

Canada's New West Partnership



BRITISH
COLUMBIA

Government
of Alberta ■



Government of
Saskatchewan

NEW WEST PARTNERSHIP TRADE AGREEMENT

FOREWORD

On September 11, 2009, the Governments of British Columbia, Alberta and Saskatchewan committed to strengthen the economy and competitiveness of the West through innovative collaboration in the areas of internal trade, international marketing, innovation and procurement. This Agreement comes into effect and will operate in accordance with its own terms.

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PART I
OPERATING PRINCIPLES

The Governments of British Columbia, Alberta and Saskatchewan, RESOLVED to:

ESTABLISH a comprehensive agreement on trade, investment and labour mobility that applies to all sectors of the economy;

ELIMINATE barriers that restrict or impair trade, investment or labour mobility;

ENHANCE competitiveness, economic growth and stability;

INCREASE opportunities and choice for workers, investors, consumers and businesses;

REDUCE costs for consumers, businesses and governments;

PROVIDE access to information to facilitate trade, investment and labour mobility;

PROMOTE sustainable and environmentally sound development, and high levels of consumer protection, health and labour standards;

COOPERATE on matters related to trade, investment and labour mobility;

MINIMIZE the impacts of other measures that may adversely affect trade, investment or labour mobility;

RESOLVE disputes in an effective, inexpensive and timely manner;

SUPPORT ongoing trade and investment liberalization both nationally and internationally; and

DEMONSTRATE the benefits of freer trade within Canada by simplifying and expanding upon the scope and coverage of the *Agreement on Internal Trade*;

HEREBY AGREE as follows:

PART II

A. EXTENT OF OBLIGATIONS

Article 1: Relationship to the Agreement on Internal Trade

1. This Agreement is established pursuant to Article 1800 (Trade Enhancement Arrangements) of the *Agreement on Internal Trade*, which permits the Parties to enter into additional arrangements to liberalize trade, investment and labour mobility beyond the level required by that Agreement.
2. In the event of an inconsistency between any provision in Parts II and V of this Agreement and any provision of the *Agreement on Internal Trade*, the provision that is more conducive to liberalized trade, investment and labour mobility prevails among the Parties. In the event that such a provision of the Agreement on Internal Trade is determined to be more conducive to liberalized trade, investment and labour mobility, that provision is hereby incorporated into and made part of this Agreement.

Article 2: Scope and Coverage

1. This Agreement applies to measures of the Parties and their government entities that relate to trade, investment and labour mobility.
2. Each Party is responsible for compliance with this Agreement by its government entities.
3. The benefits of this Agreement accrue only to the Parties and their persons.

B. GENERAL RULES

Article 3: No Obstacles

1. Each Party shall ensure that its measures do not operate to restrict or impair trade between, among or through the territory of the Parties, or investment or labour mobility between or among the Parties.

Article 4: Non-Discrimination

1. Each Party shall accord to:

- (a) like, directly competitive or substitutable goods;
- (b) persons;
- (c) services; and
- (d) investors or investments

of the other Parties treatment no less favourable than the best treatment it accords, in like circumstances, to its own or those of any other Party or non-Party.

2. Each Party shall ensure that any charges it applies to persons, goods, services, investments or investors of the other Parties are the same as those charged to its own, in like circumstances, except to the extent that any difference can be justified by an actual cost-of-service differential.

Article 5: Standards and Regulations

1. Parties shall mutually recognize or otherwise reconcile their existing standards and regulations that operate to restrict or impair trade, investment or labour mobility.
2. Parties shall, where appropriate and to the extent practicable, specify standards and regulations in terms of results, performance or competence.
3. Parties shall not establish new standards or regulations that operate to restrict or impair trade, investment or labour mobility.
4. Parties shall continue to work toward the enhancement of sustainable development, consumer and environmental protection, and health, safety and labour standards and the effectiveness of measures relating thereto.
5. Parties shall cooperate to minimize differences in standards or regulations adopted or maintained to achieve legitimate objectives.

Article 6: Legitimate Objectives

1. A Party may adopt or maintain a measure that is inconsistent with Articles 3, 4 or 5, or Part II(C) provided the Party can demonstrate:
 - (a) the purpose of the measure is to achieve a legitimate objective;
 - (b) the measure is not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective; and

- (c) the measure is not a disguised restriction to trade, investment or labour mobility.
- 2. Subject to paragraph 1, Parties may establish the level of protection necessary to achieve a legitimate objective.
- 3. No Party shall prohibit or restrict an investment or the import of any good or service from any other Party or the export of any good or service to any other Party for a legitimate objective unless the prohibition or restriction on investment or the import of the like good or service from all Parties and non-Parties or the export of the like good or services to all Parties and non-Parties is similarly prohibited or restricted.

