examination or assessment requirements as necessary to achieve a legitimate objective. In the case of a difference related to academic credentials, education, training or experience, the Party seeking to impose an additional requirement must be able to demonstrate that any such difference results in an actual material deficiency in skill, area of knowledge or ability. As an example, the imposition of a requirement for additional, education, training or experience may be justified under paragraph (1)(b) where a Party can demonstrate that:

- (a) there is a material difference between the scope of practice of the occupation for which the worker is seeking to be certified in its territory and the scope of practice of the occupation for which the worker has been certified by the regulatory authority of another Party; and
- (b) as a result of that difference, the worker lacks a critical skill, area of knowledge or ability required to perform the scope of practice of the occupation for which the worker seeks to be certified.

3. Where a Party adopts or maintains a measure under paragraph 1, it shall give written notice to the Forum of the measure, in the form, and containing the information, considered appropriate by the Forum. The notice shall indicate the Party's justification for the measure and the anticipated duration of the measure.

4. The Forum shall develop and implement a framework for the Parties to establish a list of specific measures taken under paragraph 1 for which notice has been given to the Forum under paragraph 3. This list will be posted by the Forum on a public website.

Article 709: Implementation, Administration and Assessment

1. The Forum shall:
 - (a) promote the implementation of and ongoing adherence to this Chapter and develop a work plan or plans related to those objectives;
 - (b) develop and implement the framework for the implementation of Article 707;
 - (c) develop the form and content required for notices under paragraph 3 of Article 708;
 - (d) develop and implement the framework for the posting of measures under paragraph 4 of Article 708; and
 - (e) annually produce a report on the operation of this Chapter and submit that report to the Committee.
2. The annual report referred to in paragraph 1(e) shall include:
 - (a) an assessment of the effectiveness of this Chapter, including an assessment of whether there have been any unintended adverse consequences, together with appropriate recommendations to address concerns identified in the assessment, including recommended amendments to this Chapter;
 - (b) a list of measures for which notice has been given under paragraph 3 of Article 708, together with a description of their respective justification and their anticipated duration; and
 - (c) a summary of any disputes that have arisen between the Parties during the year concerning the interpretation or application of this Chapter and the results of any consultations or other dispute resolution procedures resorted to by the Parties concerned to resolve the disputes.
3. The Forum may establish any committees that it considers necessary to assist it in the implementation of any work plan. The committees may be composed of representatives of the Parties and, where appropriate, of relevant regulatory authorities, other non-governmental bodies and interest groups.

Article 710: Consultations and Dispute Resolution

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

Article 711: Definitions

In this Chapter:

certified means that a worker holds a certificate, licence, registration or other form of official recognition issued by a regulatory authority of a Party which attests to the worker being qualified and, where applicable, authorized to practice a particular occupation or to use a particular occupational title in the territory of that Party. For greater certainty, “certified” does not include only having work experience in a given occupation gained within a Party where certification is not required in order to practice that occupation;

Forum means the Forum of Labour Market Ministers;

legitimate objective means one or more of the following objectives pursued within the territory of a Party:

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health;
- (d) protection of the environment;
- (e) consumer protection;
- (f) protection of the health, safety and well-being of workers;
- (g) provision of adequate social and health services to all its geographic regions; and
- (h) programs for disadvantaged groups;

National Occupational Analysis means a document developed pursuant to the Interprovincial Standards Red Seal Program that details tasks and subtasks performed by workers in a trade;

non-governmental body, with or without authority delegated by law, includes professional corporations and associations, hospitals, health units, long-term care facilities, clinics, other health care/service organizations and authorities, professional regulatory bodies, school authorities, universities, colleges and other educational and training institutions, trade unions and industry associations;

non-governmental body that exercises authority delegated by law means any non-governmental body to whom authority has been delegated by provincial or federal statute to set or implement measures related to:

- (a) the establishment of occupational standards or certification requirements;
- (b) the assessment of the qualifications of workers against established occupational standards or certification requirements; or

- (c) the official recognition that an individual meets established occupational standards or certification requirements;

occupation means a set of jobs which, with some variation, are similar in their main tasks or duties or in the type of work performed.

occupational standard means the skills, knowledge and abilities required for an occupation as established by a regulatory authority of a Party and against which the qualifications of an individual in that occupation are assessed;

regulatory authority of a Party means a department, ministry or similar agency of government of a Party or a non-governmental body that exercises authority delegated by law;

worker means an individual, whether employed, self-employed or unemployed, who performs or seeks to perform work for pay or profit; and

worker of a Party means a worker resident in the territory of a Party.

Chapter Eight

Consumer-Related Measures and Standards

Article 800: Application of General Rules

1. Article 404 (Legitimate Objectives) does not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), 403 (No Obstacles), 405 (Reconciliation) and 406 (Transparency) apply to this Chapter, except as otherwise provided in this Chapter.

Article 801: Scope and Coverage

This Chapter applies to consumer-related measures and standards adopted or maintained by a Party.

Article 802: Relationship to Other Agreements

In the event of an inconsistency between a provision of this Chapter and a provision of any other agreement between two or more Parties respecting consumer-related measures and standards, the more trade liberalizing provision prevails to the extent of the inconsistency.

Article 803: Legitimate Objectives

Where it is established that a consumer-related measure or standard is inconsistent with Article 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit) or 403 (No Obstacles), that measure or standard is still permissible under this Agreement where it can be demonstrated that:

- (a) the purpose of the measure or standard is to achieve a legitimate objective;
- (b) the measure or standard does not operate to impair unduly the access of persons, goods, services or investments of a Party that meet that legitimate objective;
- (c) the measure or standard is not more trade restrictive than necessary to achieve the level of consumer protection adopted or maintained under Article 804; and
- (d) the measure or standard does not create a disguised restriction on trade.

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

1. Each Party may, in pursuing a legitimate objective, adopt or maintain measures establishing the level of consumer protection that it considers appropriate.

2. For greater certainty, the decision of a Party not to adopt or maintain a particular consumer-related measure or standard shall not affect the right of any other Party to adopt or maintain such consumer-related measure or standard.

Article 805: Licensing, Registration and Certification Fees

1. Subject to paragraph 2, Article 401 (Reciprocal Non-Discrimination) does not apply before July 1, 1996, to licensing, registration and certification fees.
2. Effective July 1, 1996, each Party shall, in accordance with Article 401 (Reciprocal Non-Discrimination), eliminate any licensing, registration and certification fees that are applied to suppliers of any other Party in a manner inconsistent with that Article and shall ensure that, where it maintains any difference in the level of such fees, that difference reflects actual costs.

Article 806: Residency and Local Presence Requirements

1. No Party shall require a natural person of any other Party to be resident in its territory as a condition of licensing, registration or certification as a supplier.
2. Where necessary to achieve a legitimate objective, a Party may require a supplier of any other Party to meet, in the territory of the requesting Party, one or more of the following requirements as a condition of licensing, registration or certification as a supplier:
 - (a) establish or maintain a place of business;
 - (b) establish or maintain an address for service;
 - (c) post a bond or other form of financial security;
 - (d) establish or contribute to a trust account;
 - (e) contribute to a compensation fund; or
 - (f) maintain records.

Article 807: Reconciliation of Consumer-Related Measures and Standards

1. For the purposes of Article 405 (Reconciliation), the Parties shall, to the greatest extent possible, reconcile their respective consumer-related measures and standards listed in Annex 807.1 to a high and effective level of consumer protection. No Party shall be required by such reconciliation to lower the level of consumer protection that it maintains as at the date of entry into force of this Agreement.
2. The list of measures and standards in Annex 807.1 may be expanded in accordance with Article 809.

Article 808: Cooperation on Consumer-Related Measures and Standards⁵⁴

The Committee on Consumer-Related Measures and Standards shall, no later than July 1, 1997, report to the Committee of Ministers responsible for Consumer-Related Measures and Standards (the "Ministers") on any agreement that the Parties might conclude on matters relating to consumer-related measures and standards, such as reciprocal investigative powers, enforcement of revocation rights, financial compensation for consumers and enforcement of judgments.

Article 809: Committee on Consumer-Related Measures and Standards

1. The Parties shall establish a Committee on Consumer-Related Measures and Standards composed of representatives of each Party.
2. The Committee on Consumer-Related Measures and Standards shall, among other things:
 - (a) monitor the implementation and administration of this Chapter, including the functioning of enquiry points established under Article 406(5) (Transparency);
 - (b) facilitate the process for reconciliation of consumer-related measures and standards, including the identification of such measures and standards for inclusion in Annex 807.1;
 - (c) provide a forum for discussions between the Parties on issues relating to consumer-related measures and standards, including any agreement referred to in Article 808, and the preparation of technical advice and recommendations to the Ministers;
 - (e) submit to the Ministers an annual report on matters relating to this Chapter for transmittal to the Committee.

Article 809P4: Consultations and Dispute Resolution⁵⁵

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

Article 810: Definitions

In this Chapter:

consumer means a natural person who is offered, acquires or uses a good or service primarily for personal, family or household purposes;

⁵⁴ This article was amended by the Fourth Protocol of Amendment.

⁵⁵ This article was added to the Agreement on Internal Trade by means of the Fourth Protocol of Amendment and subsequently amended by the Seventh Protocol of Amendment.

Committee on Consumer-Related Measures and Standards means the Committee established under Article 809(1);

consumer-related measures and standards means measures and standards that are intended to protect the personal safety of consumers or the economic interests of consumers and are related to the offer, acquisition or use of a good or service intended primarily for personal, family or household purposes;

economic interests of consumers includes, but is not limited to:

- (a) quality of goods, services and suppliers;
- (b) accurate and timely information about goods, services and suppliers, including cost of credit;
- (c) contractual fairness;
- (d) access to redress mechanisms;
- (e) security of consumer deposits;
- (f) prevention of unfair trade practices; and
- (g) protection of privacy;

legitimate objective means the protection of the personal safety of consumers or the economic interests of consumers and includes the enforcement of consumer-related measures and standards;

level of consumer protection means the scope and coverage of a particular consumer-related measure or standard as determined by a Party at the cost that it considers appropriate to address a particular objective;

personal safety of consumers means the protection of consumers from hazards to health or physical safety arising from the use of a good or service;

supplier means a person of a Party that seeks to supply or supplies goods or services.

Annex 807.1

Reconciliation of Consumer-Related Measures and Standards

Direct Selling

1. Each Party shall, where appropriate, complete negotiations on harmonized measures respecting direct selling contracts and cancellation rights no later than July 1, 1995, and adopt such harmonized measures no later than July 1, 1996.
2. The Parties shall, to the greatest extent possible, harmonize their direct selling measures to the highest possible standard of consumer protection.
3. For the purposes of paragraphs 1 and 2, "direct selling" means the offer or supply of goods or services from door to door and may include the offer or supply by electronic or telecommunication means, by mail or from a location other than a supplier's usual place of business.

Upholstered and Stuffed Articles Measures

4. Parties that maintain registration systems for upholstered and stuffed articles on the date of entry into force of this Agreement shall harmonize any differing registration requirements that might otherwise constitute an obstacle to trade and adopt harmonized registration requirements no later than January 1, 1996.
5. Parties that maintain labelling standards for upholstered and stuffed articles on the date of entry into force of this Agreement shall negotiate and adopt uniform labelling standards no later than January 1, 1996.
6. Parties that adopt registration requirements or labelling standards for upholstered and stuffed articles after the date of entry into force of this Agreement shall negotiate and adopt harmonized registration requirements or uniform labelling standards no later than January 1, 1996. Parties that adopt registration requirements or labelling standards for upholstered and stuffed articles after the harmonized registration requirements or uniform labelling standards are adopted under paragraph 4 or 5, shall adopt those harmonized registration requirements or uniform labelling standards.

Cost of Credit Disclosure

7. The Parties shall adopt harmonized legislation respecting the disclosure of cost of credit in accordance with the following objectives, among others:
 - (a) to ensure that, before making a credit-purchasing decision, consumers receive fair, accurate and comparable information about the cost of credit;
 - (b) to ensure that, with respect to non-mortgage credit, consumers are entitled to repay their loans at any time and, in that event, to pay only those finance charges that have been earned at the time the loans are repaid; and
 - (c) to ensure that the disclosure is as clear and as simple as possible, taking into account the inherent complexity of disclosure issues related to any form of credit.

8. The harmonized cost of credit disclosure legislation referred to in paragraph 7 shall apply to all forms of consumer credit, including:

- (a) fixed credit such as loans for a fixed sum to be repaid in instalments;
- (b) open credit such as lines of credit and credit cards;
- (c) loans secured by mortgage of real property;
- (d) supplier credit such as conditional sale agreements; and
- (e) long-term leases of consumer goods.

9. Federal legislation relevant to cost of credit disclosure includes:

- (a) the disclosure provisions in the *Bank Act* (Canada) and the federal cost of borrowing regulations;
- (b) the cost of credit disclosure provisions in federal legislation governing other federally incorporated financial institutions; and
- (c) the *Interest Act* (Canada).

10. The Parties shall complete negotiations on the harmonization of cost of credit disclosure no later than January 1, 1996, and shall adopt such harmonized legislation no later than January 1, 1997.

Chapter Nine

Agricultural and Food Goods

Article 900: Application of General Rules

For greater certainty, Chapter Four (General Rules) applies to this Chapter, except as otherwise provided in this Chapter.

Article 901: Relationship to Other Chapters

In the event of an inconsistency between a provision of this Chapter and any other provision of this Agreement, this Chapter prevails to the extent of the inconsistency.

Article 902: Scope and Coverage

1. This Chapter applies to technical measures adopted or maintained by a Party relating to internal trade in agricultural and food goods.
2. For greater certainty, that nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining measures relating to supply management systems regulated by federal and provincial governments, and provincially regulated marketing boards, that are not technical measures. This includes measures relating to the right to invest in the production of, or to produce:
 - (a) poultry and eggs or any other farm products regulated pursuant to the Farm Products Agencies Act; and
 - (b) milk and dairy products regulated pursuant to the Canadian Dairy Commission Act and the Agricultural Products Marketing Act

Article 903: Extent of Obligations

Further to Article 102 (Extent of Obligations) each Party is responsible for compliance with this Chapter by its other governmental bodies, including Crown corporations, and by non-governmental bodies that exercise authority delegated by law.

Article 904: Working Group on Agriculture and Food Goods

1. The Parties shall establish a Working Group on Agriculture and Food Goods composed of representatives of each party.
2. The Working Group shall review and report on Chapter Nine to Ministers of Agriculture periodically with the purpose of:
 - (a) assessing whether the Chapter has met its objectives;

- (b) identifying and resolving outstanding implementation issues respecting this Chapter;
- (c) reviewing the opportunities for progress and harmonization on matters related to internal trade in agricultural and food goods

3. For the purposes of this chapter, the notification obligations enumerated in Article 406.2 may be met by providing notification to the Working Group with respect to the proposed measure.

Article 905: Right to Establish Technical Measures

1. For greater certainty, in adopting or maintaining any technical measure a Party may establish the level of protection it considers appropriate in the circumstances to achieve a legitimate objective.
2. For greater certainty, each Party shall, in ensuring that any technical measure that it adopts or maintains is not more trade restrictive than necessary to achieve a legitimate objective, take into account the risks that non-fulfillment of that legitimate objective would create and ensure proportionality between the trade restrictiveness of the technical measures and those risks.
3. Each Party shall ensure that any technical measure adopted or maintained for a legitimate objective does not arbitrarily or unjustifiably discriminate between or among Parties, including between that Party and other Parties, where identical or similar conditions prevail.
4. No Party shall adopt or apply a technical measure in a manner that would constitute a disguised restriction on internal trade.
5. Each Party shall, where appropriate and to the extent practicable, specify its technical measures in terms of results, performance or competence.
6. Each Party shall ensure that its technical measures have a scientific, factual or other reasonable basis and that where appropriate, such technical measures are based on an assessment of risk.

