

# ***New West Partnership Trade Agreement***

## **THIRD PROTOCOL OF AMENDMENT**

The Governments of Manitoba, British Columbia, Alberta and Saskatchewan, Parties to the *New West Partnership Trade Agreement* (the “**Agreement**”), hereby agree to make the following amendments to the Agreement:

### **1. PART I: OPERATING PRINCIPLES**

- 1.1. In the final clause of the resolutions, delete “*Agreement on Internal Trade*” and replace with “*Canadian Free Trade Agreement*”.

### **2. PART II: A. EXTENT OF OBLIGATIONS**

- 2.1. In Article 1: Relationship to the *Agreement on Internal Trade*, make the following amendments:
  - a. Rename the Article “Relationship to the *Canadian Free Trade Agreement*”;
  - b. In paragraph 1, delete “Article 1800 (Trade Enhancement Arrangements) of the *Agreement on Internal Trade*” and replace with “Article 1203 (Trade, Investment, and Labour Mobility Enhancing Arrangements) of the *Canadian Free Trade Agreement*”; and
  - c. Replace paragraph 2 with the following:
    - “2. In the event of an inconsistency between any provision in Parts II and V of this Agreement and any provision of the *Canadian Free Trade Agreement*, 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 *Canadian Free Trade Agreement* 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.”

### **3. PART II: B. GENERAL RULES**

- 3.1. In Article 8: Exceptions, in paragraph 1, insert “and the Bid Protest Mechanism” after “Parts II and IV”.
- 3.2. In Article 9: Transitional Measures, make the following amendments:
  - a. In paragraph 1, insert “and the Bid Protest Mechanism” after “Parts II and IV”; and

- b. In paragraph 6, insert “or the Bid Protest Mechanism” after “Part IV”.

#### **4. PART II: C. SPECIAL PROVISIONS**

- 5.1. In Article 14: Procurement, replace paragraph 4 with the following:

- “4. (a) The Parties shall be signatory to the *Agreement Among The Parties To The New West Partnership Establishing the Bid Protest Mechanism*.
- (b) The Bid Protest Mechanism shall be available to suppliers of the Parties seeking resolution of complaints relating to specific procurements covered by this Agreement.
- (c) Each Party shall provide under its laws that any tariff cost awards, operational cost awards, and bid-preparation cost awards issued by an arbiter under Article 7 of the Bid Protest Mechanism relating to a specific procurement covered by this Agreement shall be enforceable in the same manner as an order issued by that Party’s superior court.
- (d) Part IV does not apply to a dispute relating to a specific procurement.”

#### **5. PART III: ADMINISTRATIVE PROVISIONS**

- 5.1. In Article 20: Accession and Withdrawal, in paragraph 1, delete “Article 1800 (Trade Enhancement Agreements) of the *Agreement on Internal Trade*” and replace with “Article 1203 (Trade, Investment, and Labour Mobility Enhancing Arrangements) of the *Canadian Free Trade Agreement*”;

- 5.2. In Article 21: Further Negotiations and Joint Decisions, replace paragraph 3 with the following:

- “3. 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 arbiters, and any subsequent decision or award of a panel issued under Part IV or any decision issued under the Bid Protest Mechanism must be consistent with all such prior joint decisions. The Parties shall post all such joint decisions on the Agreement’s website.”

#### **6. PART IV: DISPUTE RESOLUTION**

- 6.1. Rename Part IV “Dispute Resolution Mechanism”.

- 6.2. Delete the subheading “A. Dispute Resolution Mechanism”.
- 6.3. In Article 24: Application, make the following amendments:
  - a. In paragraph 1:
    - i. Delete “Article 14(4)(b)” and replace with “Article 14(4)(d)”;
    - ii. Delete “Part IV(A)” and replace with “Part”;
  - b. In paragraph 2, delete “Part IV(A)” and replace with “Part”;
  - c. In paragraph 3:
    - i. Delete “paragraph (2)” and replace with “paragraph 2”;
    - ii. Delete “Part IV(A)” and replace with “Part”;
  - d. In paragraph 4, delete “Part IV(A)” and replace with “Part”;
  - e. In paragraph 5, delete “Part IV(A)” and replace with “Part”.
- 6.4. In Article 27: Panel Proceedings, in paragraph 5, delete “Part IV(A)” and replace it with “Part”.
- 6.5. In Article 31: Judicial Review, make the following amendments:
  - a. In paragraph 1, delete “Part IV(A)” and replace with “Part”;
  - b. Delete paragraph 2, and replace with the following paragraphs:
    - “2. In the event that a disputant files a request for judicial review of a final panel report or compliance report with the applicable court, that disputant shall concurrently notify the administrator in writing of the request.
    3. Upon receiving notification of a request for judicial review under paragraph 2:
      - (a) the administrator shall suspend the application of Article 32(3);
      - (b) the time for payment of any award of costs as set out in a final panel report shall be suspended; and
      - (c) the time for payment of any monetary award or the authorization of retaliatory measures as set out in a compliance report shall be suspended;

until the matter has been finally disposed of by the court or a subsequent panel, as the case may be.