Article 7: Transparency

- 1. Each Party shall ensure that its measures covered by this Agreement are made readily accessible.
- 2. A Party proposing to adopt or amend a measure covered by this Agreement shall, to the extent practicable:
 - (a) notify the other Parties of its intention;
 - (b) provide a copy of the proposed measure to any other Party upon request; and
 - (c) provide the other Parties with an opportunity to comment on the measure, and take such comments into consideration.
- 3. Each Party shall ensure that documents requested by another Party or interested persons of a Party are supplied in a non-discriminatory manner and that any fees charged therefor are reasonable.
- 4. Nothing in this Agreement shall be construed to require a Party to provide or allow access to information the disclosure of which would:
 - (a) be contrary to its freedom of information or privacy legislation;
 - (b) impede law enforcement;
 - (c) prejudice the legitimate commercial interests of particular enterprises;
 - (d) involve a waiver of privilege; or
 - (e) otherwise be contrary to the public interest.
- 5. This Article applies notwithstanding any other provision of this Agreement.

6. The provision of notice under paragraph 2 is without prejudice as to whether the measure is consistent with this Agreement.

Article 8: Exceptions

1. With the exception of this Article, measures listed in Part V are not subject to Parts II and IV, except as otherwise provided in Part V.
2. Additional measures may be added to Part V only by agreement of the Parties.
3. A Party may, of its own accord, remove any of its measures listed in Part V.

Article 9: Transitional Measures

1. With the exception of this Article, measures listed in Appendix I are not subject to Parts II and IV, except as otherwise provided therein.
2. Parties shall:
 - (a) ensure that no measure listed in Appendix I is amended or renewed in a manner that would decrease its consistency with this Agreement; and
 - (b) seek to minimize any adverse effects of measures listed in Appendix I on the other Parties and their persons.
3. A Party may, of its own accord, remove any of its measures listed in Appendix I.
4. Additional measures may be added to Appendix I only by agreement of the Parties.
5. For greater certainty, subject to paragraph 6, nothing in Appendix I affects the rights and obligations of this Agreement as between British Columbia and Alberta.
6. No Party or person shall have recourse to Part IV regarding any measure of British Columbia or Alberta falling within the scope of one of the subject matters specified in Appendix I, as that measure applies to Saskatchewan or a Saskatchewan person, during the transition period provided to Saskatchewan for the same subject matter.

C. SPECIAL PROVISIONS

Article 10: Purpose

1. The special provisions in this Part II(C) augment and further elaborate upon the general rules in Part II(B).
2. Except for Article 6, where a provision in this Part II(C) is inconsistent with a provision in Part II(B), the provision in this Part shall prevail to the extent of the inconsistency.

Article 11: Investment

1.
 - (a) Parties shall reconcile their business registration and reporting requirements so that an enterprise meeting such requirements of one Party shall be deemed to have met those of all other Parties.
 - (b) Parties and their municipal governments shall consider options to provide for the reconciliation of municipal business licenses. Until such time as the matter is resolved, subparagraph (a) will not apply to municipal business licenses.
2. No Party shall require an enterprise of another 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. A requirement by a Party that an enterprise has an agent located within its territory for service of notices of proceedings or other judicial documents is deemed not to be a requirement to establish or maintain a local presence or to be resident in its territory. Parties shall further consider options for eliminating measures requiring the designation or maintenance of agents for service.
4. Nothing in this Agreement shall be construed to prevent a Party from maintaining, designating, or regulating a monopoly for the provision of goods or services within its own territory.

Article 12: Business Subsidies

1. Parties shall not directly or indirectly provide business subsidies that:
 - (a) provide an advantage to an enterprise that results in material injury to a competing enterprise of another Party;
 - (b) entice or assist the relocation of an enterprise from another Party; or
 - (c) otherwise distort investment decisions

unless such subsidy is to offset a subsidy being offered by a non-Party or to an entity not subject to this Article.

2. Parties shall jointly encourage non-Parties to eliminate subsidies to business and refrain from bidding wars.

Article 13: Labour Mobility

1. Any worker certified for an occupation by a regulatory authority of a Party shall be recognized as qualified to practice that occupation by the other Parties.
2. For greater certainty, requirements imposed on workers to obtain a license, certification, or to register with a Party or one of its regulatory authorities prior to commencing work within the territory of that Party shall be deemed to be consistent with paragraph 1 provided that no material additional training or examinations are required as part of that registration procedure and such registrations are processed on a timely basis.
3. For greater certainty and without limiting the general application of Article 6, material additional requirements other than requirements permitted under paragraph 2 that are considered by a Party to be necessary because of the differences in the scope of practice of an occupation are permissible provided that the additional requirements comply with Article 6.
4. Occupations requiring certification, registration or licensing prior to commencing work in any of the Parties shall be listed on the Agreement's website.
5. Any worker certified to practice a trade under the Red Seal Program shall be recognized as qualified to practice that trade in the other Parties.

Article 14: Procurement

1. Further to Articles 3 and 4, Parties will provide open and non-discriminatory access to procurements of the following government entities:
 - (a) departments, ministries, agencies, boards, councils, committees, commissions and similar agencies of a Party where the procurement value is:
 - (i) \$10,000 or greater for goods;
 - (ii) \$75,000 or greater for services; or
 - (iii) \$100,000 or greater for construction; and