Article 906: Consultations and Dispute Resolution

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

Article 907: Definitions

In this Chapter:

agricultural good means:

- (a) an animal, a plant or an animal or plant product; or
- (b) a product, including any food or drink, wholly or partly derived from an animal or a plant; but does not include fish or fish products or alcoholic beverages;

conformity assessment procedure means a procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

food good means an article manufactured, sold or represented for use as food or drink for humans, chewing gum, and any ingredient that may be mixed with food for any purpose whatever, but does not include fish or fish products or alcoholic beverages;

Ministers mean the respective Ministers of Agriculture of the Parties;

provincially regulated marketing board means a board or agency authorized under the law of a province to exercise powers of regulation in relation to the marketing of any agricultural product locally within the province

sanitary and phytosanitary measure means a measure applied to:

- (a) protect animal or plant life or health within the territory of the Party from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- (b) protect human or animal life or health within the territory of the Party from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- (c) protect human life or health within the territory of the Party from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests;
- (d) prevent or limit other damage within the territory of the Party from the entry, establishment or spread of pests; and
- (e) includes inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety;

standard means a document approved by a recognized Body including those accredited by Canada's National Standards System, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

technical measure means a measure that is a technical regulation, a standard, a sanitary or phytosanitary measure or a conformity assessment procedure but does not include purchasing specifications prepared for production or consumption requirements of a Party that are addressed

in Chapter Five (Procurement), according to the coverage of that Chapter.

technical regulation means a document or instrument of a legislative nature which defines product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory by law. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Chapter Ten

Alcoholic Beverages

Article 1000: Application of General Rules

1. Article 402 (Right of Entry and Exit) does not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 401 (Reciprocal Non-Discrimination), 403 (No Obstacles), 404 (Legitimate Objectives), 405 (Reconciliation) and 406 (Transparency) apply to this Chapter, except as otherwise provided in this Chapter.

Article 1001: Scope and Coverage

This Chapter applies to measures adopted or maintained by a Party relating to trade in beverage alcohol products.

Article 1002: Existing Agreements

Nothing in this Agreement shall prevent a Party from maintaining a bilateral arrangement entered into with another Party before the date of entry into force of this Agreement to enhance trade in beverage alcohol products.

Article 1003: Extent of Obligations

Further to Article 102(1)(c)(Extent of Obligations), each Party is responsible for compliance with this Chapter by its competent authorities listed in Annex 1003, and any entity to which those authorities delegate authority.

Article 1004: Reciprocal Non-Discrimination

1. Article 401 (Reciprocal Non-Discrimination) applies, in particular, to measures in respect of:
 - (a) listing;
 - (b) pricing;
 - (c) access to points of sale;
 - (d) distribution;
 - (e) merchandising; and
 - (f) cost of service, fees and other charges.

2. Without limiting the generality of Article 401 (Reciprocal Non-Discrimination), each Party shall accord to beverage alcohol products of any other Party treatment no less favourable than the treatment it accords to beverage alcohol products of non-Parties under existing international trade agreements to which Canada is a party.

Article 1005: No Obstacles

1. Article 403 (No Obstacles) applies to measures such as:
 - (a) administrative procedures, requirements and decisions;
 - (b) labelling and packaging regulations and requirements;
 - (c) oenological regulations, requirements and standards; and
 - (d) advertising regulations and requirements.
2. Each Party shall ensure that decisions related to the entry of beverage alcohol products or producers of another Party into its territory are expedited and communicated in a timely manner.

Article 1006: Cost of Service, Fees and Other Charges

Each Party shall ensure that any cost of service, fees or other charges that it applies to beverage alcohol products of another Party do not exceed the cost of necessary services. Such charges shall be reasonable and reflect costs normally incurred in the provision of those services.

Article 1007: Reconciliation

1. For the purposes of Article 405 (Reconciliation), each Party shall endeavour, where practicable, to undertake to reconcile, through harmonization or other means, standards-related measures such as labelling and packaging regulations and requirements and oenological practices.
2. Each Party shall, where appropriate and compatible with international standards, ensure that wine and wine products are labelled in accordance with any voluntary national standards that may be approved by the Standards Committee on Wine of the Canadian General Standards Board (the "Canadian Wine Standards") and that are consistent with federal legislation and regulations. Each Party shall use its best efforts to bring its legislation, regulations and policies into conformity with such standards.
3. Following approval of the Canadian Wine Standards, the Parties shall review and endeavour to reconcile the definition "wine and wine products" in Article 1013 with the definition approved by the Standards Committee on Wine of the Canadian General Standards Board. In attempting to reconcile these definitions, the Parties may not exclude any products covered by the definition in Article 1013 as it reads on the date of entry into force of this Agreement.

Article 1008: Transparency

1. Further to Article 406(1) (Transparency), each Party shall promptly make available to any Party or interested person that so requests any public documentation relating to the distribution and sale of beverage alcohol products, such as copies of relevant legislation, regulations, requirements and administrative policies and procedures.
2. Each Party shall provide to any producer of a Party that so requests explanations for decisions regarding the distribution, marketing or sale of its products.
3. Each Party shall provide to an applicant for listing of a beverage alcohol product:
 - (a) prompt written notice of decisions and, if so requested, a statement of the reasons for a refusal to list; and
 - (b) access to administrative procedures that provide for prompt and fair review of listing decisions.

Article 1009: Complaints

1. Any producer of a Party that considers that it or its products are not being treated in the territory of another Party in a manner consistent with this Agreement may take up the matter directly with the competent authority of that other Party in accordance with the following:
 - (a) if the matter is not resolved the producer may make a written complaint to the competent authority providing details of the grounds of complaint; and
 - (b) the competent authority shall provide a prompt written response to the complaint.

Article 1009P7: Consultations and Dispute Resolution ⁵⁶

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

Article 1010: Non-Conforming Measures

1. Newfoundland and Labrador reserves the right to deny beer and beer products of any other Party access to outlets of brewers' agents until it determines, in consultation with the other Parties, that the existing system is no longer necessary. Other Parties reserve the right to restrict access to beer brewed in Newfoundland and Labrador. This will be subject to review by the Parties before December 1, 1999.

⁵⁶ This article was added to the Agreement on Internal Trade by means of the Seventh Protocol of Amendment.

3. New Brunswick and Quebec reserve the right to apply a differential cost of service, fees or other charges to beer and beer products of any other Party where it can be demonstrated that beer and beer products originating from New Brunswick or Quebec, respectively, encounter higher cost of service, fees, other charges or handling requirements than beer and beer products of that Party. Any implementation of this reservation will be subject to review by the Parties no later than March 31, 1997.⁵⁷

5. Ontario reserves the right to apply its Canadian grape content requirements, pursuant to its 1988 grape and wine adjustment program, to the wine and wine products of a producer of any other Party until December 31, 1999. Ontario will review these requirements before the earlier of March 31, 1997, and the date of adoption of the Canadian Wine Standards in respect of these requirements by the grape and wine industries. Ontario reserves the right to restrict access of wine and wine products produced by government entities.⁵⁸

Article 1011: Exceptions

Nothing in this Agreement prohibits the application to any Party of non-conforming measures specifically authorized by international trade agreements, as follows:

- (a) Ontario and British Columbia may maintain measures requiring private wine store outlets (in existence on October 4, 1987) to discriminate in favour of wine of Ontario and British Columbia to a degree no greater than the discrimination required by such measures as they existed on October 4, 1987;
- (b) Quebec may require any wine sold in grocery stores to be bottled in Quebec, provided that alternative outlets are provided in Quebec for the sale of wine of other Parties, whether or not such wine is bottled in Quebec. British Columbia and Quebec agree to negotiate by March 31, 1997, equivalent access for wine and wine products of the other Province. Until an agreement is implemented, British Columbia retains the right to apply measures of reciprocal effect to wine and wine products produced in Quebec;⁵⁹
- (c) British Columbia may maintain automatic listing measures for British Columbia estate wineries in existence on October 4, 1987, producing less than 30,000 gallons of wine annually and meeting existing content requirements; and
- (d) a Party may maintain or introduce a measure limiting on-premise sales by a producer of beverage alcohol products to those beverage alcohol products produced on its premises.

⁵⁷ This paragraph was amended by the Second Protocol of Amendment.

⁵⁸ This paragraph was amended by the Second Protocol of Amendment.

⁵⁹ This paragraph was amended by the Second Protocol of Amendment.

Article 1012: Reporting

The Parties shall report annually to the Committee on the following matters:

- (a) any complaints made under Article 1009;
- (b) any changes proposed to be made to this Chapter; and
- (c) any arrangements proposed or entered into under Article 1800 (Trade Enhancement Arrangements) relating to trade in beverage alcohol products.

Article 1013: Definitions

In this Chapter:

beverage alcohol products means wine and wine products, spirits and spirits products, beer and beer products or other beverage alcohol products controlled by a competent authority;

beer and beer products means ale, lager, stout, porter, malt liquor and malt-based beverages brewed in Canada, that are the product of the alcoholic fermentation by yeast of an infusion of barley or wheat, malt and hops or hop extract in potable water and are brewed in such a manner as to possess the aroma, taste and character of beer;

beverage alcohol products of a Party means beverage alcohol products produced, manufactured, brewed, blended or packaged in the territory of a Province;

competent authority means any Province or any commission, board, agency, entity or body that is authorized by that Province by law to control within its territory the importation, distribution or sale of beverage alcohol products, and includes any competent authority listed in Annex 1003;

distribution means the ordering, receipt and warehousing of beverage alcohol products and their transportation to points of sale;

listing means the right granted to a producer by a competent authority to sell a product within the territory of a Province;

other beverage alcohol products means any beverages containing alcohol, other than beverages that are brewed, that are not otherwise defined in this Article and that are produced, manufactured, blended or packaged in Canada and controlled by a competent authority;

points of sale means the retail locations and licensed establishments within the territory of a Party where beverage alcohol products are sold;

pricing means the methods and factors used by a competent authority in determining its selling price;

producer of a Party means a producer licensed by a competent authority to produce, manufacture, brew, blend or package beverage alcohol products in the territory of a Party and includes the agents and representatives of that producer;

spirits and spirits products means distilled spirits or beverages containing distilled spirits produced, manufactured, blended or packaged in Canada;

wine and wine products means wine or beverages containing wine that are produced, manufactured, blended or packaged in Canada and that contain, either exclusively or in various proportions:

- (a) grapes grown in Canada or grape products produced from grapes grown in Canada;
- (b) imported grapes or grape products made from imported grapes; or
- (c) imported wine.

Annex 1003**Competent Authorities**

Newfoundland and Labrador:

Newfoundland Liquor Corporation

Prince Edward Island:

Prince Edward Island Liquor Control Commission

Nova Scotia:

Nova Scotia Liquor Commission

Nova Scotia Liquor Licence Board

New Brunswick:

New Brunswick Liquor Corporation

Department of Finance - Revenue Division

Quebec:

Société des alcools du Québec

Régie des Alcools, des Courses et des Jeux du Québec

Ontario:

Liquor Control Board of Ontario

Liquor Licence Board of Ontario

Manitoba:

Manitoba Liquor Control Commission

Saskatchewan:

Saskatchewan Liquor and Gaming Authority

Alberta:

Alberta Liquor Control Board

British Columbia:

British Columbia Liquor Control and Licensing Branch

British Columbia Liquor Distribution Branch

Northwest Territories:

Northwest Territories Liquor Commission

Yukon:

Yukon Liquor Corporation

Chapter Eleven

Natural Resources Processing

Article 1100: Application of General Rules

For greater certainty, Chapter Four (General Rules) applies to this Chapter, except as otherwise provided in this Chapter.

Article 1101: Relationship to Other Chapters

In the event of an inconsistency between this Chapter and any other chapter in Part IV, this Chapter prevails to the extent of the inconsistency.

Article 1102: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to the processing of natural resources.
2. For the purposes of this Chapter, "processing of natural resources" means the production and sale of the forestry, fisheries and mineral resources products listed in Annex 1102.2.
3. This Agreement does not apply to:
 - (a) the licensing, certification, registration, leasing or other disposition of rights to the harvesting of forestry, fisheries or mineral resources;
 - (b) the management or conservation of forestry, fisheries or mineral resources;
 - (c) water, and services and investments pertaining to water; or
 - (d) the measures listed in Annex 1102.3.
4. For greater certainty, "environmental measure", as defined in Article 200 (Definitions of General Application), does not include measures the purpose of which is the management or conservation of fisheries resources.

Article 1103: Consultations and Dispute Resolution⁶⁰

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

⁶⁰ This article was amended by the Seventh Protocol of Amendment.

Article 1104: Working Group on Processing of Natural Resources

1. The Parties shall establish a Working Group on Processing of Natural Resources composed of representatives of each Party.
2. The Working Group shall, within 12 months after the date of entry into force of this Agreement, and no later than every second year thereafter, or earlier at the call of the Committee, undertake a review with the purpose of:
 - (a) assessing whether this Chapter has met its objectives;
 - (b) identifying and resolving outstanding implementation issues respecting this Chapter;
 - (c) revising this Chapter to accommodate changing principles under this Agreement; and
 - (d) reviewing the opportunities for progress on matters related to the processing of natural resources that are not covered in, or are excluded from, this Chapter.

Article 1105: Reconciliation

1. The Parties shall make every effort to reconcile, in accordance with Annex 405.1, their measures that have an impact on trade in the processing of natural resources.
2. Further to Annex 405.1, the reconciliation of measures adopted or maintained for a legitimate objective, such as the protection of health or safety or the protection of the environment, in accordance with this Chapter shall be based on criteria including, but not limited to, the following:
 - (a) a reasonable level of scientific and technical evidence;
 - (b) an assessment of the economic and environmental costs of the non-implementation of the measure; and
 - (c) the economic feasibility of the measure.
3. For greater certainty, a measure referred to in paragraph 2 shall not be considered to be inconsistent with this Agreement by reason solely of the lack of full scientific certainty regarding the need for the measure.

Article 1106: Definitions

In this Chapter:

water means surface and ground water in liquid, gaseous or solid state, but does not include water packaged in containers with a capacity of 20 litres or less;

Working Group means the Working Group established under Article 1104(1).

Annex 1102.2

Scope and Coverage

Chapter numbers cited in this Annex refer to specific items in the *Harmonized Commodity Description and Coding System*.

Part I

Forestry Resources

CHAPTER 6:

0604.91.30 Christmas trees.

CHAPTER 44:

- 44.01 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms.
- 44.03 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared.
- 44.04 Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking-sticks, umbrellas, tool handles or the like; chipwood and the like.
- 44.05 Wood wool; wood flour.
- 44.06 Railway or tramway sleepers (cross-ties) of wood.
- 44.07 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm.
- 44.08 Veneer sheets and sheets for plywood (whether or not spliced) and other wood sawn lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness not exceeding 6 mm.
- 44.09 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.
- 44.10 Particle board and similar board of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances.

- 44.11 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances.
- 44.12 Plywood, veneered panels and similar laminated wood.
- 4413.00.00 Densified wood, in blocks, plates, strips or profile shapes.

CHAPTER 47: Woodpulp

- 4701.00.00 Mechanical wood pulp.
- 4702.00.00 Chemical wood pulp, dissolving grades.
- 47.03 Chemical wood pulp, soda or sulphate, other than dissolving grades.
- 47.04 Chemical wood pulp, sulphite, other than dissolving grades.
- 4705.00.00 Semi-chemical wood pulp.
- 47.06 Pulps of other fibrous cellulosic material.
- 47.07 Waste and scrap of paper or paperboard.

CHAPTER 48: Paper and Paperboard

- 4801.00.00 Newsprint, in rolls or sheets.
- 48.02 Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes.
- 4803.00 Toilet or facial tissue (mill rolls).
- 48.04 Uncoated kraft paper and paperboard, in rolls or sheets.
- 48.05 Other uncoated paper and paperboard, in rolls or sheets (corrugating medium, multi-ply paper and paperboard and, linerboard).
- 48.06 Vegetable parchment, greaseproof and glassine papers.
- 48.07 Composite paper and paperboard.
- 48.08 Paper and paperboard (corrugated paper and sack kraft paper).
- 48.10 Paper and paperboard, coated on one or both sides.