4. After the matter has been finally disposed of, the administrator shall apply Article 32(3) to the financial deposits in accordance with the result of the judicial review application or any subsequent final panel report, as the case may be.”
- 6.6. In Article 32: Costs and Remuneration, in paragraph 5, delete “Schedule 5 shall be updated by the Parties at least every five years.”
- 6.7. In Article 33: Abridgement or Extension of Time Periods, make the following amendments:
  - a. In paragraph 1, delete “Part IV(A)” and replace with “Part”; and
  - b. In paragraph 2, delete “Part IV(A)” and replace with “Part”.
- 6.8. In Article 34: Other Provisions, make the following amendments:
  - c. In paragraph 3, delete “Part IV(A)” and replace with “Part”; and
  - d. In paragraph 4, delete “Part IV(A)” and replace with “Part”.

## **7. PART IV: B. BID PROTEST MECHANISM**

- 7.1. Delete subheading “B. Bid Protest Mechanism”.
- 7.2. Delete Articles 35 to 43, inclusive.

## **8. PART VI: DEFINITIONS**

- 8.1. Delete the definition of “arbiter”.
- 8.2. After the definition of “administrator agreement”, add the following:

**“Bid Protest Mechanism** means Division C of the *Agreement Among The Parties To The New West Partnership Establishing the Bid Protest Mechanism*;”

- 8.3. Delete the definition of “bid protest”.
- 8.4. In the definition of “certified”, delete the period and replace with a semicolon.
- 8.5. In the definition of “code of conduct”, delete “and arbiters”.

- 8.6. Delete the definition of “cost award”.
- 8.7. Replace the definition of “disputant” as follows:  
“**disputant** means the complainant or the responding Party;”
- 8.8. Delete the definition of “recoupment award”.
  
8. **SCHEDULE 2: FORM OF CONSULTATION REQUEST UNDER ARTICLE 25(1) and 25(4)**
  - 8.1. Rename Schedule 2 to the Agreement (Form of Consultation Request Under Article 25(1) and 25(4)) “Form Of Consultation Request Under Articles 25(1) And 25(4)”.
  
10. **SCHEDULE 3: CRITERIA FOR THE APPOINTMENT OF POTENTIAL PANELLISTS AND ARBITERS**
  - 10.1. The amendments in paragraphs 10.2 to 10.8 of this Protocol of Amendment refer to Schedule 3 to the Agreement (Criteria for the Appointment of Potential Panellists and Arbiters).
  - 10.2. Rename Schedule 3 “**CRITERIA FOR THE APPOINTMENT OF POTENTIAL PANELLISTS**”.
  - 10.3. In the subtitle of Schedule 3, delete “Articles 26(1) and 37(1)” and replace with “Article 26(1)”.
  - 10.4. Delete the subtitle of paragraph 1 and replace with:  
“**Criteria for Appointments**”
  - 10.5. In paragraph 1, delete the chapeau and replace with:  
“The Parties shall ensure that each of the individuals that they respectively appoint to their lists of potential panellists, as required under Article 26(1):”
  - 10.6. Delete the subtitle of paragraph 2.
  - 10.7. Delete paragraph 3 and its subtitle.
  - 10.8. In paragraph 4, make the following amendments:
    - a. Renumber as paragraph 3;

- b. Delete “and arbiters”; and
- c. Delete “or Article 37(1)”.

## **11. SCHEDULE 4: FORM OF CONSENT TO ARBITRATION ARTICLE 26(4)**

- 11.1. The amendments in paragraphs 11.2 to 11.8 of this Protocol of Amendment refer to Schedule 4 to the Agreement (Form of Consent to Arbitration Article 26(4)).
- 11.2. Rename Schedule 4 “**FORM OF CONSENT TO ARBITRATION**”.
- 11.3. Add a subtitle to Schedule 4 as follows:  
“Article 26(4)”
- 11.4. In paragraph 1, make the following amendments:
  - a. In the definition of “complainant”, delete “Part IV(A)” and replace with “Part IV”; and
  - b. In the definition of “consent”, delete “Part IV(A)” and replace with “Part IV”;
- 11.5. In paragraph 3, delete “Part IV(A)” and replace with “Part IV”.
- 11.6. In paragraph 4, delete “Part IV(A)” and replace with “Part IV”.
- 11.7. In paragraph 5, make the following amendments:
  - a. In subparagraph (a), delete “*Agreement on Internal Trade*” and replace with “*Canadian Free Trade Agreement*”;
  - b. In subparagraph (b), delete “Part IV(A)” and replace with “Part IV”; and
  - c. In subparagraph (f), delete “Part IV(A)” and replace with “Part IV”.
- 11.8. In paragraph 6, delete “Part IV(A)” and replace with “Part IV”.