- (b) Crown corporations, government owned commercial enterprises, and other entities that are owned or controlled by a Party through ownership interest where the procurement value is:
 - (i) \$25,000 or greater for goods;
 - (ii) \$100,000 or greater for services; or
 - (iii) \$100,000 or greater for construction; and
 - (c) regional, local, district or other forms of municipal government, school boards, 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 entities where the procurement value is:
 - (i) \$75,000 or greater for goods;
 - (ii) \$75,000 or greater for services; or
 - (iii) \$200,000 or greater for construction.
2. Articles 3 and 4 do not apply to any procurement under the thresholds specified in paragraph 1.
 3. Parties shall ensure that procuring government entities post tender notices for all covered procurement through an electronic tendering system or systems provided by the Party. Additional means of providing notices may be used.
 4. Parties shall consider options to improve the dispute settlement process as it relates to procurement, including the development of an effective bid protest mechanism. Until such time, the monetary award provisions of Articles 29, 30 and 31 do not apply to any disputes relating to procurement measures or specific procurements by covered government entities.
 5.
 - (a) A government entity participating in a buying group shall ensure that any procurement undertaken through the buying group is carried out in a manner consistent with the government entity's obligations under this Agreement.
 - (b) Notwithstanding paragraph (a) but subject to paragraph (c), this Agreement does not apply to procurements of a government entity undertaken through a buying group that includes a participating non-government entity if the buying group is not controlled or directed by one or more government entities.
 - (c) If a government entity participates in a buying group as described in paragraph (b) then:

- (i) the government entity must ensure that any specific procurement in which the government entity participates is undertaken by that buying group in a manner consistent with the government entity's obligations under Article 4; and
- (ii) the government entity has no obligations under this Agreement relating to any specific procurement of that buying group in which the government entity does not participate.

Article 15: Energy

1. Parties shall ensure that their standards-related electricity measures are not incompatible with generally accepted and applicable North American standards or standards of the Western Interconnection Region, including those relating to energy system security and reliability.
2. Parties shall work toward improving existing arrangements and promote enhanced inter-jurisdictional trade in energy.

Article 16: Transportation

1. Parties shall require all vehicles owned by a person of a Party to be licensed and registered in the Party where the person is ordinarily resident.
2. Each Party shall provide full and free registration reciprocity for temporary inter- and intra-provincial vehicle operations as provided for by the *Canadian Agreement on Vehicle Registration* (CAVR) without exceptions or additional registration fees for those Category B vehicles described in paragraph 1(a)(i) of CAVR. For the purposes of this Agreement, temporary intra-provincial operation as referenced in paragraph 4 of CAVR means operation for a period of up to 90 days in a calendar year. A Party may require carriers operating such vehicles in its territory in excess of 90 days in any calendar year to obtain a prorated license or temporary operating permit.
3. Upon request, a Party shall identify to the requesting Party its carriers having a National Safety Code number for any vehicle with a licensed gross vehicle weight of less than 11,794 kg.
4. Parties shall continue to work toward the enhancement of public safety and preservation of highway infrastructure through measures relating to cargo securement, and vehicle configurations, weights and dimensions.

**PART III
ADMINISTRATIVE PROVISIONS**

Article 17: Ministerial Committee

1. Each Party shall appoint a Minister to a Ministerial Committee to:
 - (a) ensure the implementation of and ongoing adherence to this Agreement;
 - (b) review annually the exceptions listed in Part V with a view to reducing their scope;
 - (c) oversee consultations and negotiations relating to Appendix I;
 - (d) consider reports of any working groups formed under this Agreement;
 - (e) subject to Articles 8(3) and 9(3), approve any amendments to the Agreement; and
 - (f) consider any other matter that may affect the operation of this Agreement.

Article 18: Ministerial Committee Structure and Procedures

1. The Ministerial Committee shall be composed of cabinet-level representatives authorized to act on behalf of their respective governments in matters pertaining to this Agreement.
2. The Ministerial Committee shall be convened upon the request of any Party.
3. The Ministerial Committee may establish its own practices and procedures.
4. All decisions and recommendations of the Ministerial Committee shall be taken by consensus.

Article 19: Administrative Facilities

1. Parties shall either establish a secretariat or appoint one or more administrators prior to the entry into force of this Agreement.
2. Each Party shall maintain a contact point for the other Parties or interested persons of the other Parties to answer or refer reasonable enquiries and to provide information in a timely manner pertaining to its existing and proposed

measures and other matters covered by this Agreement. The Parties shall publish the contact points on the Agreement's website.

3. For the purposes of Part IV, the Parties shall publish the contact details for the administrator on the Agreement's website.

Article 20: Accession and Withdrawal

1. Further to Article 1800 (Trade Enhancement Agreements) of the *Agreement on Internal Trade*, any Canadian province, territory or the Federal Government may accede to this Agreement upon acceptance of its terms.
2. A Party may withdraw from this Agreement on 12 months written notice to the other Parties.

Article 21: Further Negotiations

1. The Parties may enter into negotiations to amend this Agreement.
2. The Parties may establish such working groups as they consider necessary to ensure that the obligations of this Agreement are met.

Article 22: Further Co-operation

1. Parties shall cooperate to promote their mutual interests nationally and internationally.
2. Parties shall continue to jointly advocate for the removal of any Federal Government measures that operate to restrict, impair or distort trade, investment and labour mobility among the Parties.