Part II**Fisheries Resources****CHAPTER 3: Fish and crustaceans, molluscs and other aquatic invertebrates**

- 03.01 Live fish.
- 03.02 Fish, fresh or chilled, excluding fish fillets and other fish meat of heading No. 03.04.
- 03.03 Fish, frozen, excluding fish fillets and other fish meat of heading No. 03.04.
- 03.04 Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen.
- 03.05 Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; fish meal fit for human consumption.
- 03.06 Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine.
- 03.07 Molluscs, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; aquatic invertebrates other than crustaceans and molluscs, live, fresh, chilled, frozen, dried, salted or in brine.

CHAPTER 5: Products of animal origin, not elsewhere specified or included

- 05.08 Shells, crushed for animal feed.
- 05.11 Fish/crustaceans/molluscs for bait.

CHAPTER 12:

- 12.12.20.00 Seaweeds and other algae.

CHAPTER 15:

- 15.04 Fats and oils and their fractions, of fish or marine mammals, whether or not refined, but not chemically modified.

CHAPTER 16: Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates

- 1603.00 Extracts and juices of meat, fish or crustaceans, molluscs or other aquatic invertebrates.
- 16.04 Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs.

16.05 Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved.

CHAPTER 23:

23.01 Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumptions; greaves.

OTHER: Meat, furskins (whole or pieces) and other raw or processed products from marine mammals.

Part III

Mineral Resources

CHAPTER 25: Nonmetallic minerals.

CHAPTER 26: Ores, slag, ash.

CHAPTER 28: Chemical elements and compounds.

CHAPTER 31: Fertilizers (mineral or chemical fertilizers (nitrogenous, phosphatic and potassic)).

CHAPTER 32: Pigments and other preparations.

CHAPTER 68: Articles of stone, plaster, cement, asbestos, mica, or similar materials.

CHAPTER 69: Ceramic products (bricks, blocks tiles of siliceous fossil materials).

CHAPTER 71: Precious or semi-precious stones, precious metals.

CHAPTER 72: Iron and steel.

CHAPTER 74: Copper.

CHAPTER 75: Nickel.

CHAPTER 76: Aluminum.

CHAPTER 78: Lead.

CHAPTER 79: Zinc.

CHAPTER 80: Tin.

CHAPTER 81: Other base metals.

OTHER: Residues and tailings which may be processed for their metal, non-metal or mineral content.

Annex 1102.3**Measures to Which Agreement Does Not Apply**

1. This Agreement does not apply to:
 - (a) existing measures by British Columbia and Alberta on the export of logs, chips and residuals;
 - (b) existing export approval measures by Quebec on unprocessed fish; and
 - (c) any measure made pursuant to the existing Newfoundland and Labrador *Fish Inspection Act* requiring fish to be processed at facilities licensed under said Act.
2. A Party that maintains measures referred to in paragraph 1 shall give notice of such measures to the Secretariat.

Chapter Twelve

Energy

(To be negotiated in accordance with Article 1810 – Future Negotiations)

Chapter Thirteen

Communications

Article 1300: Application of General Rules

For greater certainty, Chapter Four (General Rules) applies to this Chapter, except as otherwise provided in this Chapter.

Article 1301: Scope and Coverage

This Chapter applies to measures adopted or maintained by a Party relating to communications services and telecommunications facilities.

Article 1302: Access to and Use of Transport Networks and Services

For the purposes of Article 401 (Reciprocal Non-Discrimination), "treatment" includes access to and use of public telecommunications transport networks and public telecommunications transport services.

Article 1303: Committee on Communications-Related Measures

1. When so requested by a Party, the Parties shall establish a Committee on Communications-Related Measures composed of representatives of each Party.⁶¹
2. The Communications Committee shall, among other things:
 - (a) monitor the implementation of this Chapter;
 - (b) provide a forum for the Parties to consult on issues respecting this Chapter; and
 - (c) identify communications-related measures that may require reconciliation and develop consensus on common approaches to and specify schedules and time frames for reconciliation.

Article 1304: Monopolies

Where a Party maintains or designates a monopoly to provide any communications services or telecommunications facilities and the monopoly competes, directly or through an affiliate, in other markets in the provision of communications services or telecommunications facilities, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those other markets, either directly or through its dealings with its affiliates, in a manner that adversely affects another Party.

⁶¹ This paragraph was amended by the Fifth Protocol of Amendment.

Article 1306: Definitions

In this Chapter:

communications means the emission, transmission or reception of intelligence by any wire, cable, radio, optical or other electromagnetic system, or by any similar technical system;

Communications Committee means the Committee established under Article 1303(1);

communications services means services provided by means of telecommunications facilities and includes the provision, in whole or in part, of telecommunications facilities and any related equipment, whether by sale, lease or otherwise;

telecommunications facilities means any facilities, apparatuses or other things used or capable of being used for telecommunications or for any operation directly connected with telecommunications and includes a transmission facility as defined in the *Telecommunications Act* (Canada);

public telecommunications transport networks means public telecommunications infrastructures and systems that permit telecommunications;

public telecommunications transport services means services offered to the public involving the transmission of customer-supplied information between two or more points on a public telecommunications transport network without any end-to-end change in the form or content of that information.

Chapter Fourteen

Transportation

Article 1400: Application of General Rules

1. Articles 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit) and 403 (No Obstacles) do not apply to this Chapter.⁶²
2. For greater certainty, Articles 404 (Legitimate Objectives), 405 (Reconciliation) and 406 (Transparency) apply to this Chapter, except as otherwise provided in this Chapter.
3. For the purposes of Articles 1406 and 1407, the reference in Article 404 (Legitimate Objectives) to "Article 401, 402 or 403" shall be construed as a reference to "Article 1406 or 1407".

Article 1401: Application of Other Chapters

Chapter Six (Investment) applies to this Chapter, except as otherwise provided in this Chapter.

Article 1402: Objectives

1. The objectives of this Chapter are:
 - (a) to ensure a seamless, integrated Canadian transportation system that:
 - (i) is safe, secure and efficient;
 - (ii) is responsive to the needs of shippers and travellers; and
 - (iii) promotes a competitive, productive and sustainable economy throughout Canada;
 - (b) to affirm competition and market forces, whenever possible, as the prime agents in providing viable and effective transportation services;
 - (c) to build on the progress already achieved by the Parties in reducing barriers to trade in transportation services through existing consultation mechanisms and agreements;
 - (d) to further eliminate obstacles to trade in transportation services in Canada and thereby facilitate internal trade in goods and services; and
 - (e) to create effective procedures for:
 - (i) the implementation and application of this Chapter; and

⁶² This paragraph was amended by the Second Protocol of Amendment.

- (ii) consultations to cooperatively resolve issues related to the application of this Chapter and to expand and enhance its benefits.

2. The Parties shall interpret and apply this Chapter taking into account the objectives set out in paragraph 1.

Article 1403: Scope and Coverage

1. This Chapter applies to measures adopted or maintained:
 - (a) by the Federal Government, that relate to or affect trade in transportation services by carriers of a Province; and
 - (b) by a Province, that relate to or affect trade in transportation services by carriers of another Province.
2. Nothing in this Chapter shall be construed to prevent a Party from providing an essential public transportation service, either by means of a government enterprise or a contract with a private supplier, in a manner that is consistent with this Agreement.

Article 1404: Extent of Obligations⁶³

1. Further to Article 102 (Extent of Obligations), each Party is responsible for compliance with this Chapter by its other governmental bodies, including Crown corporations, and by non-governmental bodies that exercise authority delegated by law.
2. Each Party is responsible for ensuring compliance with Article 1408(1) by its regional, local, district or other forms of municipal government.

Article 1405: Business Registration Requirements

1. A Party may adopt or maintain a measure requiring a carrier to designate an agent for service of notices of proceedings and other judicial documents within the territory of the Party.
2. For the purposes of the corporate registration requirements referred to in Article 606 (Corporate Registration and Reporting Requirements), a carrier that picks up or drops off a traveller or freight in, or travels through, a Province shall not be considered to be carrying on business in the Province by reason of that activity alone.

Article 1406: Reciprocal Non-Discrimination

1. Subject to Article 404 (Legitimate Objectives), the Federal Government shall accord to carriers of a Province treatment that:

⁶³ This article was amended by the Second Protocol of Amendment.

- (a) is no less favourable than the best treatment that it accords to carriers of any other Province, or of a non-Party, that provide like, competitive or substitutable services; and
- (b) does not discriminate between carriers of any Province and carriers of any other Province, that provide like, competitive or substitutable services.

2. Subject to Article 404 (Legitimate Objectives), each Province shall accord to carriers of any other Province treatment that:

- (a) is no less favourable than the best treatment that the Province accords to its own carriers and carriers of a non-Party, that provide like, competitive or substitutable services; and
- (b) does not discriminate between carriers of any Province and carriers of any other Province, that provide like, competitive or substitutable services.

Article 1407: No Restrictions or Obstacles to Trade

Subject to Article 404 (Legitimate Objectives), no Party shall adopt or maintain any measure that restricts or prevents the movement of transportation services across provincial boundaries or that creates an obstacle to trade in transportation services.

Article 1408: Reconciliation

1. Further to Article 405 (Reconciliation), the Parties shall reconcile, by harmonization, mutual recognition or other means, their regulatory and standards-related measures in accordance with Annexes 405.1 and 405.2 and their measures listed in Annex 1408.1 in accordance with that Annex.

2. Article 1415 and Chapter Seventeen (Dispute Resolution Procedures) do not apply to disputes relating to compliance with this Article.

Article 1409: Transparency

A Party required to notify any other Party of a proposed measure under Article 406(2) (Transparency) shall also notify the Council.

Article 1410: Listed Measures

- 1. This Chapter and Chapter Six (Investment) do not apply to:
 - (a) an existing measure maintained by a Party that is listed in Annex 1410.1;
 - (b) the continuation or prompt renewal of any measure referred to in paragraph (a); and

- (c) an amendment to a measure referred to in paragraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with this Chapter.
2. The Parties shall, through the Council, periodically, but in any event at least every two years, endeavour to negotiate to liberalize or remove measures listed in Annex 1410.1.
3. Further to paragraph 2, the Council shall, within one year after being notified of an issue relating to any measure listed in Annex 1410.1, develop a plan by consensus to address that issue.
4. Where the Council has developed a plan referred to in paragraph 3, but that plan fails to resolve the issue within two years after the date on which the plan was agreed to, a Party may request the establishment of a panel under Article 1704 (Establishment of Panel) to determine whether the plan was properly implemented.⁶⁴

Article 1411: Phase Out of Non-Conforming Measures

Each Party shall liberalize or remove its non-conforming measures listed in Annex 1411 in accordance with that Annex.

Article 1412: Consultations and Dispute Resolution⁶⁵

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

Article 1415: Council of Ministers Responsible for Transportation and Highway Safety

1. The Council shall:
- (a) monitor and facilitate the implementation of the reconciliation obligations set out in Article 1408(1);
 - (b) act as an effective forum for consultations toward further reconciliation of regulatory and standards-related measures; and
 - (c) prepare an annual report on its progress under paragraphs (a) and (b).

⁶⁴ This article was amended by the Seventh Protocol of Amendment.

⁶⁵ This article was amended by the Seventh Protocol of Amendment.

2. The Council may:

- (a) consider and discuss matters relating to the implementation, operation and further elaboration of this Chapter;
- (b) serve as a forum for the exchange of views of the Parties on the implications of proposed measures and for developing a consensus on common approaches to trade-related issues or problems to which this Chapter applies;
- (c) establish any committees, working groups or expert groups that it considers necessary or advisable to fulfil the intent of this Chapter; and
- (d) delegate any of its duties or responsibilities under this Chapter to a committee established by the Council.

Article 1416: Definitions

In this Chapter:

carrier means a person that seeks to provide or provides a transportation service;

carrier of a Province means, in relation to a Province, a carrier that is

- (a) a resident of the Province;
- (b) a business constituted or organized under the laws of the Province; or
- (c) a business constituted or organized under the laws of another Party that has substantial business activities in or a substantial connection to the Province;

Council means the Council of Ministers Responsible for Transportation and Highway Safety;

legitimate objective includes, in addition to the objectives set out in the definition "legitimate objective" in Article 200 (Definitions of General Application), an objective respecting:

- (a) the availability and quality of transportation services facilities and services;
- (b) the accessibility of transportation facilities and services to mobility disadvantaged persons; and
- (c) protection of public transportation infrastructure;

trade in transportation services means the provision of a transportation service by a carrier of a Province:

- (a) into, out of or through a Province;
- (b) within a Province, by a carrier of another Province; or
- (c) within a Province, for a traveller or shipper of another Province.

Annex 1408.1

Reconciliation

Motor Vehicle Weights and Dimensions

1. The Parties undertake to establish and maintain uniform rules governing the size and weight of commercial motor vehicles, building on the Memorandum of Understanding signed by the Parties in 1988, as amended in 1992.
2. The Council shall review the status of these rules at least every two years.

Extra-Provincial Truck Carrier Operating Authorities

3. In furtherance of Council direction, each Party shall eliminate its operating authority requirements for extra-provincial trucking operations no later than January 1, 1996.

Motor Carrier Safety Rules

4. Subject to paragraph 5, each Party shall implement the National Safety Code for Motor Carriers, as it exists on the date of entry into force of this Agreement, within six months after that date.
5. The Parties shall endeavour to resolve issues relating to the effective delivery of the National Safety Code program before the date of entry into force of this Agreement.

Bill of Lading

6. The Parties shall establish a uniform national bill of lading for transportation of goods by motor carriers before the date of the entry into force of this Agreement.

Fuel and Sales Tax and Vehicle Registration Administrative Harmonization

7. The Council shall establish a work plan for the creation of harmonized administrative mechanisms for the collection of fuel and sales taxes and vehicle registration fees before the date of entry into force of this Agreement.

Memorandum of Understanding on Regulatory Review

8. The Parties affirm their commitments to the guiding principles of regulatory policy and the criteria and process for regulatory review embodied in the "Memorandum of Understanding to Review Regulations Affecting Transportation", and will bring the process envisaged by that Memorandum of Understanding into operation.

Agents for Service

9. The Council shall establish a work plan for the creation of harmonized administrative arrangements for the designation of agents for service as referred to in Article 1405(1) before the date of entry into force of this Agreement.

Annex 1410.1

Listed Measures

NEWFOUNDLAND AND LABRADOR⁶⁶

Motor Carrier Act and Motor Carrier Regulations (Consolidated Newfoundland and Labrador Regulations, CNR 965/96 as amended) relating to the economic entry test (reverse onus), rate and service regulation for passenger bus service operating on the Trans-Canada Highway, and the economic entry test (public convenience and necessity) and rate regulation for ambulance service.

Provisions of by-laws of municipalities within the Province relating to the economic entry, rate, and service regulation of taxicabs, liveries and buses operating within the municipality.

NOVA SCOTIA

Motor Vehicle Act, R.S.N.S., 1989, Chapter 293, Section 305, relating to the regulation and licensing of local taxis.

Motor Carrier Act, R.S.N.S., 1989, Chapter 292, Sections 11 to 14 inclusive, relating to the licensing of public passenger vehicles.

Railways Act, Chapter 11 of the Acts of 1993, Sections 14 to 21 inclusive, relating to the regulation and licensing of provincial railways.

PRINCE EDWARD ISLAND

Motor Carrier Act, R.S.P.E.I., 1988

Highway Traffic Act, R.S.P.E.I., 1988

NEW BRUNSWICK

NIL

QUEBEC⁶⁷

An Act respecting transportation by taxi (R.S.Q., c. T-11.1), section 33: power of the Commission des transports du Québec to approve transfers or changes of ownership of taxi companies.

⁶⁶ This listing was amended by the Fifth Protocol of Amendment.

⁶⁷ This listing was amended by the Sixth Protocol of Amendment.

An Act respecting transportation by taxi (R.S.Q., c. T-11.1), sections 59.2 and 59.5: power to seize the vehicle of a non-resident offender operating a taxi, limousine or minibus (less than ten (10) passengers) who could otherwise abscond.