## **12. SCHEDULE 5: REMUNERATION AND COSTS UNDER ARTICLE 32(5)**

- 12.1. The amendments in paragraphs 12.2 to 12.8 of this Protocol of Amendment refer to Schedule 5 to the Agreement (Remuneration and Costs Under Article 32(5)).
- 12.2. In the subtitle of Schedule 5, delete “Articles” and replace with “Article”.

- 12.3. In section 3, make the following amendments:
- a. Delete “\$100” and replace with “\$125”; and
  - b. Delete “\$800” and replace with “\$1000”.
- 12.4. In section 4, make the following amendments:
- a. Delete “\$50” and replace with “\$62.50”; and
  - b. Delete “\$400” and replace with “\$500”.
- 12.5. Insert the following text as a new section 5 and renumber the existing sections 5 to 8, inclusive:
- “5. The maximum allowable amount for arbiter remuneration under sections 3 and 4 of this schedule shall be increased annually on January 1 by that percentage by which the Consumer Price Index (All items) (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 maximum allowable amount for arbiter remuneration will remain the same for the following calendar year. The administrator shall calculate and publish on the designated website the maximum allowable amounts for arbiter remuneration annually.”
- 12.6. In the section now numbered 7, delete “section 7 of this Schedule” and replace with “section 8 of this schedule”.
- 12.7. Delete the section now numbered 9, and replace with:
- “9. All administrator-related expenses that may be awarded against the participants are governed by agreements the Parties have entered into with the administrator. The administrator will provide an accounting of all such costs relating to a particular proceeding to the panel. Upon receiving that accounting and being satisfied that the costs are appropriately chargeable to the participants under the applicable agreement and are reasonable in the circumstances, the panel shall include such administrator-related costs in its assessment and allocation of costs against the participants.”
- 13. SCHEDULE 6: CODE OF CONDUCT FOR DISPUTE RESOLUTION PANELLISTS AND ARBITERS**
- 13.1. The amendments in paragraphs 13.2 to 13.6 of this Protocol of Amendment refer to Schedule 6 to the Agreement (Code of Conduct for Dispute Resolution Panellists and Arbiters).

- 13.2. Rename Schedule 6 “**CODE OF CONDUCT FOR DISPUTE RESOLUTION PANELLISTS**”.
- 13.3. In the subtitle of Schedule 6, delete “Articles 26(8) and 37(2)” and replace with “Article 26(8)”.
- 13.4. In Part II - Interpretation, make the following amendments:
- a. In the definition of “candidate”, delete “or as an arbiter”; and
  - b. Replace the definition of “member” as follows:  
  
““**member**” means a member of a panel constituted pursuant to the Agreement;”
- 13.5. In paragraph 3 of Part IV - Disclosure Obligations, make the following amendments:
- a. In subparagraph (c), delete the “and” at the end of the subparagraph;
  - b. In subparagraph (d), delete the period at the end of the subparagraph and replace with “; and”; and
  - c. Add the following as subparagraph (e):  
  
“(e) Members will forthwith in writing communicate with the administrator in the event that, for any reason, they become unavailable to continue their service or otherwise must resign their appointment.”
- 13.6. Replace paragraph 1 of Annex 2 to Schedule 6 with the following:
- “1. I have read the code of conduct established under the *New West Partnership Trade Agreement* (the “**NWPTA**”) which governs the conduct of members of a panel constituted pursuant to Part IV of the NWPTA (“**members**”) and individuals under consideration for an appointment as a member (“**candidates**”).”
- 14. SCHEDULE 7: FORM OF CONSENT TO ARBITRATION ARTICLE 37(4)**
- 14.1. Delete the entirety of Schedule 7 to the Agreement (Form of Consent to Arbitration Article 37(4)).

## 15. ENTRY INTO FORCE

- 15.1. The amendments to the Agreement provided for in this Protocol shall enter into force at 11:59 PM PST on December 31, 2018, subject to:
- a. each Party having signed the *Agreement Among The Parties To The New West Partnership Establishing The Bid Protest Mechanism* to take effect immediately following the entry into force of this Protocol of Amendment; and
  - b. the Parties having exchanged written notifications certifying the completion of each of their internal approval procedures.

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