Article 23: Entry Into Force

1. This Agreement shall enter into force on July 1, 2010.

PART IV DISPUTE RESOLUTION PROCEDURES

Article 24: Application

1. This Part applies to the avoidance and resolution of disputes between Parties, or between persons and Parties, regarding the interpretation or application of this Agreement.
2. Further to Article 25(2), where a dispute falls within the jurisdiction of a regulatory body with an established dispute resolution process, that process shall first be used prior to utilizing the procedures set out in this Part.
3. Where a Party or person believes that a measure is inconsistent with both the *Agreement on Internal Trade* and this Agreement, that Party or person must choose which agreement's dispute resolution process to use and, once chosen, will have no recourse to the other process regarding that same measure.

Article 25: Consultations

1. A Party may request in writing to the contact point of another Party, with a copy to the administrator and contact points of the other Parties, that such Party engage in consultations to resolve any matter regarding the interpretation or application of this Agreement.
2. Where a person of a Party has first exhausted all other reasonable means to resolve any matter regarding the interpretation or application of this Agreement, that person may request in writing that a Party initiate consultations with the responding Party on its behalf.
3. Following the delivery of a request made under paragraph 2, a requested Party must determine within 21 days whether to proceed with consultations on the person's behalf. If the Party accedes to the request, it shall request consultations, in writing, with the responding Party within 7 days and provide a copy of such request to the administrator and the other Parties.
4. If the requested Party declines the request under paragraph 2, it must provide written notice to the person, setting out the reasons for its decision, within 21 days from delivery of the written request. Failure to provide notice to the person within the 21-day period shall be deemed to be a rejection of the request.
5. Following a rejection of its request under paragraph 4, a person may, within six months, request in writing to the contact point of the responding Party, with a

copy to the administrator and the other Parties, that the responding Party enter into consultations with that person to resolve the matter.

6. In a request for consultations under paragraph 1, 3 or 5, a Party or person, as applicable, requesting consultations shall:
 - (a) provide the factual basis for the matter, including the existing or proposed measure at issue;
 - (b) list those provisions of this Agreement it considers to apply to the matter;
 - (c) describe in detail the alleged inconsistency; and
 - (d) provide an address for service.

Should the matter proceed to panel under Article 26, the consultation request shall establish the basis of the complaint.

7. Any other Party may participate in the consultations upon providing written notice to each Party with a copy to the administrator within 10 days of receiving a copy of a request for consultations under paragraph 1, 3 or 5.
8. The consulting parties shall exchange all reasonable information pertaining to the matter.
9. Consulting parties may include relevant sectoral and trade officials in the consultations and, by agreement, may use mediation or other cooperative means to resolve the matter.
10. Consultations shall be without prejudice to the rights of the consulting parties in any further proceedings.
11. Consultations shall be completed within 30 days from delivery to the responding Party of the request for consultations under paragraph 1, 3 or 5.

Article 26: Establishment of a Panel

1. Prior to the entry into force of this Agreement, each Party will establish and maintain a list of at least five individuals to act as panellists. If a Party fails to establish or maintain a list, the other Parties' roster of panellists shall be exclusively used.
2. If consultations under Article 25 have failed to resolve the matter, any consulting party individually, or two or more consulting parties collectively, may request the establishment of a panel to consider the matter. Such request shall be made in

writing to any other consulting party, with a copy to the administrator, the other Parties and the Ministerial Committee.

3. In order to access the panel process established under this Article, a person must acknowledge, in writing, its consent thereto. Such consent shall be in a form agreed to among the Parties and shall be included with the request made under paragraph 2.
4. If more than one administrator has been designated, the administrator located within the territory of the responding Party will administer the dispute.
5. Where a request has been delivered under paragraph 2, within 15 days of delivery of the request the responding Party shall select a panellist and the complainant shall select a panellist. No Party shall select from its own list and no person shall select from its Party's list. If a disputant fails to select a panellist within 15 days, the administrator shall select a panellist by lot from the applicable lists on that disputant's behalf.
6. Within 10 days of their appointment, the two panellists shall choose, by consensus, a panellist from the list of any Party to chair the proceedings. If the two panellists are unable to agree, they shall choose a chair by lot from the lists of the Parties.
7. As an alternative to the panel selection process under paragraphs 5 and 6, the disputants may, by agreement and within 15 days of the commencement of the selection process under paragraph 5, choose a single panellist to consider the matter.
8. All panellists selected must be independent and impartial in the matter under dispute and otherwise comply with the code of conduct established by the Parties under Article 34(3).
9. At any time prior to the issuance of a final report, if a disputant believes that a panellist is in violation of the code of conduct it shall immediately advise the other disputant in writing, with a copy to the administrator and to the other Parties. The Parties shall immediately consult on the issue and, if they agree, the panellist shall be removed and a replacement panellist immediately selected in accordance with the procedures set out in this Article.

Article 27: Panel Proceedings

1. Except as otherwise specifically provided in this Part, the panel shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules.
2. Following a panel request under Article 26(2), any non-disputant Party may, on delivery of written notice to the disputants, with a copy to the administrator,

participate in the proceeding as an intervener and attend all hearings, make written and oral submissions to the panel and receive the written submissions of the disputants. Subject to Article 26(9), any such notice must be delivered within 15 days of the date of delivery of the panel request under Article 26(2), failing which the non-disputant Party shall not participate further in the proceeding.