An Act respecting transportation by taxi (R.S.Q., c. T-11.1), and the *Transportation by Taxi Regulation* (O.C. 1763-85, dated August 28, 1985): limit of twenty (20) taxi permits per person.

An Act respecting transportation by taxi (R.S.Q., c. T-11.1), and the *Transportation by Taxi Regulation* (O.C. 1763-85, dated August 28, 1985): public interest criteria for entry in the taxi sector without a reversal of proof; a moratorium on the issuance of permits, and the requirement that operators and drivers of taxis, limousines and minibuses (less than ten (10) passengers) reside or have a place of business in Quebec.

An Act respecting truck transportation (R.S.Q., c. C-5.1), sections 12 and 33: provision maintaining the requirement of an attorney for non-Quebec truck transportation undertakings.

An Act respecting intermunicipal boards of transport in the area of Montréal (R.S.Q., C-60.1), *Municipal Code of Québec* (R.S.Q., c. C-27.1) and *Cities and Towns Act* (R.S.Q., c. C-19).

Education Act (R.S.Q., c. I-13.3) and the *Regulation respecting student transportation* (O.C. 647-91, dated May 8, 1991).

General Order respecting the transport of passengers and goods by water (R.R.Q., 1981 c. T-12 r. 17), section 28: public interest criteria for entry in the local marine transportation sector.

Highway Safety Code (R.S.Q., c. C-24.2), section 92.1: prohibition on driving for non-residents who have failed to pay, within the prescribed time, a fine imposed for an infringement of this Code.

Railway Act (S.Q. 1993, c. 75), Division II: preservation of the certificate of competence issued by the Commission des transports du Québec as a prerequisite for carrying on rail transportation activities in Quebec.

Transport Act (R.S.Q., c. T-12), the *Regulation respecting bulk trucking* (R.R.Q. 1981, c.T-12, r. 3), and the *Regulation respecting foreign carriers* (R.R.Q., c. T-12, r. 24).

Transport Act (R.S.Q., c. T-12), paragraph 5(d), and the *Bus Transport Regulation* (O.C. 1991-86 dated December 19, 1986), section 12: public interest criteria for entry in the bus transportation sector.

Transport Act (R.S.Q., c. T-12), section 39, and the *Bus Transport Regulation* (O.C. 1991-86 dated December 19, 1986), sections 10 and 11: requirement of having a place of business or domicile in Quebec, in the bus sector.

Transport Act (R.S.Q., c. T-12), section 80, and an *Act respecting truck transportation* (R.S.Q., c. C-5.1), section 72: power to seize a vehicle of a (non-resident) offender, in the trucking and bus sectors, who could otherwise abscond.

ONTARIO

Public Vehicles Act, R.S.O. 1990, Chapter P. 54, Sections 5, 6, 7 and 8, relating to the public necessity and convenience test for the issuance and transfer of a public vehicle operating license.

Provisions of by-laws of local, regional, district and other forms of municipal governments within the province relating to the entry, service and local presence requirements for taxicabs, liveries and buses operating within the local, regional, district or municipal area.

MANITOBA

Provisions of the *Highway Traffic Act*, C.C.S.M. c.H60, relating to the economic entry, rate and service regulation of motor carriers, other than local truck undertakings as defined in the *Motor Vehicle Transport Act, 1987*, R.S.C., 3rd Supp., c. 29.

Provision of the *Provincial Railways Act*, C.C.S.M. c.R15, relating to the economic entry, rate and service regulation of provincial railways as defined in the legislation.

Provision of the *Taxicab Act*, C.C.S.M. c.T10, relating to the economic entry, rate and service regulation of taxicabs within the city of Winnipeg.

Provisions of by-laws, municipalities within the province, relating to the economic entry, rate, and service regulation of taxicabs, liveries and buses operating within the municipality.

Provisions of the *Highway Traffic Act*, C.C.S.M. c.H60, relating to the economic entry, rate and service regulation of local truck undertakings as defined in the *Motor Vehicle Transport Act, 1987*, R.S.C., 3rd Supp., c. 29, until January 1, 1998.

SASKATCHEWAN

Motor Carrier Act, Section 4, relating to the economic entry regulation of extra-and intra-provincial bus service.

Railway Act, Section 14, relating to the economic entry regulation of provincial railways.

ALBERTA

NIL

BRITISH COLUMBIA

The Motor Carrier Act.

NORTHWEST TERRITORIES

NIL

CANADA⁶⁸

Motor Vehicle Transport Act, 1987, R.S.C., 3rd Supp., c. 29, Part 1

⁶⁸ This listing was amended by the Fifth Protocol of Amendment.

Annex 1411**Phase Out of Non-Conforming Measures****NEWFOUNDLAND AND LABRADOR**

NIL

NOVA SCOTIA

NIL

PRINCE EDWARD ISLAND

NIL

NEW BRUNSWICK

NIL

QUEBEC

Transport Act (R.S.Q., c. T-12), section 39, and the *Bus Transport Regulation*, (O.C. 1991-86, dated December 19, 1986), sections 9 and 10: from July 1, 1995, the requirement to have a place of business or a domicile in Quebec for bus operators will apply from the date on which the application for a permit is filed, and not six (6) months before that application.

Transport Act (R.S.Q., c. T-12), Government Aid Program for Public Transportation: the status quo is upheld until December 31, 1996, concerning procurement by municipalities in the field of bus transportation and, from January 1, 1997, the timetable for trade liberalization provided for in the Quebec-Ontario Agreement on government procurement and labour mobility in the construction industry will be upheld and applied in respect of all provinces.

ONTARIO

NIL

MANITOBA

Provisions of the *Highway Traffic Act*, C.C.S.M. c.H60, relating to the economic entry, rate and service regulation of local truck undertakings as defined in the *Motor Vehicle Transport Act 1987*, R.S.C., 3rd Supp., c. 29, effective January 1, 1998.

SASKATCHEWAN

Motor Carrier Act, section 4, relating to local truck regulation, effective January 1, 1998.

ALBERTA

NIL

BRITISH COLUMBIA⁶⁹

NIL

NORTHWEST TERRITORIES

NIL

CANADA⁷⁰

NIL

⁶⁹ This listing was amended by the Fifth Protocol of Amendment.

⁷⁰ This listing was amended by the Fifth Protocol of Amendment.

Chapter Fifteen

Environmental Protection

Article 1500: Application of General Rules

For greater certainty, Chapter Four (General Rules) applies to this Chapter, except as otherwise provided in this Chapter.

Article 1501: Relationship to Other Chapters

Subject to Article 1508(3), in the event of an inconsistency between this Chapter and any other chapter, the Parties shall endeavour to reconcile the inconsistency.

Article 1502: Scope and Coverage

This Chapter applies to environmental measures adopted or maintained by a Party that may affect the interprovincial mobility of people or interprovincial trade in goods, services or investments.

Article 1503: Extent of Obligations

Further to Article 102(1)(c) (Extent of Obligations), each Party is responsible for compliance with this Chapter by its bodies listed in Annex 1503.

Article 1504: Relationship to Other Agreements

Nothing in this Agreement shall be construed to affect the rights and obligations of the Parties under environmental agreements, including conservation agreements, in effect on the date of entry into force of this Agreement.

Article 1505: Basic Rights and Obligations

1. The Parties shall, in dealing with trade matters, take into account the need to restore, maintain and enhance the environment.
2. For greater certainty, each Party has the right to establish its own environmental priorities and levels of environmental protection in its territory in accordance with this Agreement and to adopt or modify its environmental measures accordingly.
3. Each Party has the right to adopt or maintain differing environmental standards based on the need to protect and enhance the environment.
4. Each Party shall ensure that its measures provide for high levels of environmental protection and shall continue to endeavour to improve those levels of protection.

5. No Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental measures as an encouragement for the establishment, acquisition, expansion, ongoing business activities or retention in its territory of an enterprise.
6. Where appropriate, the Parties shall take environmental considerations into account in the dispute resolution procedures and harmonization processes set out in this Agreement.
7. Further to Article 404(c) (Legitimate Objectives) and Annexes 405.1(5) and 405.2(5), an environmental measure shall not be considered to be more trade restrictive than necessary to achieve a legitimate objective if the Party adopting or maintaining the measure takes into account the need to minimize negative trade effects when choosing among equally effective and reasonably available means of achieving that legitimate objective.
8. For greater certainty, an environmental measure shall not be considered to be inconsistent with this Agreement by reason solely of the lack of full scientific certainty regarding the need for the measure.

Article 1506: Transparency

A Party required to notify any other Party of a proposed environmental measure under Article 406(2) (Transparency) shall instead notify the Council and the Council shall notify the other Parties.

Article 1507: Non-Conforming Measures

1. This Agreement does not apply to:
 - (a) any existing non-conforming environmental measure, for two years after the date of entry into force of this Agreement, and thereafter as set out in Annex 1507.2 in accordance with paragraph 2;
 - (b) the continuation or prompt renewal of a measure referred to in paragraph (a); or
 - (c) an amendment to a measure referred to in paragraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with this Chapter.
2. Each Party may, within two years after the date of entry into force of this Agreement, set out in Annex 1507.2 any existing non-conforming environmental measure maintained by it.
3. On identification of non-conforming environmental measures, each Party shall endeavour to develop a work plan to eliminate those measures by January 1, 2000.

Article 1508: Harmonization

1. The Parties shall endeavour to harmonize environmental measures that may directly affect interprovincial mobility and trade, following principles such as those set out in the *Statement of*

Interjurisdictional Cooperation on Environmental Matters (Winnipeg: CCME, 1991) and *Rationalizing the Management Regime for the Environment: Purpose, Objectives and Principles* (Winnipeg: CCME, 1994) any other applicable principles established by the Council, and this Agreement.

2. In harmonizing environmental measures, the Parties shall maintain and endeavour to strengthen existing levels of environmental protection. The Parties shall not, through such harmonization, lower the levels of environmental protection.

3. In the event of an inconsistency between Article 405 (Reconciliation) and this Article, this Article prevails to the extent of the inconsistency.

Article 1509: Canadian Council of Ministers of the Environment

1. The Council shall:

- (a) facilitate a process for the harmonization of environmental measures in accordance with Article 1508;
- (b) provide a forum for Parties to consult on issues relating to environmental measures, including the provision of technical advice and the development of recommendations;
- (c) administer the dispute resolution procedures provided in this Chapter;
- (d) notify Parties of proposed environmental measures in accordance with Article 1506; and
- (e) monitor matters addressed in this Chapter.

2. The Council shall prepare an annual report on its activities related to this Agreement and shall share the report and any other relevant information with the Committee.

Article 1510: Consultations and Dispute Resolution⁷¹

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

⁷¹ This article was amended by the Seventh Protocol of Amendment.

Article 1511: Definitions

In this Chapter:

Council means the Canadian Council of Ministers of the Environment;

harmonization means to adjust environmental measures to minimize unnecessary differences between the Parties without compromising the achievement of the legitimate objectives of each Party.

Annex 1503⁷²**Other Governmental and Non-Governmental Bodies Covered by Chapter Fifteen****NEWFOUNDLAND AND LABRADOR**

NIL

NOVA SCOTIA

NIL

PRINCE EDWARD ISLAND

NIL

NEW BRUNSWICK

NIL

QUEBEC

RECYC-Quebec

ONTARIO

Environmental Appeal Board
 Environmental Assessment Board
 Niagara Escarpment Commission

MANITOBA

Clean Environment Commission
 Tire Stewardship Board
 Multi-Material Stewardship Board
 Manitoba Ozone Protection Industry Association Inc.

SASKATCHEWAN

NIL

⁷² This annex was added to the Agreement on Internal Trade by means of the First Protocol of Amendment.

ALBERTA

Environmental Appeal Board
Natural Resources Conservation Board
Special Waste Management Corporation
Tire Recycling Management Board

BRITISH COLUMBIA

Environmental Appeal Board

NORTHWEST TERRITORIES

NIL

YUKON

Yukon Fish and Wildlife Management Board
Salmon Subcommittee of the Fish and Wildlife Management Board

CANADA

Resource management boards established by aboriginal land claims agreements

Annex 1507.2⁷³**Non-Conforming Environmental Measures**

⁷³ This annex was added to the Agreement on Internal Trade by means of the Second Protocol of Amendment and was subsequently amended by the Fifth Protocol of Amendment.

PART V - INSTITUTIONAL PROVISIONS AND DISPUTE RESOLUTION PROCEDURES**Chapter Sixteen****Institutional Provisions****Article 1600: Committee on Internal Trade**

The Parties shall establish a Committee on Internal Trade to:

- (a) supervise the implementation of this Agreement;
- (b) assist in the resolution of disputes arising out of the interpretation and application of this Agreement;
- (c) approve the annual operating budget of the Secretariat; and
- (d) consider any other matter that may affect the operation of this Agreement.

Article 1601: Committee Structure and Procedures

1. The Committee shall be composed of cabinet-level representatives of each of the Parties or their designates.
2. The Committee may establish its own practices and procedures.
3. The Committee shall meet:
 - (a) annually; and
 - (b) at any other time at the call of the Chairperson, at the request of two or more Parties or as may be agreed by the Committee.
4. Each Party shall act as Chairperson of the Committee for a period of one calendar year. At the first meeting of the Committee, the first Chairperson and the Chairperson for each of the following 12 years shall be determined by drawing lots.
5. All decisions and recommendations of the Committee shall be taken by consensus, except as otherwise provided in this Agreement.
6. The Committee shall prepare an annual report on the functioning of this Agreement, including the operation of Chapter Seventeen (Dispute Resolution Procedures).

Article 1602: Working Group on Adjustment

1. The Parties shall, no later than April 1, 1996, establish a Working Group on Adjustment, composed of representatives of each Party, which shall seek to determine the effects of this Agreement on each Province in each fiscal year.
2. The Working Group on Adjustment shall report annually to the Committee and may make recommendations for appropriate action to assist the Parties to adjust to the effects of this Agreement.
3. The Working Group on Adjustment shall meet at least semi-annually or at such other times as may be agreed by that Working Group.
4. The Working Group on Adjustment shall be dissolved on April 1, 2006, or at such other time as may be agreed by the Committee.

Article 1603: Secretariat

1. The Committee shall establish a Secretariat consisting of an office the location of which shall be determined no later than the date of entry into force of this Agreement.
2. The Committee shall appoint a Secretary to head the Secretariat for a term to be determined no later than the date of entry into force of this Agreement.
3. The Secretariat shall be funded in accordance with Annex 1603.3.
4. The Secretariat shall provide administrative and operational support to the Committee, working groups and other committees and such other support as the Committee may direct.

Annex 1603.3**Secretariat Funding**

1. The annual operating budget of the Secretariat, as approved by the Committee, shall be funded by contributions from the Parties based on the following method of apportionment:
 - (a) Federal Government - 50 per cent of total budget; and
 - (b) Provinces - 50 per cent of total budget.
2. The respective share of each Province shall be determined by the size of its population relative to the total population of Canada. This apportionment shall be reviewed and revised as appropriate after every national census.

Chapter Seventeen
Dispute Resolution Procedures⁷⁴

Article 1700: Cooperation

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

Article 1701: Application and Enforcement Mechanisms

1. Subject to paragraphs 2 and 3, this Chapter applies to the avoidance and resolution of disputes between Parties, or persons and Parties, regarding the interpretation or application of this Agreement.
2. This Chapter does not apply to Annex 405.2 (*Regulatory Measures and Regulatory Regimes*), to Annex 502.3 (*Procurement for Commercial Entities*), or to Annex 502.4 (*Procurement for MASH sector*). With respect to paragraphs 8 and 9 of Annex 608.3 (*Incentives*), only Article 1702.1 (*Consultations*) of this Chapter applies.⁷⁵
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.
4. Within eighteen months of the Effective Date, each Party shall take steps necessary to:
 - (a) ensure that any order for Tariff Costs made by a Presiding Body may be enforced in the same manner as an order for costs against the Crown in that Party's superior courts, and
 - (b) ensure that any order for monetary penalties made by a Compliance Panel may be enforced,
 - (i) in the same manner as an order against the Crown in that Party's superior courts; or
 - (ii) through a Standby deposited with the Secretariat.

⁷⁴ The former chapter including annexes was replaced by the current chapter and annexes by means of the Tenth Protocol of Amendment.

⁷⁵ This Paragraph was amended by the Thirteenth Protocol of Amendment.

5. Each Party shall notify the Secretariat and all other Parties of the enforcement mechanism it has put in place pursuant to Article 1701(4).
6. Eighteen months after the Effective Date, the Secretariat shall begin to report annually to the Committee on the Parties that have not filed a notification pursuant to Article 1701(5).
7. A Party that fails to comply with Article 1701(4) is subject to the application of Article 1707.3(1) and (2) (*Removal of Dispute Resolution Privileges*) until such time as it notifies the Secretariat that the required mechanism has been put in place.

PART A: Government-to-Government Dispute Resolution

Article 1702: Transitional Provisions - Summary Panel

1. For purposes of this Article,

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

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

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

2. During the Transition Period, a Disputing Party to a Pre-existing Dispute may request that a Summary Panel be established to determine whether or not the measure that was the subject of a Pre-existing Dispute is or would be inconsistent with this Agreement. From the day after the end of the Transition Period, resolution of any dispute regarding a measure that was the subject of a Pre-Existing Dispute must be sought under Articles 1702.1 to 1704, inclusive.
3. A Disputing Party to a Pre-existing Dispute may continue to participate in Proceedings before a Summary Panel even if it has not complied with Article 1701(4).
4. A Summary Panel shall be established in accordance with procedures set out in Article 1704 (*Establishment of Presiding Body*). Members of the Panel that heard the Pre-Existing Dispute may not be appointed to the Summary Panel.
5. All Summary Panel Proceedings shall be conducted in accordance with the provisions of Annex 1702.

Article 1702.1: Consultations

1. Subject to Article 1707.3 (*Removal of Dispute Resolution Privileges*), a Party that considers that a measure of another Party is or would be inconsistent with that other Party's obligations under this Agreement may request consultations with that other Party by delivering written notice to that other Party, to all other Parties and to the Secretariat. The notice shall specify the actual or proposed measure complained of, the relevant provisions of this Agreement and provide a brief summary of the complaint.

2. A Party may not make a request for consultations under this Part in the case of a matter arising under Annex 608.3 (*Incentives*) if more than two years have elapsed from the date when the Party first acquired, or should have first acquired, knowledge of an incentive and knowledge that the Party had incurred injury.
3. No Party may request consultations under this Article with respect to a measure that is or has been the subject of a request for a Panel pursuant to Article 1703 until three years after whichever of the following applies:
 - (a) the date on which written notice of a mutually satisfactory resolution regarding that measure was filed with the Secretariat pursuant to Article 1707(3);
 - (b) the date of a Report regarding that measure issued pursuant to Article 1706 from which no appeal has been taken; or
 - (c) the date of a final decision regarding that measure following an appeal made pursuant to Article 1706.1(1).
4. Any Party that considers itself to have a substantial interest in the matter, within the meaning of Article 1703(10), may participate in the consultations by delivering written notice of its intention to participate to all other Parties and to the Secretariat within 10 days of the delivery by the Initiating Party to the Replying Party of a request made pursuant to paragraph 1.
5. The Initiating Party and Replying Party may, by agreement, request the assistance of one or more relevant working groups in resolving the dispute. A list of working groups shall be filed by the Parties with the Secretariat.
6. A request for assistance made pursuant to paragraph 5 shall be delivered in writing to each working group being requested to assist, to all Consulting Participants and to the Secretariat.
7. A working group, in giving assistance requested pursuant to paragraph 5, shall consider any matter referred to it as expeditiously as possible, particularly matters regarding perishable goods.
8. Where the matter is not resolved to the satisfaction of the Initiating Party and Replying Party within 60 days of delivery by the Initiating Party to the Replying Party of a request made pursuant to paragraph 1, the Initiating Party and Replying Party may, by agreement, request the assistance of relevant responsible Ministers or members of the Committee whose assistance they consider would be helpful in resolving the dispute.
9. A request for assistance from the Initiating Party and Replying Party made pursuant to paragraph 8 shall be delivered in writing to such Ministers or members of the Committee, to all Consulting Participants and to the Secretariat.
10. In providing assistance requested pursuant to paragraph 8, such Ministers or members of the Committee may seek the advice of technical experts, establish other working groups or fact-finding bodies, facilitate the use of conciliation, mediation and other dispute resolution mechanisms, and make recommendations.
11. Consultations shall be confidential and without prejudice to the rights of the Consulting Parties in any Proceedings.

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

Article 1703: Request for Panel

1. Where the matter in question has not been resolved to the satisfaction of the Initiating Party or to the satisfaction of a Consulting Participant, the Initiating Party, or the Initiating Party and Consulting Participant jointly, may make a written request to the Secretariat, with a copy to the Committee, to establish a Panel. No request to establish a Panel may be made sooner than 120 days after the Initiating Party delivered a request for consultations to the Replying Party pursuant to Article 1702.1(1).
2. With respect to a dispute arising under Annex 608.3 (*Incentives*), a request may not be made after 2 years from the date of delivery by the Initiating Party of a request for consultations to the Replying Party pursuant to Article 1702.1(1) without the consent of the Replying Party.
3. A request to establish a panel shall:
 - (a) specify the actual or proposed measure complained of;
 - (b) list the relevant provisions of this Agreement;
 - (c) provide a brief summary of the complaint;
 - (d) explain how the measure has impaired or would impair internal trade; and
 - (e) identify the actual or potential injury or denial of benefit caused by the actual or proposed measure.
4. The Panel shall be established in accordance with Article 1704 and shall be composed of three members unless the Disputing Parties agree to a Panel composed of one member.
5. Where a Complaining Party requests that a Panel be established 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 paragraphs 6, 7 or 8. If the Complaining Party fails to do so, the Panel shall immediately dismiss the complaint for lack of standing.
6. 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
 - (c) the consequences of that economic injury or denial of benefit are being felt in the Province.

7. With respect to disputes arising out of Chapter Seven (Labour Mobility), a Party shall also be deemed to have a substantial and direct connection with a person if the person holds an

occupational or professional certificate from that Party and the person has suffered an economic injury or denial of benefit.

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

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

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

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

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

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

Article 1704: Establishment of Presiding Body

1. Unless inconsistent with, or otherwise required by, provisions in this Chapter, a Presiding Body shall be established in accordance with paragraphs (2) to (8).

2. The Parties shall maintain a roster of individuals qualified in accordance with Annex 1704(2) to be panellists. The Parties shall maintain a roster of individuals qualified in accordance with Annex 1704(2) to be Appellate Panellists.

3. Within 30 days after the date of delivery by the Complaining Party to the Secretariat of a request to establish a Presiding Body, each Disputing Party shall appoint one panellist from the roster. If the Parties have agreed to a Presiding Body composed of one member, they shall agree, within the 30 days, on a panellist from the roster with administrative law experience as identified pursuant to paragraph 4 of Annex 1704(2).

4. If a Disputing Party fails to appoint a panellist within the 30 days, or, if the Parties have agreed to a Presiding Body composed of one member and the Parties fail to agree on a panellist within the 30 days, the Secretariat shall select the panellist by lot.
5. The appointed panellists shall, within 10 days after the last of them has been appointed, select the chairperson of the Presiding Body from the roster. If they are unable to agree within that period, the Secretariat shall select the chairperson by lot from the roster.
- 6.1 If neither of the panellists appointed or selected pursuant to this Article has administrative law experience as identified pursuant to paragraph 4 of Annex 1704(2), the panellists or the Secretariat, as the case may be, shall select a person with administrative law experience to be the chairperson.
- 6.2 If a Disputing Party requests that the chairperson of a Presiding Body be bilingual (French and English), the chairperson selected pursuant to the procedures set out in paragraph 5 or 6.1, as the case may be, must be bilingual (French and English).
7. Unless the Disputing Parties otherwise agree, the panellists or the Secretariat, as the case may be, shall not appoint or select as the chairperson of a Presiding Body any roster member who has been appointed to the roster by a Disputing Party, or is resident in a Disputing Party's Province.
8. Unless otherwise specified or unless the Disputing Parties otherwise agree, the terms of reference for a Presiding Body shall be to examine whether the actual or proposed measure or other matter at issue is or would be inconsistent with this Agreement.

Article 1705: Presiding Body Rules of Procedure

1. The Panel, Compliance Panel and Appellate Panel Rules of Procedure in Annex 1705(1) shall apply to all Proceedings unless modified, where appropriate, by a Presiding Body.
2. A Presiding Body may seek information and expert advice from any person or body that it considers appropriate, provided that the Participating Parties so agree and subject to the following and to such other terms and conditions as the Participating Parties may agree:
 - (a) If a procedural question arises, the Presiding Body shall first seek advice from the Participating Parties. If the procedural question is not resolved to the satisfaction of the Presiding Body, the Presiding Body may request that the Secretariat obtain independent legal advice on the procedural question.
 - (b) A request pursuant to paragraph (a) shall be in writing to the Secretariat, with copies to the Participating Parties, and shall outline the procedural question on which advice is sought. The Secretariat shall retain appropriate counsel and transmit the advice immediately to the Presiding Body, with copies to the Participating Parties.
3. All Proceedings before a Presiding Body shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit.

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

Article 1706: Report of Panel

1. The Panel shall issue a Report based on the submissions of the Disputing Parties and any other information received during the course of the Proceeding.
2. If the Panel cannot release its final Report within the period stipulated in Rule 39 of Annex 1705(1), it does not lose jurisdiction and shall inform the Participating Parties in writing of the reasons for the delay together with an estimate of the date by which it will issue its Report.
3. The Report shall contain:
 - (a) findings of fact;
 - (b) a determination, with reasons, as to whether the measure in question is or would be inconsistent with this Agreement;
 - (c) if an affirmative determination has been made under (b), a determination, with reasons, as to whether the measure has impaired or would impair internal trade and has caused or would cause injury;
 - (d) recommendations, if requested by a Disputing Party, to assist in resolving the dispute;
 - (e) where applicable, and at the discretion of the Panel, a stipulation of the period within which the Complaint Recipient must comply with this Agreement, and
 - (f) a determination as to apportionment of Operational Costs as provided in Annex 1705(1) (*Rules of Procedure*).
4. The Panel retains jurisdiction for the purpose of assessing a cost order after it issues its Report, and may at the request of a Disputing Party or on its own initiative, make an order for Operational Costs specifying the amount payable by a Participating Party to the Secretariat.
5. Within 10 days after the receipt of the Report, any Participating Party may, with notice to the chairperson of the Panel, the Secretariat and all other Participating Parties, request that the Panel:
 - (a) clarify one or more aspects of its Report, in which case the Panel shall, within 15 days of receipt of the notice, provide the clarification; or
 - (b) correct in its Report any errors in computation or translation, any clerical or typographical errors, or any errors of a similar nature, in which case the Panel may, within 15 days of receipt of the notice, make such corrections as it considers appropriate.

Article 1706.1: Appellate Panel: Jurisdiction and Process

1. A Disputing Party may appeal a Panel Report to an Appellate Panel on the grounds that the Panel erred in law, failed to observe a principle of natural justice or acted beyond or refused to exercise its jurisdiction. An Intervenor may not appeal a Panel Report.
2. Where a Disputing Party provides a notice of appeal as provided in Annex 1705.1, an Appellate Panel shall be established in accordance with Article 1704 (*Establishment of Presiding Body*) and, notwithstanding Article 1704(3), shall be composed of three members.
3. Upon receipt by the Secretariat of a notice of appeal, any requirement for a Complaint Recipient to comply with this Agreement within a stipulated time or to pay Operational Costs is suspended until such time as the appeal, and any subsequent re-hearing by the Panel that may be required, are concluded.
4. The Appellate Panel shall, on the completion of the hearing, issue a report with reasons which:
 - (a) may confirm, vary, rescind, or substitute the Report of the Panel in whole or in part, or refer the matter back to the Panel for re-hearing; and
 - (b) shall award Operational Costs in accordance with Rule 47, and may, in its discretion, award Tariff Costs in which case they shall be made in accordance with Rules 48 and 49, of Annex 1705(1).
5. If the Appellate Panel cannot release its final report within the period stipulated in Rule 46 of Annex 1705(1), it does not lose jurisdiction and shall inform the Parties in writing of the reasons for the delay together with an estimate of the date by which it will issue its decision.
6. The Appellate Panel retains jurisdiction for the purposes of assessing an Operational Costs or Tariff Costs order after it issues its decision, and may, at the request of a Disputing Party or on its own initiative, order Operational Costs or Tariff Costs to be paid, specifying the amount payable by a Participating Party, and to whom it is payable.
7. If a matter is not referred back for re-hearing, the Appellate Report is deemed to be a Panel Report for purposes of determining compliance under Articles 1707(9) to 1707(14) (*Compliance Panel Process*) or matters under Article 1709 (*Retaliatory Action*), together with those parts of the Panel Report which have not been superseded by the Appellate Report.
8. If an Appellate Panel refers a matter back to the Panel for re-hearing, the Secretariat shall fix a date to reconvene the Panel forthwith.
9. Within 10 days after receipt of the Appellate Report, any Appellant or Respondent may, with notice to the Secretariat and all other Appellants and Respondents, request that the Appellate Panel:
 - (a) clarify one or more aspects of its report, in which case the Appellate Panel shall, within 15 days of receipt of the notice, provide the clarification; or

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

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

1. The Parties agree that the prompt resolution of disputes is for the benefit of all Parties.
2. Wherever possible, a dispute shall be resolved by removing, amending or not implementing the measure that is or would be inconsistent with this Agreement.
3. Where the Disputing Parties resolve the dispute at any stage of a Proceeding, written notice of such resolution shall be delivered to the other Parties and to the Secretariat. Upon receipt of such notification by the Secretariat, the Proceeding shall be terminated.
4. Proceedings may be suspended, either at the request of the Disputing Parties or by order of the Presiding Body, in order to negotiate a mutually satisfactory resolution.
5. Where a Proceeding has been suspended pursuant to Article 1707(4), if no Disputing Party has made an application to end the suspension within 36 months of the date of suspension, the complaint that initiated the Proceeding is deemed to have been withdrawn and the Proceeding shall be terminated.
6. After a Panel has determined in a Report that a Complaint Recipient has not complied with this Agreement, the Complaint Recipient may notify the Complaining Party that the Complaint Recipient has complied with the Agreement in respect of the matters addressed in the Report. Such notice shall be in writing, shall include a description of the manner of such compliance, and shall be delivered to the Complaining Party, to all other Participating Parties and to the Secretariat.
7. A Complaining Party may, within 30 days of delivery to it of the notice pursuant to Article 1707(6), object to the notice. Such objection shall be in writing, shall include a description of the reasons for its objection, and shall be delivered to the Complaint Recipient, to all other Participating Parties and to the Secretariat.
8. Where no objection has been delivered pursuant to Article 1707(7), a Party that provides notice pursuant to Article 1707(6) is deemed to have complied with the Agreement in respect of the matters addressed in the Report.
9. Upon the expiry of one year following the issuance of a Report, or, where applicable, upon the expiry of an alternate implementation period stipulated by the Panel in its Report, a Disputing Party may request that the Secretariat reconvene the Panel as a Compliance Panel to make a determination as to whether the Complaint Recipient has complied with this Agreement in respect of the matters addressed in the Report.
10. Notwithstanding Article 1707(9), a Complaint Recipient may request a Compliance Panel immediately upon the delivery by the Complaining Party to the Complaint Recipient of an objection made pursuant to Article 1707(7).