3. Within 7 days of the panel being established, the complainant, if a person, will provide to the administrator and the other disputant a copy of the notice, if any, issued under Article 25(4).
4. Subject to the requirements of this Part, the panel shall determine the manner in which it intends to proceed and, through the administrator, shall so notify the participants.
5. Without prejudice to a panel's authority to address other objections as preliminary questions, a panel shall address and decide as a preliminary question any objection by the responding Party that the matter under dispute is not one for which an award in favour of the complainant may be made under this Agreement.
6. Subject to Article 7(4) and any concerns relating to confidential information, panel hearings shall be open to the public, and the panel shall determine, in consultation with the participants, the appropriate logistical arrangements therefor.
7. The hearing of the matter shall take place within 45 days of the establishment of the panel under Article 26 and shall take place at a location within the territory of the responding Party, as determined by the panel.
8. On agreement of the disputants, the panel process may be terminated at any time prior to the issuance of the panel's final report.
9. The panel shall, within 45 days of hearing the dispute, issue a report to the participants that contains:
 - (a) findings of fact;
 - (b) rulings on any applicable interpretations and whether the measure at issue is or would be inconsistent with this Agreement;
 - (c) any findings as to the possible economic effect of the measure;
 - (d) recommendations, if any, to resolve the dispute; and
 - (e) specification of a reasonable period of time for implementation of the panel's recommendations, which shall be no longer than one year from the issuance of the report.

10. Within 10 days of the delivery of the panel report to the participants, any disputant with notice to the other participants, may request in writing to the administrator that the panel clarify or reconsider any part of the panel report. If no such request is received by the administrator within that 10-day period, the panel's report will be considered to be final.
11. Within 5 days of delivery of a request to the administrator under paragraph 10, the other participants may provide a response thereto to the administrator. The panel shall, within 15 days of delivery of the initial request to the administrator, provide the requested clarification or rule on the requested reconsideration. Thereafter, the panel's report, including any clarification or reconsideration thereof issued by the panel, will be considered to be final.
12. The final report of the panel is binding on the disputants and, subject to Article 7(4) and any concerns relating to confidential information, shall be made public.

Article 28: Implementation of Final Report

1. The disputants shall, within 30 days of delivery of the final panel report, agree on the resolution of the dispute. Absent any other agreement between the disputants, resolution of the dispute will require compliance with the determinations and recommendations of the panel.

Article 29: Non-Implementation

1. If a complainant believes the panel's final report or the agreement reached between the disputants under Article 28 has not been complied with, the complainant may request that a panel be convened to determine whether there has been compliance. Such request shall be made in writing to the administrator and all participants. A copy of the request shall be delivered to other Parties and the Ministerial Committee.
2. The panel established to determine if there has been compliance shall be composed of the original panellists unless otherwise agreed to by the disputants. Any original panellist that is unwilling or unable to participate, shall be replaced using the panel selection process established under Article 26.
3. The panel shall convene within 30 days after the date of delivery of the request to the administrator under paragraph 1. The panel shall determine the manner in which it intends to proceed and, through the administrator, shall so notify the disputants.
4. Any non-disputant Party may make oral and written submissions to the panel regarding compliance with the panel's final report.

5. Subject to Article 7(4) and any concerns relating to confidential information, panel hearings shall be open to the public and the panel shall determine, in consultation with the disputants, the appropriate logistical arrangements therefor.
6. The panel shall, within 30 days of being convened, determine whether the final report or the agreement reached between the disputants has been complied with and issue a compliance report.
7. Subject to Article 14(4), if the panel determines that there has not been compliance, it shall:
 - (a) if all disputants are Parties, issue a monetary award determined in accordance with Article 30 or authorize retaliatory measures of equivalent economic effect, or both; or
 - (b) if any complainant is a person, issue a monetary award determined in accordance with Article 30.
8. Subject to any judicial review initiated under Article 31, any remedy determined under paragraph 7 shall be effective at a time of the panel's discretion.

Article 30: Determination of Monetary Awards

1. In determining the amount and allocation among individual complainants of any monetary award under Article 29(7), the panel shall take into account:
 - (a) the efforts made by the responding Party to conform with the recommendations of the panel in its final report or the agreement between the disputants under Article 28;
 - (b) the nature and extent to which the measure has caused economic injury to the complainant and the extent to which that injury would continue should the responding Party continue to be non-compliant; and
 - (c) any other factor the panel considers relevant in the circumstances.
2. In no circumstances shall a monetary award exceed \$5 million with respect to any one matter under consideration.

Article 31: Judicial Review

1. A disputant may, within 15 days after the delivery to the disputants of any compliance report that has awarded a monetary award under Article 29(7), request judicial review of that report under:

- (a) section 30 of the *Commercial Arbitration Act* (RSBC 1996 c. 55) if the responding Party is British Columbia;
- (b) subsection 45(1)(c) and (f) through (i), and subsection 45(8) of the *Arbitration Act* (RSA 2000, c. A-43) if the responding Party is Alberta; and
- (c) clauses 46(1)(c) and (f) through (i) and subsection 46(8) of *The Arbitration Act, 1992* (S.S. 1992, c. A-24.1) if the responding Party is Saskatchewan

and solely for the purpose of this Article, the Parties agree that this Part constitutes an “arbitration agreement” and any compliance report constitutes an “award” as those terms are defined in the applicable statute.