11. The Compliance Panel shall issue a Compliance Report containing:
- (a) a determination on whether or not the Complaint Recipient has, with regard to the matter in dispute, brought itself into compliance with this Agreement;
 - (b) where the determination is that there has not been compliance, a monetary penalty order made in accordance with Articles 1707.1(1) and (2), and, where there is more than one Complaining Party, the amount of the monetary penalty payable by the Complaint Recipient to each;
 - (c) at the discretion of the Compliance Panel, an order apportioning Operational Costs, as provided for in Rules 54 to 57 of Annex 1705(1); and
 - (d) if an order for a monetary penalty has been made, a form of order that
 - (i) is enforceable in the same manner as an order against the Crown in the superior court of a Party against whom the order is made; or
 - (ii) the Secretariat will rely on when, in accordance with Rule 10.3 of Annex 1705(1), it demands payment by a financial institution having provided a Standby on behalf of a Party against whom the order is made.
12. The Compliance Panel retains jurisdiction for the purposes of assessing an Operational Costs order after it issues its Compliance Report, and may, at the request of a Disputing Party or on its own initiative, make an order for Operational Costs specifying the amount payable by a Participating Party to the Secretariat.
13. Within 10 days after receipt of the Compliance Report, a Disputing Party, with notice to the chairperson of the Compliance Panel, the Secretariat and all other Disputing Parties, may request that the Compliance Panel:
- (a) clarify one or more aspects of its Compliance Report, in which case the Compliance Panel shall, within 15 days of receipt of the notice, provide the clarification; or
 - (b) correct in the Compliance Report any errors in computation or translation, any clerical or typographical errors, or any errors of a similar nature, in which case the Compliance Panel may, within 15 days of receipt of the notice, make such corrections as it considers appropriate.
14. If the Compliance Panel cannot release its final report within the period mentioned in Rule 50.5 of Annex 1705(1), it does not lose jurisdiction and shall inform the Participating Parties in writing of the reasons for the delay together with an estimate of the date by which it will issue its report.

Article 1707.1: Monetary Penalty

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

- (a) the seriousness of the inconsistency with the Complaint Recipient's obligations under the Agreement;
- (b) the magnitude of the impact of the inconsistency on the market or markets;
- (c) where the Complaint Recipient has previously been found by a Presiding Body in a Proceeding not to have been compliant with this Agreement, whether the complaint has been resolved or remains outstanding;
- (d) whether the Complaint Recipient has made efforts, in good faith, to comply with the Agreement in respect of the matters addressed in the Report before the Compliance Panel; and
- (e) any other factor the Compliance Panel considers relevant.

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

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

1. Where a Compliance Panel has made an order for a monetary penalty, the monetary penalty is immediately due and payable. The Complaint Recipient shall pay a Complaining Party the amount stated in the order to be paid by the Complaint Recipient to the Complaining Party, and shall confirm in writing to the Secretariat when it has done so.
2. Where the Complaint Recipient is a Party that has implemented the enforcement mechanism for monetary penalties referred to in Article 1701(4)(b)(i) (Court Enforcement), a complaining party in whose favour a monetary penalty has been ordered shall:
 - (a) promptly take such registration, filing or other action as is required by the legislation and administrative practice of the Complaint Recipient to commence the process of enforcing the monetary penalty in the same manner as an order against the Crown in that Party's superior courts; and
 - (b) immediately advise the Complaint Recipient that such action has been taken, but may not take any further action to enforce the order until 60 days after the date of the order unless the Complaint Recipient consents to further action before such time.
3. If a Complaint Recipient that has deposited a Standby with the Secretariat has not paid a monetary penalty within 60 days of the date of the monetary penalty order, the Secretariat shall demand payment in accordance with Rule 10 of Annex 1705(1).
4. Within 20 days of receiving notice pursuant to Rule 10 of Annex 1705(1) that its Standby has been drawn upon, a Complaint Recipient shall replenish the Standby and deposit with the Secretariat written confirmation signed by the Complaint Recipient's financial institution and addressed to the Secretariat that the Standby has been replenished to the amount required under Annex 1707.1(2).

5. Unless a Party that has filed a Standby has confirmed to the Secretariat and all other Parties that it has taken the steps necessary to ensure enforcement of monetary penalties pursuant to Article 1701(4)(b)(i) (Court Enforcement), the Party shall file with the Secretariat no

later than 60 days prior to the expiry of its Standby, a new Standby to take effect upon the expiry of the former Standby.

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

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

- (a) promptly take such registration, filing or other action as is required by the legislation and administrative practice of the Party against which the order was made to commence the process of enforcing the order in the same manner as an order for costs against the Crown in that Party's superior courts; and
- (b) immediately advise the Party against which the order was made that such action has been taken, but may not take any further action to enforce the order until 60 days after the date of the order unless the Party against which the order was made consents to further action before such time.

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

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

- (a) the Party has failed to ensure that both monetary penalty and Tariff Costs enforcement mechanisms referred to in Article 1701(4) (enforcement of Tariff Costs awards and monetary penalties) are in place and 18 months have elapsed since the Effective Date, until the Party complies with these obligations;
- (b) the Party has failed to comply with Article 1707.2(4) (requirement to replenish Standby) or 1707.2(5) (requirement to file new Standby before expiry), until the Party complies with these obligations;
- (c) a Compliance Panel has determined that the Party has not brought itself into compliance with this Agreement and 180 days have elapsed since the date on which the Compliance Report was issued, until the Party complies with this Agreement notwithstanding that the Party may have paid the monetary penalty or Operational Costs ordered by the Compliance Panel, or that the Party has also had benefits suspended or retaliatory measures imposed against it pursuant to Article 1709(3); or

- (d) the Party has failed to pay the monetary penalty as required by Article 1707.2(1);
- (e) the Party has failed to pay Tariff Costs as required by Article 1707.2(6); or
- (f) the Party has failed to pay Operational Costs ordered against it by a Panel pursuant to Article 1706(3)(f) or by a Compliance Panel pursuant to Article 1707(11)(c), or by an Appellate Panel pursuant to Article 1706.1(4)(b), within 60 days of the date on which the Panel Report, Compliance Panel report or Appellate Report, as the case may be, was issued, until the Party pays such Costs.

2. Where

- (a) the Complaint Recipient is a Party that has implemented the enforcement mechanism for monetary penalties referred to in Article 1701(4)(b)(i) (Court Enforcement), or
- (b) the Party against which an order for Tariff Costs has been made is a Party that has implemented the enforcement mechanism for Tariff Costs referred to in Article 1701(4)(a) (Court Enforcement)

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

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

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

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

Article 1707.4: Limiting Judicial Review/Privative Clause

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

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

Article 1707.5: Failure to Participate/Discontinuance

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

Article 1708: Publication, Committee Agenda

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

Article 1709: Non-Implementation - Retaliatory Action

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

benefits or impose retaliatory measures in other sectors covered by this Agreement.

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

PART B: Person-to-Government Dispute Resolution

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

1. A person of a Party may request that a Party with which the person has a substantial connection, within the meaning of Articles 1703(5), (6) or (7), initiate on the person's behalf dispute resolution Proceedings under Part A with another Party.

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

Article 1711: Initiation of Proceedings by Persons

1. A person of a Party may commence dispute resolution Proceedings in respect of all matters, other than those covered by Chapter Five (*Procurement*), where the person has received:
 - (a) notice under Article 1710(4) that a Party will not initiate dispute resolution Proceedings on the person's behalf; or
 - (b) notice under Article 1710(5) that a Party will not request the establishment of a panel.
2. A person of a Party may commence dispute resolution Proceedings in respect of matters covered by Chapter Five (*Procurement*) where the person has received notice under Article 513(5) (*Complaint Procedures - Provinces*) that the contact point of the Province where the person is located will not make representations on the person's behalf or will not request the establishment of a review panel.
3. The person requesting the commencement of dispute resolution Proceedings shall provide written notice to the Party that refused to initiate Proceedings or request a panel, to the Party complained against and to the Secretariat.

4. A person may not commence Proceedings under this Article if the person has failed to:
 - (a) request a Party to initiate dispute resolution Proceedings under Article 1710(1); or
 - (b) request a contact point to initiate dispute resolution Proceedings under Article 513(4) (*Complaint Procedures - Provinces*)

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

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

Article 1712: Screening

1. Each Party shall, before the date of entry into force of this Agreement, appoint an individual (the "screener") to review requests made under Article 1711(1) or (2). The screener shall be independent of government and capable of making an independent decision on the merits of the request. Notice of the appointment shall be delivered to the other Parties and the Secretariat.
2. The screener shall follow the Screener Process Guidelines filed with the Secretariat.
3. Where notice is provided under Article 1711(3), the screener of the Party that delivered notice to a person under Article 1710(4) or (5) or Article 513(5) or (6) (*Complaint Procedures - Provinces*) shall, within 30 days after the date of its delivery, review the request to determine whether the person should be permitted to commence dispute resolution Proceedings.
4. In deciding whether the person should be permitted to commence dispute resolution Proceedings, the screener shall take into account the following:
 - (a) whether the complaint is frivolous or vexatious;
 - (b) whether the complaint has been instituted merely to harass the Party complained against; and
 - (c) whether there is a reasonable case of injury or denial of benefit to the person or, in the case of a trade union, injury or denial of benefit to its members.
5. Where a dispute resolution Proceeding is commenced under Article 1711(1)(a), the screener shall also determine the chapter of Part IV under which the person shall proceed.
6. The screener shall decide whether to accept or reject the person's request within 30 days after the date of delivery of the request. If the screener rejects the person's request, the screener shall, within that 30 day period, provide written notice to the person of the screener's decision, including the reasons for the decision. If the screener determines that the person may proceed, the screener shall, within that 30 day period, provide written notice, including the reasons, to the person, the Party that refused to initiate Proceedings or request a panel, the Party complained against and the Secretariat. Failure to provide such notice to the person within the 30 day period is deemed to be an approval.

7. If the screener determines under paragraph 6 that the person may proceed, then the person and the Party complained against may agree to proceed directly under Article 1714.

Article 1713: Consultations

1. A person that has received approval from the screener to proceed to dispute resolution may request consultations with the Party complained against respecting the complaint approved by the screener by delivering written notice to that other Party, and to the Secretariat. The notice shall specify the actual measure complained of, the relevant provisions of this Agreement and a brief summary of the complaint.

2. A person that has received a notice under Article 513(5)(a) (*Complaint Procedures - Provinces*) shall request consultations under this Article.

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

4. A request for assistance made pursuant to paragraph 3 shall be delivered in writing to the Ministers or members of the Committee and to the Secretariat.

5. In providing assistance pursuant to paragraph 3, the Ministers or members of the Committee may seek the advice of technical experts, establish other working groups or fact-finding bodies, facilitate the use of conciliation, mediation and other dispute resolution mechanisms, and make recommendations.

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

Article 1714: Request for Panel

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

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

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

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

Article 1715: Establishment of Panel

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

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

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

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

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

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

Article 1716: Report of Panel

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

2. The report shall contain:

- (a) findings of fact;
- (b) a determination, with reasons, as to whether the actual measure in question is inconsistent with this Agreement;
- (c) a determination, with reasons, as to whether the actual measure has impaired internal trade and has caused injury; and

- (d) recommendations, if requested by either the person or the Party complained against, to assist in resolving the dispute.
3. The Panel may award Tariff Costs to a person in accordance with Annex 1706.1(4)(b) and 1716(3).
 4. Within 10 days after the receipt of the report the person or the Party complained against may, with notice to the chairperson of the panel, to the Secretariat and to the Person or Party as the case may be, request that the panel:
 - (a) provide a clarification of one or more aspects of its report, in which case the panel shall, within 15 days of receipt of the notice, provide the clarification; or
 - (b) correct in its report any errors in computation or translation, any clerical or typographical errors, or any errors of a similar nature, in which case the panel may, within 15 days of receipt of the notice, make such corrections as it considers appropriate.

Article 1717: Implementation of Panel Report

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

Article 1718: Publication, Committee Agenda

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

PART C: General

Article 1719: Code of Conduct

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

Article 1720: Limit on Jurisdiction

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

Article 1721: Contact Points

1. Where this Chapter requires a notice, request, report or other document to be sent to a Party, it shall be sent to that person identified to the Secretariat by the Party as being responsible for the Chapter of Part IV of this Agreement that is relevant to the notice, request, report or other document. Where no such person is identified, the notice, request, report or other document shall be sent to that Party's Internal Trade Representative.
2. Where this Chapter requires a notice, request, report or other document to be sent to the Committee, a panel or a working group, it shall be sent to the chairperson of the Committee, panel or working group, as the case may be. Where a panel consists of only one individual, the notice, request, report or other document shall be sent to that individual.

Article 1722: Definitions

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

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

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

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

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

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

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

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

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

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

Disputing Parties means the Complaining Party and the Complaint Recipient.

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

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

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

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

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

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

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

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

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

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

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

Standby means an irrevocable standby letter of credit issued by a Canadian chartered bank or credit union at the request of a Party and for the benefit of the Secretariat acting as trustee for the Parties to this Agreement, and containing the terms set out in Annex 1701(4)(b)(ii).

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

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

ANNEX 1701(4)(b)(ii)**Irrevocable Standby Letter of Credit**

(To be printed on Bank letterhead)

Month xx, 20__

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

Re: Irrevocable Standby Letter of Credit No. X.

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

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

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

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

EXPIRY DATE

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

IRREVOCABILITY

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

which the Bank receives:

- (a) from ITS, a written notice confirming
 (i) that the Province of _____ has withdrawn from the AIT in accordance with Article 1811; or
 (ii) that the Standby is no longer required,
 or
- (b) from ITS solely or from the Province of _____ and at least one other Signatory, notice confirming that the AIT has been terminated.

DRAWS

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

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

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

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

THIS CREDIT IS NON-TRANSFERABLE.

THE BANK

INTERNAL TRADE SECRETARIAT
CORPORATION

Executive Vice President

Executive Director

Vice President

EXHIBIT "A"

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

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

EXHIBIT "B"

(Form of Certification of Order for Monetary Penalty)

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

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

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

Executive Director

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

Annex 1702

Summary Panel Proceeding

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

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

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

Annex 1704(2)

Panel, Compliance Panel and Appellate Panel Rosters

Panel and Compliance Panel Roster

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

Appellate Panel Roster

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

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

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

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

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

Annex 1705(1)

Panel, Compliance Panel and Appellate Panel Rules of Procedure

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

Application

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

Definitions

2. In these rules:

Agreement means the Agreement on Internal Trade;

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

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

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

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

General Rules

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

Interpretation

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

Directions on Procedure

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

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

Combining Proceedings

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

Adding Parties to a Proceeding

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

Extending or Abridging Time Limits

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

Defect in Form and Irregularity

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

Responsibilities of the Secretariat

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

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

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

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

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

10. Where the Complaint Recipient has filed a Standby pursuant to Article 1701(4)(b)(ii) and fails to comply with the monetary penalty order within the time specified in Article 1707.2(2), the

Secretariat shall, within 7 days after such time, demand payment in accordance with the procedure set out in the Standby. The Secretariat shall provide notice to the Complaint Recipient that its Standby has been presented to the financial institution for payment.

Translation and Interpretation

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

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

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

Operation of the Presiding Body

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

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

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

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

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

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

Confidentiality

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

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

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

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

such other persons maintain the confidentiality of the information.

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

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

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

Prior Contact with Presiding Body Member Prohibited

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

Panel Proceedings: Notice of Appearance

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

25. The Compliant Recipient or the person, as the case may be, shall file a notice of appearance with the Secretariat within 15 days after receiving, from the Secretariat, a request for a Panel under Article 1714.

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

Panel Proceedings: Written submissions

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

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

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

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

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

30. The Panel may convene a pre-hearing conference in order to determine:
- (a) whether a Party has a substantial and direct connection with a person within the meaning of Article 1703(5), (6) or (7);
 - (b) the timing and the location of the hearing;
 - (c) the order in which the Participants will be heard at the hearing; and
 - (d) subject to Rule 31, whether an issue in the Proceeding is within the scope of the Agreement; and
 - (e) any other matter relevant to the Proceeding.
31. For the purposes of paragraph (d) of Rule 30:
- (a) “scope” means the range of rights and obligations encompassed by the Agreement;
 - (b) the Panel may refuse to make the requested determination and instead direct that the issue be dealt with at the Panel hearing.

Panel Proceedings: Hearing

32. The Panel shall fix the date for the hearing within 30 days of receipt of the last written submission and the Secretariat shall forward notice of the date to the Participants.
33. The hearing shall, unless the Participants otherwise agree, be held in the capital city of the Complaint Recipient.
34. All panellists must be present during the hearing. Participants who have not filed submissions or counter submissions may not present oral arguments without the consent of the panel and all other Participants.
35. Except to the extent that a Presiding Body otherwise directs, the hearing shall be conducted in the following manner:
- (a) argument of the Complaining Party or person;
 - (b) presentation of any Intervenor that has joined a Panel Proceeding pursuant to Article 1703(9.1);
 - (c) argument of the Complaint Recipient;
 - (d) reply of the Complaining Party or person;
- 36.1 Oral arguments shall be limited to the issues in dispute.

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

replies of other Participants.

Panel Proceedings: Supplementary written submissions

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

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

Panel Proceedings: Report of panel

39. The panel shall within 45 days after the date the hearing was completed or such other period of time as the Disputants may agree, issue a report based on the submissions of the Participants and any other information received during the course of the Proceeding.

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

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

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

Notice of Suspension and Negotiation of Mutually Satisfactory Resolution

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

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

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

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

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

Appellate Panel

Notice of Appeal

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

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

Written Submissions

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

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

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

Hearing

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

45.2 Except to the extent the Presiding Body otherwise directs,

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

Timing of the Decision of the Appellate Body

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

Costs

Operational Costs Apportionment in Appellate Proceedings

47.1 For purposes of paragraphs 47.2 to 47.6, “Operational Costs” has the same meaning as that defined in Rule 54.

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

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

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

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

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

Tariff Cost Awards in Appellate Proceedings

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

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

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

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

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

Tariff Costs of Intervenors in Appellate Proceedings

49. An Intervenor shall bear its own Tariff Costs.

Compliance Panel

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

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

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

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

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

Discontinuance

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

Convening of Panel under Article 1709

52.1 Where a panel is convened by the Committee:

- (a) under Article 1709(5) to determine whether the suspension of benefits or the imposition of retaliatory measures by a complaining Party is manifestly excessive; or
- (b) under Article 1709(7) to determine whether any action taken by the complained against to resolve the dispute is sufficient or satisfactory;

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

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

Unavailability of Panellist

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

Payment of Presiding Body Operational Costs

54. For the purposes of Rules 55 to 57:

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

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

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

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

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

Annex 1707.1(2)**Monetary Penalty Tiers**

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

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

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

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

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

Annex 1706.1(4)(b) and 1716(3)**Tariff Costs**

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

Annex 1719

Code of Conduct for Panellists

PREAMBLE

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

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

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

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

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

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

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

Part 1: INTERPRETATION

1. In this Code of Conduct:

Agreement means the Agreement on Internal Trade;

candidate means

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

committee means Committee on Internal Trade;

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

family member means a member of a family;

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

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

Party means a Party to the Agreement;

Secretariat means the Secretariat established pursuant to Article 1603; and

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

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

Part 2: RESPONSIBILITIES TO THE PROCESS

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

Part 3: DISCLOSURE OBLIGATIONS

INITIAL DISCLOSURE OBLIGATION

(Relationship Conflicts)

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

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

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

- (a) any financial or personal interest of the candidate
 - (i) arising out of any personal, professional or other relationship with persons

associated with the Proceeding or who may benefit from its outcome, and

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

SUPPLEMENTAL DISCLOSURE OBLIGATION

(Issue Conflicts)

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

CONTINUING DISCLOSURE OBLIGATION

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

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

Part 4: THE PERFORMANCE OF DUTIES BY CANDIDATES AND MEMBERS

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

8. A member shall carry out all duties fairly and diligently and comply with the provisions of Chapter Seventeen; the applicable rules and the Code of Conduct.
9. A member shall not deny other members the opportunity to participate in all aspects of the Proceeding.
10. A member shall consider only those issues raised in the Proceeding and necessary to make a decision and shall not delegate the duty to decide to any other person, except as provided in the applicable rules. A member must make his or her decision based solely on the official record.
11. A member shall take all reasonable steps to ensure that the member's staff comply with Parts 2, 3 and 7 of this Code of Conduct.
12. A member shall not make any communication concerning the Proceeding outside the scope of Presiding Body review. A member shall not have any communication with a participant except in the presence of all other members and participants.
13. A candidate or member shall not communicate matters concerning actual or potential violations of this Code of Conduct unless the communication is to the Secretariat and is necessary to ascertain whether that candidate or member has violated or may violate the Code.

Part 5: INDEPENDENCE AND IMPARTIALITY OF MEMBERS

14. A member shall be independent and impartial. A member shall act in a fair manner and shall avoid creating a reasonable apprehension of bias or an appearance of impropriety.
15. A member shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
16. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the member's duties.
17. A member shall not use the member's position on the Presiding Body to advance any personal or private interests. A member shall avoid actions that may create the impression that others are in a special position to influence the member. A member shall make every effort to prevent or discourage others from representing themselves as being in such a position.
18. A member shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the member's conduct or judgment.
19. A member shall avoid entering into any relationship, or acquiring any financial or personal interest, that is likely to affect the member's impartiality or that might create a reasonable apprehension of bias or an appearance of impropriety.

Part 6: POST PROCEEDING CONDUCT

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

any issues which arose in the Proceeding.

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

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

Part 7: MAINTENANCE OF CONFIDENTIALITY

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

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

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

Part 8: RESPONSIBILITIES OF STAFF

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

Part 9: RESPONSIBILITIES OF THE SECRETARIAT AND COMMITTEE

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

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

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

AGREEMENT ON INTERNAL TRADE

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

(Secretariat file number)

INITIAL DISCLOSURE STATEMENT

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

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

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

I recognize that, once appointed, I have a continuing duty to make all reasonable efforts to become aware of any interest, relationship or matter within the scope of Part 3 of the Code of

Conduct that may arise during any stage of the matter cited above and to disclose it in writing to the Secretariat, as and when I become aware of it.

Signature

Name (Typed)

Date

PART VI - FINAL PROVISIONS

Chapter Eighteen

Final Provisions

Article 1800: Trade Enhancement Arrangements

1. The Parties recognize that it is appropriate to enter into bilateral or multilateral arrangements in order to enhance trade and mobility.
2. This Agreement shall not prevent the maintenance or formation of a trade enhancement arrangement where:
 - (a) the arrangement liberalizes trade beyond the level required by this Agreement;
 - (b) there is full disclosure of the details of the arrangement to all other Parties at least 60 days prior to its implementation; and
 - (c) the signatories to the arrangement are prepared to extend the arrangement within a reasonable time to all other Parties willing to accept the terms of the arrangement.

Article 1801: Regional Economic Development

1. The Parties recognize that measures adopted or maintained by the Federal Government or any other Party that are part of a general framework of regional economic development can play an important role in encouraging long-term job creation, economic growth or industrial competitiveness or in reducing economic disparities.
2. Subject to paragraphs 3 through 7, Parts III and IV of this Agreement do not apply to a measure adopted or maintained by the Federal Government or any other Party that is part of a general framework of regional economic development, provided that:
 - (a) the measure does not operate to impair unduly the access of persons, goods, services or investments of another Party; and
 - (b) the measure is not more trade restrictive than necessary to achieve its specific objective.
3. Each Party shall:
 - (a) within a reasonable period of time after the date of entry into force of this Agreement, notify all other Parties of its existing programs relating to regional economic development;
 - (b) on adoption of any program relating to regional economic development, notify all other Parties of that program; and

- (c) prepare an annual written report on its programs relating to regional economic development.
4. Each Party shall conduct an evaluation of:
- (a) all programs referred to in paragraph 3(a) every five years after the date of entry into force of this Agreement; and
 - (b) all new programs every five years after the date of their adoption.
5. The evaluation referred to in paragraph 4 shall be made public, shall specify the details, parameters and objectives of the program, and shall assess its operation.
6. Paragraph 2 does not apply to:
- (a) obligations relating to transparency or reconciliation of measures;
 - (b) institutional and dispute settlement provisions;
 - (c) obligations to eliminate, phase out or liberalize measures as listed in Annex 1801.6A; and
 - (d) the chapters listed in Annex 1801.6B.
7. Where a chapter in Part IV of this Agreement contains a specific regional economic development exception, a Party may only use that exception to exclude the application only of corresponding obligations as stated in that chapter. Column I of Annex 1801.7 lists the specific regional economic development exceptions contained in chapters and Column II lists the corresponding obligations.
8. For the purposes of this Article, "general framework of regional economic development" means a program or statute-based system that:
- (a) a Party has identified as a regional economic development program;
 - (b) specifies eligibility criteria or development priorities based on, but not limited to, such factors as geographic area, industrial sector or population group, whether determined by a Party or regional partners of a Party;
 - (c) is generally available to recipients that meet the eligibility criteria; and
 - (d) identifies reasonable performance or economic development objectives or targets that can be measured.
9. The Parties recognize that a general framework of regional economic development may include a decentralized, cooperative approach by way of a system of delegated authority to provincial regions or sub-regions, provided that:
- (a) the terms of such a decentralized, cooperative approach are contained in framework agreements between a Party and its regions; and

- (b) such agreements set out development priorities for specific planning periods and specify the activities to be undertaken by the regions to implement these priorities.

10. Nothing in this Agreement shall be construed to affect the level of assistance provided by the Federal Government or any other Party as part of a general framework of regional economic development.

Article 1802: Aboriginal Peoples

This Agreement does not apply to any measure adopted or maintained with respect to Aboriginal peoples. It does not affect existing aboriginal or treaty rights of any of the Aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

Article 1803: Culture

Notwithstanding any other provision of this Agreement except Article 300 (Reaffirmation of Constitutional Powers and Responsibilities), any measure adopted or maintained with respect to culture or cultural industries is exempted from the provisions of this Agreement.

Article 1804: National Security

Nothing in this Agreement shall be construed to:

- (a) require the Federal Government to provide, or allow access to, information the disclosure of which it determines to be contrary to national security; or
- (b) prevent the Federal Government from taking any action that it considers necessary to protect national security interests or, pursuant to its international obligations, for the maintenance of international peace and security.

Article 1805: Taxation

Except as provided in paragraphs 4 through 9 of Annex 608.3, nothing in this Agreement shall preclude a Party from adopting or maintaining:

- (a) measures relating to taxation; or
- (b) measures to secure compliance with measures relating to taxation.

Article 1806: Financial Sector

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.

2. For greater certainty, nothing in this Agreement shall be construed to lessen the scope of the limitation set out in paragraph 1, such limitation prevailing to its full extent over any provision having some connection therewith.
3. For greater certainty, persons shall be considered to be financial institutions only in respect of, and to the extent of, their provision of financial services.

Article 1807: Measures Subject to Transitional Provisions

No Party shall, during the period beginning on the date of execution and ending on the date of entry into force of this Agreement, adopt a measure that would be inconsistent with this Agreement or amend or renew a measure in a manner that would decrease its consistency with this Agreement.

Article 1808: Non-Conforming Measures

1. No Party shall amend or renew a non-conforming measure in a manner that would further decrease the conformity of that measure with this Agreement.
2. A subsequent amendment or renewal of a measure referred to in paragraph 1 may not decrease the conformity of that measure as it existed immediately prior to the subsequent amendment or renewal.

Article 1809: Relationship to International Agreements

1. Nothing in this Agreement is intended to provide nor shall be construed to provide, directly or indirectly, to any national, enterprise, state or other person any right, claim or remedy under any international agreement.
2. In the event that one of Canada's trading partners alleges that, contrary to the intention stated in paragraph 1, on the basis of this Agreement, a national, enterprise, state or other person has been provided with a right, claim or remedy under any international agreement and requests formal consultations under such international agreement, the Committee shall, within 30 days after the date of the request, meet to take account of the new situation raised by the allegation and take the necessary action which includes, among other things, amending or removing, as appropriate, the obligation under this Agreement that gives rise to the allegation, or rebalancing the benefits under this Agreement.
3. Where, notwithstanding any action the Committee may take under paragraph 2, the trading partner proceeds to an international panel and is successful in establishing a right under an international agreement based on a provision of this Agreement, that provision is to that extent of no force or effect, unless the provision expressly states that it shall continue to exist notwithstanding the panel ruling.
4. The Parties recognize that an essential ingredient for achieving Canada's trade and economic goals in the international arena is the cooperation between federal and provincial governments. Existing mechanisms set up in connection with the *Canada-U.S.A. Free Trade Agreement*, the *North American Free Trade Agreement* and the *Final Act Embodying the Results of the Uruguay*

Round of Multilateral Trade Negotiations, including the Agreement Establishing the World Trade Organization, allow for consultations with and participation by the governments of the Provinces. It is understood that such mechanisms for consultation and participation will continue to be used in the future and that the Parties will take appropriate steps to assess international obligations to ensure that the relationship between any international obligations and this Agreement will be taken into account when new international obligations are negotiated or when international trade disputes arise. To this end, the Parties agree to review the effectiveness of existing mechanisms for consultation and participation within one year after the date of entry into force of this Agreement.

Article 1810: Future Negotiations

1. The Parties have agreed to fulfil their commitments to negotiate particular matters as provided in specific chapters of this Agreement.
2. The Parties agree to continue negotiations on Chapter Twelve (Energy) to conclude no later than the date of entry into force of this Agreement.
3. Until the terms of Chapter Twelve (Energy) are negotiated, agreed on and made part of this Agreement, no provision of this Agreement shall apply to any measure of a Party relating to energy goods or energy services as defined in Annex 1810.3.
4. The Committee shall review annually the scope and coverage of this Agreement and may make recommendations for the inclusion of measures not otherwise covered by this Agreement or of new chapters.
5. Before the conclusion of negotiations referred to in paragraph 1 or 2 or any negotiations between the Parties pursuant to recommendations made under paragraph 4, respecting a particular matter, no Party shall adopt a new measure or amend an existing measure in relation to that matter where the new measure or amendment would result in an obstacle to internal trade.
6. Subject to paragraphs 5 and 7, any obligation arising under paragraph 1, 2 or 4 to negotiate a particular matter shall, where the negotiations are successful, terminate on the effective date of the new provisions agreed to by the Parties.
7. Where a Party declares in writing that it is no longer willing to participate in negotiations pursuant to paragraph 1, 2 or 4 respecting a particular matter, the obligation under paragraph 5 terminates but only in respect of that Party.

Article 1811: Accession and Withdrawal

1. Any new province or territory may accede to this Agreement on such terms as are agreed to by all Parties.
2. A Party may withdraw from this Agreement 12 months after it gives written notice to all other Parties.

Article 1812: Language

The Parties acknowledge and agree that this Agreement has been made and executed in English and French and that both versions are equally authoritative.

Article 1813: Rules of Interpretation

This Agreement shall be interpreted in accordance with the Rules of Interpretation set out in Annex 1813.

Article 1814: Entry into Force

1. Subject to paragraph 2, this Agreement shall enter into force on July 1, 1995, by which date all Parties shall have taken all measures in order to give effect to this Agreement.
2. The provisions set out in Annex 1814.2 shall enter into force on the date of execution of this Agreement by all Parties.

Annex 1801.6A**Obligations to Eliminate, Phase Out or Liberalize to Which Article 1801(2) Does Not Apply**

Chapter Six (Investment)

Article 604 (Local Presence and Residency Requirements)
Article 607(1) (Performance Requirements)
Article 608(3) (Incentives)
Article 610 (Environmental Measures)

Chapter Seven (Labour Mobility) ⁷⁶

Article 705 (1)(b) (Residency Requirements)
Article 706 (Certification of Workers)

Chapter Eight (Consumer-Related Measures and Standards)

Article 805 (Licensing, Registration and Certification Fees)
Article 806(1) (Residency and Local Presence Requirements)

Chapter Nine (Agricultural and Food Goods)

Article 902(3) (Scope and Coverage)

Chapter Fourteen (Transportation)

Article 1411 (Phase Out of Non-Conforming Measures)

⁷⁶ This Paragraph was amended by the Thirteenth Protocol of Amendment.