- 2. The effective time of any award as determined by the panel under Article 29(8) shall be suspended during the period of any judicial review under this Article.

Article 32: Costs and Remuneration

- 1. The panel may apportion costs at its discretion. For greater certainty, if the disputants agree to terminate the panel proceedings prior to the issuance of the panel’s final report under Article 27(8), the panel retains the power to apportion any costs incurred up to such termination.
- 2. Each Party shall provide under its laws that any monetary award issued under Article 29(7), or any award of costs under paragraph 1, shall be enforceable in the same manner as an order issued by that Party’s superior court.
- 3. Parties shall, prior to the entry into force of this Agreement, and thereafter every five years, establish the amounts of remuneration and expenses that will be paid to administrators, panellists, or any experts that they may engage.

Article 33: Abridgement or Extension of Time Periods

- 1. Consulting parties or disputants may, by agreement, abridge or extend any time period specified in this Part.

Article 34: Other Provisions

- 1. A person may not initiate proceedings under this Part if more than two years have elapsed from the date on which the person first acquired, or should have first acquired, knowledge of the alleged inconsistency.

2. A person or Party may not initiate any proceedings under this Part regarding any measure that is already the subject of proceedings under this Part until such time as those ongoing proceedings have been completed.
3. Parties shall establish a code of conduct governing panellists prior to entry into force of the Agreement.
4. The Parties may, at any time, issue a joint decision declaring their interpretation of this Agreement. All such joint decisions shall be binding on panels and any subsequent decision or award by a panel issued under this Part must be consistent with such joint decisions. The Parties shall post all such joint decisions on the Agreement's website.

**PART V
EXCEPTIONS
ALL PARTIES**

A. General Exceptions

1. Measures adopted or maintained relating to:
 - (a) Aboriginal peoples;
 - (b) Water, and services and investments pertaining to water;
 - (c) Subject to Article 12, taxation and associated compliance mechanisms;
 - (d) Subject to Articles 4 and 12, other revenue generation, including royalties and mark-ups, and associated compliance mechanisms;
 - (e) Regulated rates established for the public good or public interest;
 - (f) Social policy, including labour standards and codes, minimum wages, employment insurance, social assistance benefits and worker's compensation; or
 - (g) Subject to Article 4, land use.

B. Business Subsidies

1. Measures adopted or maintained to provide:
 - (a) Compensation to persons for losses resulting from calamities such as diseases or disasters;
 - (b) Assistance for book and magazine publishers, sound recordings, and film development, production and distribution;
 - (c) Assistance for recreation;
 - (d) Assistance for academic research; or
 - (e) Assistance to non-profit organizations.

C. Government Procurement

1. Articles 3, 4 and 14 do not apply in the circumstances listed below in paragraph 2 provided that procurement procedures are not used by the procuring Party to avoid competition, discriminate between suppliers, or protect its suppliers.
2. Procurements:
 - (a) from philanthropic institutions, prison labour or persons with disabilities;
 - (b) from a public body or a non-profit organization;
 - (c) of goods purchased for representational or promotional purposes, and services or construction purchased for representational or promotional purposes outside the territory of a Party;
 - (d) of health services and social services;
 - (e) on behalf of an entity not covered by Article 14;
 - (f) by entities which operate sporting or convention facilities, in order to respect a commercial agreement containing provisions incompatible with Article 3, 4 or 14;
 - (g) where it can be demonstrated that only one supplier is able to meet the requirements of a procurement;
 - (h) where an unforeseeable situation of urgency exists and the goods, services or construction could not be obtained in time by means of open procurement procedures;
 - (i) when the acquisition is of a confidential or privileged nature and disclosure through an open bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or be contrary to the public interest;
 - (j) of services provided by lawyers and notaries;
 - (k) of goods intended for resale to the public; or
 - (l) in the absence of a receipt of any bids in response to a call for tenders.
3. Articles 3, 4 and 14 do not apply to any procurement undertaken by non-governmental bodies that exercise authority delegated by law.
4. Articles 3, 4 and 14 do not apply to any procurement of treasury services.

D. Energy and Minerals

1. Subject to Article 4, measures adopted or maintained relating to:
 - (a) the licensing, certification, registration, leasing or other disposition of rights to energy or mineral resources;
 - (b) exploration and development of energy or mineral resources; or
 - (c) management or conservation of energy or mineral resources.
2. Measures adopted or maintained to promote renewable and alternative energy.

E. Transportation

1. Measures relating to the licensing of a motor vehicle operated by or on behalf of a person who may charge or collect compensation for the transportation of passengers in that vehicle.

F. Regional Economic Development

1. Regional economic development measures, provided that such measures:
 - (a) are only adopted or maintained under exceptional circumstances;
 - (b) are not more trade restrictive than necessary to achieve their specific objective;
 - (c) do not operate to unduly harm the economic interests of persons, goods, services or investments of the other Party;
 - (d) minimize the discriminatory effects and impacts on trade, investment and labour mobility; and
 - (e) are consistent with Article 12(1).

G. Forests, Fish and Wildlife

1. Measures adopted or maintained relating to:
 - (a) the licensing, certification, registration, leasing or other disposition of rights to the harvesting of forest or fish resources;

- (b) the management or conservation of forests, fish and wildlife; or
- (c) requirements that timber be used or manufactured within the territory of a Party.

H. Environment

- 1. Measures adopted or maintained relating to the management and disposal of hazardous and waste materials.

ALBERTA

I. Investment

- 1. *Fair Trading Act - Collections and Debt Repayment Regulation and Public Auctions Regulation*, requiring that funds be maintained in an Alberta-based account.
- 2. *Fisheries (Alberta) Act* requires residency for:
 - (a) Commercial Bait Fish Licence; and
 - (b) Commercial Fish Licence.
- 3. *Wildlife Act* requires residency for:
 - (a) Registered Fur Management;
 - (b) Registered Fur Management Partner; and
 - (c) Resident Fur Management.

J. Energy

- 1. *Power Purchase Arrangements Regulation*, Section 3 that restricts access to and ownership of Power Purchase Arrangements.

K. Agriculture

1. Measures adopted or maintained relating to regulated marketing and supply management which restrict trade, or the right to invest in the production of, or to produce poultry, dairy and eggs.

BRITISH COLUMBIA

L. Energy

1. Measures adopted or maintained relating to the use of dams, reservoirs and generation facilities provided that such measures are not used for the purpose of preventing access to electricity transmission facilities.
2. Measures to ensure domestic load is served as provided for in the British Columbia Transmission Corporation's Open Access Transmission Tariff, where filed with, and approved by, the British Columbia Utilities Commission.
3. Provisions of the *BC Hydro Public Power Legacy and Heritage Contract Act*, S.B.C.2003, c. 86, and any regulations or special directions pursuant thereto. Without limiting the foregoing, the Act prohibits BC Hydro from selling, or otherwise disposing of, protected (heritage) assets, and *Heritage Special Direction No. HC2 to the British Columbia Utilities Commission* that ensures domestic customers of BC Hydro receive the benefit of the utility's low-cost resources on an embedded cost basis for a minimum of ten years, beginning April 1, 2004.

M. Transportation

1. Measures to ensure adequate insurance coverage for commercial vehicles.

N. Agriculture

1. Existing regulatory measures adopted pursuant to the *Natural Products Marketing (BC) Act* which restrict trade or investment in agricultural products or production regulated thereunder.

SASKATCHEWAN

O. Investment

1. Residency requirements under *The Wildlife Act, 1998* and *The Wildlife Regulations, 1981* for fur conservation area licences and fur licences.
2. Residency requirements under *The Labour-Sponsored Venture Capital Corporations Act*.
3. Residency requirements under *The Outfitter and Guide Regulations, 2004*.

P. Agriculture

1. Measures adopted or maintained relating to regulated marketing and supply management which restrict trade, or the right to invest in the production of, or to produce poultry, dairy and eggs.

PART VI DEFINITIONS

In this Agreement:

administrator means the secretariat, if established, or a third party contracted to provide secretarial and operational support as provided under Article 19;

business subsidy means a financial contribution by a Party, namely:

- (a) cash grants, loans, debt guarantees or an equity injection, made on preferential terms;
- (b) a reduction in taxation and other forms of revenue generation, including royalties and mark-ups, or government levies otherwise payable, but does not include a reduction resulting from a provision of general application of a tax law, royalties, or other forms of a Party's revenue generation; or
- (c) any form of income or price support that results directly or indirectly in a draw on the public purse

that confers a benefit on a specific non-government entity, whether organized as one legal entity or as a group of legal entities, but does not include generally available infrastructure, assistance to provide generally available infrastructure, or subsidies defined as non-actionable under Article 8 of the World Trade Organization Agreement on Subsidies and Countervailing Measures.

A business subsidy does not include a financial contribution made available to entities within a particular industry or group of industries where the measure pursuant to which the financial contribution is made available establishes objective criteria or conditions governing eligibility that are not structured, in law or in fact, so as to make the financial contribution uniquely available to one single entity, whether that entity is structured as one legal entity or a group of legal entities;

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;

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

complainant means one or more Parties and/or a person that has requested the establishment of a panel under Article 26(2);

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;

disputant means the complainant or the responding Party;

enterprise means an entity constituted, established, organized or registered 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;

existing means existing as of the date of the entry into force of this Agreement;

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 market intermediation including, but not limited to, the distribution of financial products;

good 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;

government entity means a Party's:

- (a) departments, ministries, agencies, boards, councils, committees, commissions and similar agencies of government;
- (b) Crown corporations, government-owned commercial enterprises, and other entities that are owned or controlled by the Party through ownership interest;

- (c) regional, local, district or other forms of municipal government as well as any corporation or entity owned or controlled by any such form of municipal government;
- (d) school boards, 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 entities; and
- (e) non-governmental bodies that exercise authority delegated by law;

intervener means a non-disputing Party that has given notice under Article 27(2);

investment means:

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

investor means:

- (a) a Party;
- (b) a person ordinarily resident in the territory of a Party; or
- (c) an enterprise carrying on business in the territory of a Party;

that seeks to make, is making, or has made an investment within a Party;

legitimate objective means any of the following objectives pursued within 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) conservation and prevention of waste of non-renewable or exhaustible resources;
- (f) consumer protection;
- (g) protection of the health, safety and well-being of workers;