Annex 1801.6B**Chapters to which Article 1801(2) does not Apply**

Chapter Five (Procurement)

Chapter Ten (Alcoholic Beverages)

Chapter Thirteen (Communications)

Chapter Fifteen (Environmental Protection)

Annex 1801.7**Specific Regional Economic Development Exceptions****COLUMN I**

Specific Regional Economic Development Exception

COLUMN II

Specific Obligation

Annex 1810.3

Definitions

Part I

For the purposes of Article 1810(3):

energy goods means biomass and biomass products, hydrogen, thermal energy, and energy and petrochemical goods listed in Part II and classified under the *Harmonized Commodity Description and Coding System* as:

- (a) subheading 2612.10;
- (b) chapter 27, headings 27.01 through 27.16;
- (c) subheadings 2844.10 through 2844.50;
- (d) subheadings 2845.10; and
- (e) subheadings 2901.10;

energy services means services related to:

- (a) energy efficiency activities, including energy supply services, energy efficiency improvements, management services, energy management monitoring and training;
- (b) energy using products and products affecting the use of energy;
- (c) energy transportation facilities, including electricity transmission lines and pipelines; and
- (d) energy exploration, development, production and processing facilities, equipment and activities.

Part II

26.12 Uranium or thorium ores and concentrates

2612.10	ICES	--	Uranium ores and concentrates
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27.01 Coal; briquettes, ovoids and similar solid fuels manufactured from coal

		--	Coal, whether or not pulverised, but not agglomerated.
--	--	----	--

2701.11	ES	--	Anthracite
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2701.11.10	I	--	Screenings or dust
2701.11.20	I	--	Buckwheat No. 4, 5 or 6
2701.11.30	I	--	Buckwheat No. 1, 2 or 3
2701.11.40	I	--	Pea or bean size
2701.11.50	I	--	Egg, stove or nut size
2701.11.90	I	--	Other
2701.12	E	--	Bituminous coal
2701.12.10	I	--	Dust
2701.12.2	I	--	Other high volatile
2701.12.21	S	--	From Canadian mines
2701.12.22	S	--	Imported
2701.12.3	I	--	Other low volatile
2701.12.31	S	--	From Canadian mines
2701.12.32	S	--	Imported
2701.19	ICES	--	Other coal
2701.20	ICES	--	Briquettes, ovoids and similar solid fuels manufactured from coal

27.02 Lignite, whether or not agglomerated, excluding jet

2702.10	ICES	--	Lignite, whether or not pulverised, but not agglomerated
2702.20	ICES	--	Agglomerated lignite

27.03 Peat (including peat litter), whether or not agglomerated

2703.00	IE	--	Peat (including peat litter), whether or not agglomerated
2703.00.10	S	--	Crude
2703.00.20	S	--	Baled

27.04 Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon

2704.00	S	--	Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon
2704.00.10	IE	--	Coke or semi-coke of coal, briquettes
2704.00.20	I	--	Retort carbon
2704.00.30	I	--	Breeze or dust
2704.00.90	IE	--	Other

27.05 Coal gas, water gas, producer gas and similar gases, other than petroleum gases and other gaseous hydrocarbons

2705.00	ICES	--	Coal gas, water gas, producer gas and similar gases, other than petroleum gases and other gaseous hydrocarbons
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27.06	Tar distilled from coal, from lignite or from peat, and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars		
2706.00	ICES	--	Tar distilled from coal, from lignite or from peat, and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars.
27.07	Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents		
2707.10	ICES	--	Benzole
2707.20	ICES	--	Toluole
2707.30	ICES	--	Xylole
2707.40	ICES	--	Naphthalene
2707.50	E	--	Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distills at 250 degrees Celsius by the ASTM D 86 method
2707.50.10	I S	--	Naphtha of coal-tar origin
2707.50.90	I S	--	Other
2707.60	ICES	--	Phenols
		--	Other
2707.91	ICES	--	Creosote oils
2707.99	ES	--	Other
2707.99.10	I	--	Cresylic acid
2707.99.90	I	--	Other
27.08	Pitch and pitch coke, obtained from coal tar or from other mineral tars		
2708.10	ICES	--	Pitch
2708.20	ICES	--	Pitch coke
27.09	Petroleum oils and oils obtained from bituminous minerals, crude		
2709.00	ICES	--	Petroleum oils and oils obtained from bituminous minerals, crude
2709.00.10	S	--	Conventional
2709.00.20	S	--	Synthetic
2709.00.30	S	--	Condensate and pentanes plus
2709.00.90	S	--	Other (including oils from bituminous sand or shale other than synthetic)
27.10	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations		
2710.00		--	Petroleum oils and oils obtained from bituminous minerals, other than crude;

			preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations
2710.00.1	E	--	Gasoline (including aviation)
2710.00.11	I S	--	Aviation gasoline
2710.00.12	I S	--	Motor gasoline, regular, leaded
2710.00.13	I S	--	Motor gasoline, regular, unleaded
2710.00.14	I S	--	Motor gasoline, premium
2710.00.2		--	Aviation turbine fuel (jet type A and B)
2710.00.21	I S	--	Kerosene type jet fuel (type A)
2710.00.22	I S	--	Naphtha type jet fuel (type B)
2710.00.30	I S	--	Kerosene (excluding jet fuel)
2710.00.4	S	--	Naphtha specialties
2710.00.41	I	--	Paint thinners
2710.00.49	I	--	Other
2710.00.5		--	Diesel and light fuel oils
2710.00.51	ICES	--	Diesel oil
2710.00.52	ICES	--	Fuel oils Nos. 2 and 3
2710.00.6	S	--	Heavy fuel oils
2710.00.61	IE	--	Fuel oils Nos. 4 and 5
2710.00.62	IE	--	Fuel oil No. 6
2710.00.63	IE	--	Bunker C
2710.00.69	IE	--	Other
2710.00.8	ES	--	Lubricating oils and greases
2710.00.82	I	--	Lubricating oils or base stocks, containing by weight more than 50% of synthetic hydrocarbons
2710.00.83	I	--	Lubricating oils put up in packing for retail sale; oils and preparations thereof, having a viscosity of 7.44 mm ² /sec. of more at 37.8 degrees Celsius (excluding white oils)
2710.00.84	I	--	Petroleum greases and lubricating greases
2710.00.9		--	Other petroleum oils
2710.00.91	I S	--	White oils
2710.00.92	S	--	Cutting and penetrating oils
2710.00.93	I	--	Alkylenes, mixed, with a very low degree of polymerization
2710.00.94	S	--	Petroleum alkylate
2710.00.95	S	--	Petroleum bases for lubricating oils
2710.00.96	S	--	Petroleum bases for lubricating greases
2710.00.97	IE	--	Other light petroleum oils
2710.00.98	IE	--	Other medium petroleum oils
2710.00.99	ICES	--	Other

27.11 Petroleum gases and other gaseous hydrocarbons

		--	Liquefied
2711.11	ICES	--	Natural gas
2711.12	ES	--	Propane

2711.12.10	I	--	When in containers ready for use
2711.12.90	I	--	Other
2711.13	ICES	--	Butanes
2711.14	ICES	--	Ethylene, propylene, butylene and butadiene
2711.19		--	Other
2711.19.1	I	--	Ethane
2711.19.11	I	--	When in containers ready for use
2711.19.19	I	--	Other
2711.19.9	ES	--	Other
2711.19.91	I	--	When in containers ready for use
2711.19.99	I	--	Other
		--	In gaseous state
2711.21	ICES	--	Natural gas
2711.29	ICES	--	Other

27.12 Petroleum jelly; paraffin wax, micro-crystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured.

2712.10	ICES	--	Petroleum jelly
2712.20	ES	--	Paraffin wax containing by weight less than 0.75% of oil
2712.20.10	I	--	For use in the manufacture of candles
2712.20.90	I	--	Other
2712.90	E	--	Other
2712.90.10	I	--	Lignite wax
2712.90.20	I	--	Microcrystalline petroleum wax
2712.90.30	I S	--	Crude paraffin wax
2712.90.90	I S	--	Other

27.13 Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals

		--	Petroleum coke
2713.11	ICES	--	Not calcined
2713.12	ICES	--	Calcined
2713.20	ICES	--	Petroleum bitumen
2713.90	ES	--	Other residues of petroleum oils or of oils obtained from bituminous minerals
2713.90.10	I	--	Of a kind used in the manufacture of carbon black
2713.90.90	I	--	Other

27.14 Bitumen and asphalt, natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks

2714.10	ICES	--	Bituminous or oil shale and tar sands
2714.90	ES	--	Other
2714.90.10	I	--	Gilsonite
2714.90.90	I	--	Other

27.15 Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cut-backs)⁷⁷

2715.00	E	--	Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example: bituminous mastics, cut-backs)
2715.00.10	I	--	Asphaltum oil, of a kind used for paving purposes
2715.00.20	I	--	Mastics of asphalt and other bituminous mastics
2715.00.30	S	--	Asphalt compound, hot (bulk)
2715.00.40	S	--	Asphalt compound, cold (including kegs)
2715.00.90	I S	--	Other

27.16 Electrical energy (optional heading)

2716.00	ICES	--	Electrical energy (optional heading)
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28.44 Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products

2844.10	S	--	Natural uranium and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds
2844.10.10	IE	--	Uranium oxides
2844.10.20	E	--	Uranium hexafluoride
2844.10.90	E	--	Other
2844.20	ES	--	Uranium enriched in U 235 and its compounds; plutonium and its compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U 235, plutonium or compounds of these products
2844.20.10	I	--	Uranium and its compounds
2844.20.90	I	--	Other
2844.30	ES	--	Uranium depleted in U 235 and its compounds; thorium and its compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing uranium depleted in U 235, thorium or compounds of these products
2844.30.10	I	--	Uranium and its compounds

⁷⁷ This item was amended by the Second Protocol of Amendment.

2844.30.20	I	--	Thorium nitrate
2844.30.90	I	--	Other
2844.40	ES	--	Radioactive elements and isotopes and compounds other than those of subheading No. 2844.10, 2844.20 or 2844.30; alloys, dispersions (including cermets), ceramic products and mixtures containing these elements, isotopes or compounds; radioactive residues
2844.40.10	I	--	Radioactive elements, isotopes and compounds
2844.40.90	I	--	Other
2844.50	ICES	--	Spent (irradiated) fuel elements (cartridges) of nuclear reactors

28.45 Isotopes other than those of heading No. 28.44; compounds, inorganic or organic, of such isotopes, whether or not chemically defined

2845.10	ICES	--	Heavy water (deuterium oxide)
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29.01 Acyclic hydrocarbons

2901.10	E	--	Saturated
2901.10.10	I S	--	Butanes
2901.10.20	I S	--	Hexanes
2901.10.30	I	--	Pentanes
2901.10.90	I S	--	Other
		--	Unsaturated

Annex 1813

Rules of Interpretation

1. In this Annex:

horizontal chapter means any of the following chapters:

- (a) Chapter Five (Procurement);
- (b) Chapter Six (Investment);
- (c) Chapter Seven (Labour Mobility);
- (d) Chapter Eight (Consumer-Related Measures and Standards); and
- (e) Chapter Fifteen (Environmental Protection);

vertical chapter means any of the following chapters:

- (a) Chapter Nine (Agricultural and Food Goods);
- (b) Chapter Ten (Alcoholic Beverages);
- (c) Chapter Eleven (Natural Resources Processing);
- (d) Chapter Twelve (Energy);
- (e) Chapter Thirteen (Communications); and
- (f) Chapter Fourteen (Transportation).

2. A vertical chapter applies to matters within its scope.

3. A horizontal chapter applies both to matters within its scope and, where applicable, to matters that fall within the scope of a vertical chapter.

4. In the event of an inconsistency between a vertical chapter and a horizontal chapter, the vertical chapter prevails to the extent of the inconsistency, except as otherwise provided.

5. For greater certainty, in the event of an inconsistency between two horizontal chapters or two vertical chapters, reference may be made to this Agreement as a whole, including the Preamble, Chapter One (Operating Principles) and Chapter Three (Reaffirmation of Constitutional Powers and Responsibilities), to determine which chapter prevails to the extent of the inconsistency, except as otherwise provided.

6. This Agreement shall be interpreted in accordance with the reaffirmation set out in Article 300 (Reaffirmation of Constitutional Powers and Responsibilities).

7. Nothing in this Agreement shall be construed to require a Party to:
- (a) alter a contract entered into with a person before the date of execution of this Agreement, where that contract was authorized by a measure that is inconsistent with this Agreement; or
 - (b) alter such a contract that has been renewed on or after the date of execution of this Agreement, where it has been renewed pursuant to an option to renew.
8. Reference to an article includes any annex referred to in that article.
9. Use of a term in the singular includes the plural and *vice versa*.
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.⁷⁸
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.⁷⁹
12. Time limits imposed by this Agreement shall be calculated as follows:⁸⁰

Time limits and holidays

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

Number of days between two events

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

Beginning and ending of prescribed periods

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

After specified day

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

⁷⁸ This paragraph was modified by the Seventh Protocol of Amendment

⁷⁹ This paragraph was added to the Agreement on Internal Trade by means of the Seventh Protocol of Amendment

⁸⁰ This paragraph was added to the Agreement on Internal Trade by means of the Tenth Protocol of Amendment

Within a time

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

Annex 1814.2

Provisions Entering into Force on Date of Execution

The following provisions enter into force on the date of execution of this Agreement:

- (a) Article 506(3) requiring the Parties to designate electronic tendering systems and daily newspapers no later than January 1, 1995;
- (b) Article 511(2) requiring the Parties to develop a general mechanism to report through an electronic tendering system before July 1, 1995;
- (c) Article 513(7) requiring each Party to establish a roster of panellists before July 1, 1995;
- (d) Article 516(3) requiring the Parties to establish a working group on electronic tendering no later than January 1, 1995;
- (e) Article 516(5) requiring the Parties to review and finalize the list of excluded services set out in Annex 502.1B before July 1, 1995;
- (f) Article 517(1) requiring Provinces to enter into and conclude negotiations to extend coverage of Chapter Five no later than June 30, 1995;
- (g) Paragraph 2 of Annex 502.1B requiring the Parties to review and reduce the list of excluded services before July 1, 1995;
- (h) Article 604(4) requiring the Parties to list existing inconsistent measures in Annex 604.4 no later than December 31, 1995;
- (i) Article 606 requiring the Parties to prepare an implementation plan for reconciling extra-provincial corporate registration and reporting requirements no later than July 15, 1995;
- (j) Article 809 requiring the Parties to establish a Committee on Consumer-Related Measures and Standards and requiring the Committee to develop appropriate dispute resolution mechanisms before July 1, 1995;
- (k) Paragraph 1 of Annex 807.1 requiring the Parties to complete negotiations on harmonized measures respecting direct selling contracts and cancellation rights no later than July 1, 1995;⁸¹
- (l) Paragraph 5 of Annex 1408.1 requiring the Parties to endeavour to resolve issues relating to the National Safety Code Program before July 1, 1995;
- (m) Paragraph 6 of Annex 1408.1 requiring the Parties to establish a uniform national bill of lading before July 1, 1995;

⁸¹ This paragraph was amended by the Second Protocol of Amendment.

- (n) Paragraph 7 of Annex 1408.1 requiring the Council of Ministers Responsible for Transportation and Highway Safety to establish a work plan for the creation of harmonized administrative mechanisms for the collection of certain taxes and fees before July 1, 1995;
- (o) Paragraph 9 of Annex 1408.1 requiring the Council of Ministers Responsible for Transportation and Highway Safety to establish a work plan respecting harmonized administrative arrangements before July 1, 1995;
- (p) Articles 1600, 1601 and 1603;
- (q) Article 1706(1) requiring the Committee to establish Model Rules of Procedure before July 1, 1995;
- (r) Article 1713(1) requiring each Party to appoint its screener before July 1, 1995;
- (s) Article 1721 requiring the Parties to establish a Code of Conduct for panellists before July 1, 1995;
- (t) Paragraph 6 of Annex 1718.3 requiring the Parties to establish rates for the tariff items in the Annex before July 1, 1995;
- (u) Article 1807;
- (v) Article 1810; and
- (w) Any provisions containing definitions necessary for the implementation of the provisions referred to in paragraphs (a) to (v).