- (h) provision of social services and health services within the territory of a Party;
- (i) affirmative action programs for disadvantaged groups; or
- (j) prevention or relief of critical shortages of goods essential to a Party

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

“Legitimate objective” does not include protection or favouring of the production of an enterprise of a Party;

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

non-governmental bodies that exercise authority delegated by law means any organization, institution, corporation or association to whom regulatory or supervisory authority has been delegated by a Party;

participant means any disputant or intervener;

Party means any signatory to this Agreement;

person means a natural person or an enterprise of a Party;

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) provision by government organizations, including government entities, of goods and services to persons or other government organizations, including government entities;

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;

regulation means a standard that has been adopted into law;

regulatory authority means a government entity with authority to certify or regulate an occupation;

responding Party means the Party whose measure is at issue in consultations under Article 25 or a complaint under Article 26;

sanitary and phytosanitary measures means a measure that a Party adopts or maintains to:

- (a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease;
- (b) protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease causing organism in a food, beverage or feedstuff;
- (c) protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or
- (d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest;

service 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, that sets out the rules, guidelines or characteristics for:

- (a) goods or related processes and production methods,
- (b) services and service providers or their related operating methods,
- (c) occupations and occupational qualifications, or
- (d) sanitary/phytosanitary measures;

treasury services means services or financial products relating or ancillary to any of the following:

- (a) borrowing, lending, investing, managing or holding money, securities or other property; and
- (b) without limiting the generality of paragraph (a),
 - (i) managing debt, loan, asset or investment portfolios,
 - (ii) entering into commodity or other derivative transactions, or
 - (iii) acquiring, exchanging, disposing of or otherwise transacting in securities, foreign currencies or any property acquired as a result of borrowing, lending, managing or investing money or securities.

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.

**APPENDIX I
TRANSITIONAL MEASURES**

SASKATCHEWAN

A. Financial Services

1. Measures relating to financial services until July 1, 2013.

B. Standards and Regulations

1. Existing standards and regulations not otherwise expressly addressed in this Agreement until July 1, 2012.

C. Investment

1. Measures relating to business registration and reporting until July 1, 2012.

D. Labour Mobility

1. Measures related to the following occupations until July 1, 2013:

(a) Insurance

Insurance agent	All classes of insurance agent other than life agency
Insurance broker	Restricted travel insurance agent
Restricted agent	Restricted travel insurance salesperson
Restricted agency	Restricted travel insurance agency
Restricted salesperson	Motor vehicle warranty administrator
Salesman of a licensed agent	Motor vehicle warranty dealer
Salesperson of a licensed agent	Warranty administrator
Insurance salesman	Warranty dealer
Insurance salesperson	Insurance adjuster
General agent	Adjuster representative
Sponsoring agent	Adjusting firm
General insurance agent	Representative of a licensed insurance adjuster
Life insurance agent	Hail adjuster
Life and accident and sickness agent	Hail adjuster representative
Accident and sickness agent	
Accident and sickness salesperson	

Life and/or accident and sickness agency
Hail insurance agent
Hail insurance agency
Hail insurance salesperson
All classes of insurance agent other than
life insurance and hail insurance
All classes of insurance agent other than
life agent/salesperson

Hail adjusting firm
General claims adjuster
Public adjuster
Exclusive agent
Managing general agent

(b) Mortgage brokers

Mortgage broker
Mortgage associate

(c) Payday lenders

Payday lender
Payday broker

(d) Securities

Dealing representative
Advising representative
Associate Advising Representative
Ultimate Designated Person
Chief Compliance Officer

(e) Trust and Loan

Loan broker

E. Procurement

1. Article 14 does not apply to Crown corporations; government-owned commercial enterprises; other entities that are owned or controlled by the Party through ownership interest; regional, local, district or other forms of municipal government; school divisions or publicly-funded academic, health and social service entities, as well as any corporation owned or controlled by one or more of the preceding entities until July 1, 2012.
2. Article 14 does not apply to the following agencies and boards until July 1, 2012:

Saskatchewan Assessment Management Agency
Saskatchewan Human Rights Commission
Saskatchewan Legal Aid Commission
Saskatchewan Financial Services Commission

Workers' Compensation Board

3. Article 14(3) does not apply to ministries until July 1, 2011.

F. Transportation

1. Article 16(2) and Article 16(3) do not apply until July 1, 2011.

In Witness Whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Signed at _____,
_____ day of _____, 2010

Signed at _____,
_____ day of _____, 2010

The Honourable Gordon Campbell,
Premier of British Columbia

The Honourable Iain Black
Minister of Small Business, Technology
and Economic Development,
Government of British Columbia

Signed at _____,
_____ day of _____, 2010

Signed at _____,
_____ day of _____, 2010

Approved pursuant to the *Government
Organization Act*, RSA 2000, c. G-10

The Honourable Ed Stelmach,
Premier of Alberta

The Honourable Iris Evans,
Minister of International and
Intergovernmental Relations,
Government of Alberta

Signed at _____,
_____ day of _____, 2010

Signed at _____,
_____ day of _____, 2010

The Honourable Brad Wall
Premier of Saskatchewan

The Honourable Ken Cheveldayoff
Minister Responsible for Trade,
Government of Saskatchewan